

QBuild ..... region

..... Queensland .....

<b>Date issued:</b> .....	<b>Contact Name:</b> .....
<b>Telephone:</b> .....	<b>Reference No:</b> .....
<b>Facsimile:</b> .....	<b>Email:</b> .....

**Invitation to submit offers**

You are invited to submit an offer for the Works described below, in accordance with the attached Conditions of Offer and Conditions of Contract "Minor Works (QBuild)".

**Offers close at:**.....(for hardcopy offers) or.....  
(for electronic offers) **on (date)** ...../...../..... **at (time)**.....

**Note:** For hardcopy offers please ensure that your offer is in a sealed envelope marked with the Reference No. and addressed to the appropriate tender box as specified above.

**Description of Works:** .....

.....

.....

.....

**Location:** .....

**Site contact:** ..... **Telephone:** .....

**Attachments:** ..... **No. of pages:** .....

Quality system (clause A8):	Alternative 1- not applicable*; Alternative 2 - to AS/NZS ISO 9001:2008* ( <i>*delete one</i> )
Time for commencement (clause 11):	within ..... days of acceptance or ...../...../.....
Date for Practical Completion (clause 12):	within ..... weeks from acceptance or ...../...../.....
Liquidated damages (clause 13):	\$..... per day (exclusive of GST)
Defects liability period (from Practical Completion) (clause 14):	..... ( <i>if none stated, 6 months</i> )
Times for making payment claims (clause 18):	..... If no time/s stated monthly payment claims will apply
Retention from progress payments (clause 18):	Alternative 1- nil*; Alternative 2 - 10% of progress payments (excl GST) up to 5% of the contract sum (minus GST)* ( <i>*delete one</i> )
Retention after Practical Completion (clause 18):	50% of retention from progress payments If an Alternative is not deleted, Alternative 1 applies

Date issued:.....Contact name:.....  
 Telephone:.....Reference No:.....  
 Facsimile:.....Email:.....  
 Description of Works:.....  
 Location:.....

**Offer to: The State of Queensland through QBuild, a business unit of the Department of Public Works (the Principal)**

**I/We (the Offerer)** .....  
 (Full Name in BLOCK LETTERS of Individuals, Partners trading in a partnership or Company)  
 .....  
**Address:** .....  
**State:** ..... **Postcode:** .....  
**Telephone:** ..... **Mobile:** ..... **Facsimile:** .....  
**ACN (if a Company):**..... **ABN:**.....  
 hereby offer to perform the Works described for the amount (inclusive of GST) of .....  
 ..... (words only)  
**Tender sum (exclusive of GST) \$**..... **GST \$**..... **Total tender sum \$**.....  
 (Please note the amount in words takes precedence)

I/We elect to provide retention by way of **cash/ unconditional undertakings** (*\*delete one*) (in a form approved by the Principal, available on request) (clause 18). If no deletion is made the Contractor shall be deemed to have elected to provide cash retentions.

**This offer includes for the following addenda:** ..... (Please list all addenda e.g. 1, 2, 3 – not three or 3)

**Licensing requirements:** (Please complete or update with current information)  
 QBSA licence number: ..... Category: .....  
 Other licence (eg Electrical):..... Restrictions/Conditions: (if any) .....

**I/We have the following insurances:** (Please complete or update with current information)  
 Insurance of employees (WorkCover) or equivalent for self employed policy number: ..... Valid to ..... /..... /.....  
 Public liability policy number: ..... Valid to ...../...../.....  
 Other type: .....  
 Policy number: ..... Valid to ..... /..... /.....

