



Conditions of Arrangement

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1. DEFINITIONS

“Arrangement” means the Register of Pre-Qualified Suppliers entered into by the Principal and a Supplier.

“Authorised Officer” means the officer or agent nominated in the Letter of Acceptance or as may be nominated from time to time by the Principal.

“Contract” means a legally binding contract as agreed between the Principal and a Supplier in accordance with the Arrangement. **“Contract Administrator”** means the officer nominated in the Invitation to Offer.

“Contractor” or Consultant means in relation to the Contract, the entity accepted onto the Arrangement and from whom the Goods and/or Services are being procured.

“Principal” or Client means Noosa Shire Council.

“Services” means construction of open space structures, shelters, boardwalks, viewing decks, platforms, access stairways, and pedestrian bridges.

“Supplier” means in relation to the Arrangement, the entity specified in the Supplier Offer and accepted as a supplier on the Register of Pre-Qualified Suppliers.

2. NATURE OF ARRANGEMENT

- 2.1 This Arrangement is being established by the Principal assessing a number of Suppliers as being capable, at the Principal's sole discretion, of providing Services. The Principal may from time to time require the Services and will enter into a Contract through a request for quote or the placement of a purchase order with a Supplier.
- 2.2 Suppliers may enter into one or more Contracts with the Principal under this Arrangement which may differ with respect to service or work performed under each Contract.
- 2.3 This is a non-exclusive arrangement and the Principal reserves the right to choose other Suppliers on this Arrangement at any time.
- 2.4 It is a condition of this Arrangement that the Principal is not providing any guarantee, promise or undertaking (whether legal or equitable) that it will acquire any Services from a Supplier during the Term of the Arrangement.
- 2.5 This Arrangement does not preclude the Principal from acquiring services from other third parties where the Principal is of the opinion that none of the Suppliers on this Arrangement can supply the required Services.

3. CONSTRUCTION OF A CONTRACT UNDER THE ARRANGEMENT

- 3.1 A contract between the Principal and the Contractor is formed when the Principal provides a Letter of Acceptance and/or Purchase Order (PO) to the Contractor and is constituted by the following documents:
 - a) Letter of Acceptance (as applicable);
 - b) the Purchase Order;
 - c) the requirements (including any variations agreed to in writing by the Principal);
 - d) the Conditions of Contract for Goods and/or Services (if relevant);
 - e) correspondence passing between the Principal and the Contractor clarifying any aspect of an Invitation to Quote (ITQ) or ITQ response;
 - f) the ITQ (if any);
 - g) the IFQ response (if any); and
 - h) the Conditions of Arrangement.

- 3.2 Where there arises any inconsistency or ambiguity between provisions in the different documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity shall be from document (a) to (g) in clause 3.1.
- 3.3 In consideration of payment pursuant to these conditions by the Principal, the Contractor agrees to meet its obligations pursuant to and provide the services in accordance with the requirements of the Contract and at the Purchase Order price.

4. INVITATION TO QUOTE AND PURCHASE ORDER PROCESS

ITQ Options

- 4.1 The Principal may issue an ITQ to one or more suppliers on the Arrangement.
- 4.2 For the avoidance of doubt, the use of an ITQ by the Principal is optional and where sufficient information is available the Principal may place a Purchase Order directly with an Arrangement supplier of their choice.

RFQ Acceptance

- 4.3 If a Contractor is selected following an ITQ RFQ process, the Principal shall issue a Purchase Order, forming part of the Agreement.

5. TERM OF ARRANGEMENT

- 5.1 The term of this Arrangement shall be for an initial period defined in the Special/Additional Conditions of Arrangement.

6. EXTENSION OF ARRANGEMENT

- 6.1 This Arrangement may be extended for further terms defined in the Special/Additional Conditions of Arrangement.
- 6.2 The Principal will take into account the Principal's operations, the Supplier's past performance, and proposed prices when determining whether to exercise any extension option.