**Name** of Offerer or authorised person(s): .....  
**Signature(s):** ..... **Date:** ..... /..... /.....

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## Conditions of Offer for Minor Works

- A1** The offer documents comprise the offer form, letter of invitation to offer (if any), these Conditions of Offer and Conditions of Contract for Minor Works and such specifications, drawings and any other information issued by the Principal for the purposes of tendering and which may be inspected or obtained at the place of closing of offers.
- A2** To submit hardcopy offers:
- (a) the offer shall be signed, fully priced where required and accompanied by any other documents required to be submitted; and
  - (b) offers must be enclosed in an envelope, sealed and endorsed with the location and description of the work and reference number (if any) and lodged at the place named in the offer form, by the date and time given.
  - (c) any offer not in the tender box before the specified closing time may be rejected at the discretion of the Principal. In exercising its discretion as to rejection of any offer, the Principal shall, amongst other factors, consider any evidence that the offer was sent by prepaid post or recognised carrier in time to be delivered, within the time stated, in the ordinary course of mail or delivery by the recognised carrier.
- A3** To submit electronic offers:
- (a) the offer shall include a completed offer form, be fully priced where required and accompanied by any other documents required to be submitted;
  - (b) the offer must be lodged electronically to the address stated in the offer form for electronic offers by the date and time given; and
  - (c) an electronic offer shall be deemed to have been delivered at the time the electronic offer enters the Department of Public Works information system designated to receive the electronic communication. Any electronic offer that has not entered the designated information system before the specified closing time may be rejected at the discretion of the Principal.
- A4** No offer received by facsimile or email will be considered.
- A5** The Offerer is required to satisfy itself as to the correctness and sufficiency of its offer. An offer shall be deemed to be on the basis that the Offerer has a full knowledge of all matters relating to the Contract and has undertaken an inspection of the site and any existing structures or features thereon.
- A6** The Principal shall not be bound by any oral advice or information furnished in respect of the offer but shall be bound only by written advice or information given or furnished by it (which may be given electronically).
- A7** The Principal shall not be bound to accept the lowest or any offer. The Principal may accept an offer which on a consideration of all the circumstances appears to be the best "value for money" in accordance with the Queensland Government's State Procurement Policy. The Principal may consider, accept or decline to accept any offer. An offer shall not be deemed to have been accepted until the date of notification in writing to the Offerer of such acceptance.
- A8** The Offerer shall have in place the quality system nominated by the Principal (if any).
- A9** Notwithstanding that the Principal may have invited offers from selected organisations or has otherwise procured submission of offers, the Principal may decline to consider or accept an offer from an Offerer who, within seven (7) days of being requested to do so, has not been able to satisfy the Principal that it has sufficient financial capacity to satisfactorily perform and complete the Contract in accordance with its terms.
- A10** The Offerer acknowledges and agrees that if awarded a Contract as a result of submitting an offer, it shall comply with the requirements of the **Conditions of working with QBuild - Contractors** and, prior to commencing the Works, be registered as a QBuild registered contractor.
- A11** The Offerer is deemed to have completed an environmental risk assessment and allowed for all necessary environmental controls to complete the Works without causing environmental harm.
- A12** If the Offerer provides a quote for the Works on a form other than the provided offer form, the issuance by the Principal of a purchase order or work order for the Works shall be deemed to include these Conditions of Offer and the Conditions of Contract set out below.

## Conditions of Contract

### 1 Definitions

"Contract" means the agreement in writing between the Principal and the Contractor for the execution of the Work under the Contract, including the offer documents and the **Conditions of working with QBuild – Contractors**.

"Contractor" means the person or company whose offer for the Work under the Contract has been accepted and its executors, administrators, successors or permitted assigns.

"Date for Practical Completion" means the date, or last day of the period of time, specified on the offer form.

"Practical Completion" means the Work under the Contract is complete in accordance with the Contract except for minor omissions and defects which will not (and the rectification of which will not) prevent or impair the normal use and occupation of the Works.

"Superintendent" means the person nominated by the Principal to exercise the functions of the Superintendent under the Contract. The Superintendent may appoint a representative to exercise any of its powers, duties, discretions and authorities.

"Work under the Contract" means the work which the Contractor is or may be required to execute under the Contract including any variations.

"Works" means the whole of the work and or services to be executed and completed in accordance with the Contract, including all variations provided for by the Contract, which by the Contract is to be handed over to the Principal.

### 2 Execution of Works

The Contractor shall undertake the Work under the Contract in accordance with the Contract and any other documents issued by the Principal. Unless otherwise provided, the Contractor is responsible for all things, including items not expressly mentioned in the

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Contract, necessary for satisfactory completion of the Works. The documents forming the Contract are mutually explanatory and anything contained in one but not in another is equally binding as if contained in all.

The Contractor shall comply with the requirements of legislation and public or other authorities affecting the Works, and unless otherwise specified pay all fees, give all notices and obtain necessary consents.

### **3 Assignment and subcontracting**

The Contractor shall not assign or subcontract the Work under the Contract, or any part thereof or any payment thereunder, without the prior written approval of the Superintendent. The Contractor shall not, without the prior written approval of the Superintendent, allow a subcontractor to subcontract the Work under the Contract. The Superintendent may, in its entire discretion and without giving reasons, reject any request for approval by the Contractor pursuant to this clause.

### **4 Workplace health and safety**

- (a) For the purpose of this clause the words "principal contractor", "construction work", "workplace", "serious bodily injury", "work caused illness", "work injury" and "dangerous event" have the meanings assigned to them by the *Workplace Health and Safety Act 1995* ("the Act").
- (b) If the Work under the Contract is construction work the Principal may appoint the Contractor as the principal contractor pursuant to section 13 of the Act. If appointed principal contractor in writing:
  - (i) the Contractor shall accept the appointment and fulfil all requirements to effect that appointment prior to commencing any construction work; and
  - (ii) the Contractor shall be responsible for the performance of the functions of the principal contractor within the meaning of the Act and associated Regulation in force under the Act; and
  - (iii) the Contractor shall consult with the Principal in relation to how the construction work can be undertaken in a way that prevents or minimises all risks to health and safety.
- (c) The Contractor indemnifies the Principal against liabilities arising out of the Contractor's obligations under the Act or Regulations.
- (d) The Contractor shall notify the Superintendent of every work caused illness, work injury, serious bodily injury and dangerous event which occurs on site as soon as possible but not later than 12 hours after such occurrence.
- (e) Except as stated in the Contract, if material which may contain asbestos or any other hazardous substance is discovered, the Contractor shall not disturb it and shall inform the Superintendent who shall direct the action to be taken.

### **5 Protection of persons and property**

The Contractor shall take all measures necessary to protect people and property, including the Works, avoid unnecessary interference with passage of people and vehicles, prevent nuisance, unreasonable noise and disturbance. If the Contractor damages any property, the Contractor shall provide temporary protection for, and repair it at its cost.

### **6 Care of work and reinstatement of damage**

The Contractor shall be responsible for the care of the whole of the Work under the Contract. If loss or damage occurs to the Work under the Contract, the Contractor shall at the Contractor's cost rectify such loss or damage except loss or damage caused by the negligent act or omission of the Principal, or employees or agents of the Principal, or caused by defects in the design of the Work under the Contract.

### **7 Indemnity by the Contractor**

The Contractor indemnifies the Principal against:-

- (a) loss of or damage to the Principal's property; and
- (b) claims by any person in respect of injury, death or loss of or damage to any property, resulting from or in any way connected with the Contractor carrying out the Work under the Contract, but the Contractor's liability to indemnify the Principal shall be reduced proportionally to the extent that an act or omission of the Principal, or its employees or agents, contributed to the loss, damage, death or injury.

### **8 Public liability insurance**

Before commencing work the Contractor shall have public liability insurance for an amount not less than five million dollars (\$5,000,000) or such other amount required by the Principal. The insurance policy shall cover the Contractor's liability to the Principal for loss of or damage to property and death or injury to any person. The Contractor shall maintain such insurance for the duration of the Contract and produce evidence of insurance if requested.

### **9 Insurance of employees (WorkCover)**

Before commencing work the Contractor shall insure against liability for death of or injury to persons employed by the Contractor. Where the Contractor is a self employed person, the Contractor shall maintain an equivalent insurance policy for itself. The Contractor shall maintain such insurance for the duration of the Contract and produce evidence of insurance if requested. The Contractor shall ensure that every subcontractor is similarly insured.

### **10 Materials and workmanship**

All materials used in any Work under the Contract and the standards of workmanship shall be in conformity with the provisions of the Contract. In the absence of such provisions in the Contract the material or standard of workmanship as the case may be shall be of a kind which is suitable for its purpose and is consistent with the nature and character of the Works. Unless otherwise specified, all materials shall be new and workmanship shall be in accordance with the relevant manufacturer's recommendations or, if none, the relevant Australian Standard where applicable. Apart from any tests specified, the Superintendent may at any time direct that any materials or work shall be examined and/or tested.

The Contractor shall comply with any direction by the Superintendent to remedy any work not in accordance with the Contract within the period of time stipulated in writing by the Superintendent. If the Contractor fails to comply with such a direction to carry out rectification work within the time stipulated, the Principal may have the rectification work the subject of the direction carried out by others at the Contractor's expense or may accept the work at a reduced value. The Principal may deduct the cost of rectification work or reduced value from payments or recover the cost or reduced value as a debt due from the Contractor. The Principal may deduct the estimated cost of rectification work from payments until such time as the Principal has incurred the cost of rectification.

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## 11 Time for commencement

The Contractor shall commence Work under the Contract within the time stated in the offer and shall, unless otherwise permitted, give at least two (2) days notice to the Superintendent prior to the commencement of work.

## 12 Time for completion

The Contractor shall execute the Works to Practical Completion by the Date for Practical Completion or within any extended time agreed by the Superintendent. The Contractor is not entitled to an extension of time for delays caused by it whether occurring before or after the Date for Practical Completion, nor for delays due to inclement weather or industrial conditions occurring after the Date for Practical Completion. The Superintendent may extend the Date for Practical Completion for any reason.

## 13 Liquidated damages

If the Contractor fails to complete the Works by the Date for Practical Completion together with any extensions of time granted by the Superintendent, the Contractor shall be liable to the Principal for liquidated damages in the amount stated in the offer for every day after that date until Practical Completion has been achieved or the Contract terminated, whichever is sooner.

## 14 Defects liability period

The Contractor shall promptly rectify all defects and omissions notified to the Contractor during the defects liability period stated in the offer. If the Contractor fails to do so, the Principal may have the omission or defect remedied by other persons and the cost so incurred shall be a debt due to the Principal which may be deducted from payments.

## 15 Cleaning of site

The Contractor shall keep the site and the Works clean and tidy and regularly remove from the site rubbish and surplus material arising from the execution of the Works. On completion of the Works the Contractor shall clear away and remove from the site all constructional plant, surplus materials, rubbish and temporary works of every kind.

## 16 Variations

The Superintendent may direct in writing a variation to any Work under the Contract and the Contractor shall promptly comply with that direction. The Contractor shall submit to the Superintendent a detailed price for the variation within 14 days of the direction. The variation shall be valued by agreement between the Contractor and the Superintendent or failing agreement, by the Superintendent, and the Contract price adjusted accordingly. The margin for profit and attendance shall be 12.5%. No payment for additional work shall be made unless the additional work is authorised in writing by the Superintendent.

## 17 Latent conditions

If the Contractor discovers physical conditions on the site or its surroundings, excluding weather conditions, which differ materially from those which should reasonably have been anticipated at the time of offer if it had:

- (a) examined all information made available in writing by the Principal to the Contractor for the purpose of tendering; and
- (b) examined all information relevant to the risks, contingencies and other circumstances having an effect on the offer and obtainable by the making of reasonable enquiries; and
- (c) inspected the site and its surroundings,

the Contractor shall immediately notify the Superintendent in writing and may request that a variation be directed pursuant to clause 16.

The Superintendent may issue a direction in respect of the latent condition, and the Contractor shall be entitled to claim an extension of time for delays, and may be entitled to reimbursement of costs incurred as a consequence of the latent condition and directions issued in respect thereof.

## 18 Payment

At the times stated in the offer, the Contractor shall give the Superintendent a detailed payment claim supported by information the Superintendent may reasonably require. Subject to the provisions of clause 19, payment will be made as follows:

- (a) where this contract is a 'building contract' as that term is defined in the *Queensland Building Services Authority Act 1991*, payment will be made within 15 business days of receipt of a valid claim; and
- (b) in all other cases, payment will be made within 22 business days of receipt of a valid claim.

Payment shall take into account the deduction of retention moneys (if any) and any other amount which the Principal may be entitled to deduct or which is due and payable by the Contractor to the Principal whether under the Contract, any other contract or independent of contract. If the moneys to be deducted are insufficient to discharge the liability of the Contractor, the Principal may have recourse to retention moneys or unconditional undertakings provided in lieu of retention.

Payment of moneys to the Contractor shall not be evidence of the value of work done or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only. The Principal may, in a later payment, correct an error in a previous payment. Nothing in this Contract shall oblige the Principal to pay for work that is not in accordance with the Contract, or for plant or materials not incorporated in the Works on site.

For the purposes of the *Building and Construction Industry Payments Act 2004*, the Superintendent is authorised to receive payment claims and to issue payment schedules on behalf of the Principal.

## 19 Default of contractor

- (a) Subject to clause 19(c), if the Contractor fails to commence the Work under the Contract within the time stated in the offer, or fails to proceed with the work at a reasonable rate of progress, or commits any substantial breach of the Contract, or indicates that it is unable or unwilling to complete the Works, the Principal may, by written notice, require the Contractor to show cause by the date specified in the notice, which shall be not less than five (5) days, why the Principal should not exercise a right under clause 19(b).
- (b) If the Contractor fails to show reasonable cause by the date specified by the Principal, then the Principal shall have the power upon notice in writing to the Contractor to terminate the Contract or suspend payment and take the work remaining

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to be completed wholly or partly out of the hands of the Contractor without prejudice to any rights of the Principal under the Contract or at common law.

- (c) If the Contractor:
- (i) fails to hold a current licence required to perform the Work under the Contract; or
  - (ii) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or
  - (iii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the Bankruptcy Act 1966, or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
  - (iv) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets; or
  - (v) fails to maintain registration with QBuild as a QBuild registered contractor.,
- the Principal may, without giving a notice to show cause, exercise a right under clause 19 (b).
- (d) In the event that the Principal takes the work out of the hands of the Contractor, the Principal may itself or by means of other persons, complete the whole or any part of that work and may without payment of compensation take possession of the constructional plant and other things on or in the vicinity of the site as are owned by the Contractor. If the cost incurred by the Principal in completing the work is greater than the amount which would have been paid to the Contractor if the Contractor had completed the work, the difference shall be a debt due from the Contractor to the Principal, otherwise any difference shall be a debt due from the Principal to the Contractor.

## 20 Disputes

Within 14 days of a dispute arising either party may refer it to the Superintendent. Within 28 days of receiving notice of dispute the Superintendent shall give its written decision to each party. If the Superintendent fails to give the decision, or if either party is dissatisfied with it, the parties shall within 14 days of receipt of the decision, or the date upon which it should have been given, confer at least once to attempt to resolve the dispute.

## 21 GST and PAYG

- (a) *GST Included in Price*  
Payments for any taxable supplies under the Contract include GST.
- (b) *Tax Invoices*  
The Contractor must issue to the Principal a tax invoice or adjustment note (as the case may require) within five (5) business days after each of the following occurring in relation to that taxable supply:
- (i) the Contractor submitting a claim for payment that is not in the form of a valid tax invoice;
  - (ii) the Superintendent certifying an amount for payment different to the amount claimed;
  - (iii) the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) certified.
- (c) *PAYG Withholding*  
Whenever the Principal reasonably considers itself bound by law to do so, the Principal shall be entitled to withhold from any payment otherwise due to the Contractor, amounts calculated and to be withheld in accordance with the law.