7. RISE AND FALL

- 7.1 The Contract Price is firm and not subject to rise or fall unless otherwise negotiated in specific Contract conditions. If rise and fall is used then the price variation will be determined by the relevant CPI out of Brisbane.
- 7.2 The rates submitted shall be firm for the first twelve (12) months of the Contract and then subject to rise or fall annually by applying the formula:

$$\text{Contract Price} \times \frac{\text{Index 2}}{\text{Index 1}}$$

- 7.3 For the purposes of this clause:

- a) **"Index 1"** means the CPI published with respect to the quarter year last expiring before the Contract Commencement Date;
- b) **"Index 2"** means the CPI published with respect to the quarter year last expiring before the relevant Adjustment Date;
- c) **"Adjustment Date"** means each anniversary of the Contract Commencement Date during the term;
- d) **"CPI"** means the Consumer Price Index (All Groups) Brisbane figure published from time to time by the Australian Bureau of Statistics or, if no Consumer Price Index (All Groups) Brisbane figure is published at the relevant time by the Australian Bureau of Statistics, an index that the Australian Statistician nominates as appropriate (whether by public notice or by specified advice to the Principal or Contractor).

8. REFRESHING THE ARRANGEMENT

- 8.1 The Principal may refresh the Arrangement by adding additional Suppliers under the Arrangement.
- 8.2 In considering its option to refresh the Arrangement as proposed in this clause, the Principal may give consideration as to whether:
- the existing Suppliers have ceased (or are highly likely to cease) to provide all or a critical number of or Services specified in the Arrangement; or
 - additional Suppliers are required in order to ensure the Arrangement provides sufficient Suppliers to ensure value for money to the Principal; or
 - there is a reasonable possibility of new entrants entering the market/industry relevant to this Arrangement and that such entrance will have an impact on that market/industry – whether through:
 - a) pricing; and/or
 - b) availability of suitably qualified personnel; and/or
 - c) availability of innovative quality Goods and/or Services.
- 8.3 If the Principal does then seek to refresh the Arrangement it shall do so by way of a public offer process (a “Refreshing Invitation to Offer”).
- 8.4 In the interests of ensuring all existing Suppliers has an equal opportunity to match or better the pricing submitted by prospective Suppliers, each existing Supplier will be invited to submit new Contract prices. However, any such invitation will not provide the Supplier (existing or prospective) with any opportunity to re-negotiate any other terms and conditions of the Arrangement.
- 8.5 Unless the circumstances nominated above applies, the Principal will not:
- undertake a Refreshing Invitation to Offer in the first twelve (12) months of the Term of this Arrangement; and
 - undertake more than one (1) Refreshing Invitation to Offer in any twelve (12) month period commencing on the anniversary date of the Arrangement commencement date.

9. ADVERTISING

- 9.1 The Supplier will not make any public announcement or advertisement in any medium in relation to this arrangement without the express written consent of the Principal.
- 9.2 The Principal reserves the right, at its sole discretion, to install signage that is the subject of the contract. This may include the Supplier’s logo/brand as mutually agreed.

10. SERVICE TERMS

- 10.1 The Principal may require Services to be performed on site at any location in the Noosa Shire region.
- 10.2 Contractors engaged under this arrangement are required to mobilise and initiate activities within the timeframe nominated by the Contract Administrator from being appointed to a Contract.
- 10.3 The Principal will not be liable for any costs or charges in relation to transportation and accommodation expenses incurred through engagement under this arrangement.
- 10.4 The Principal will not be liable for any costs or charges relating to the purchase or usage of licences or training made by the Supplier for the purpose of engagement from this arrangement.

11. CONTRACTOR PERFORMANCE

- 11.1 Suppliers engaged under this Arrangement will be subject to formal annual performance reviews. Issues addressed at these reviews will include but will not be limited to:

- a) Maintaining nominated insurances and Workcover for the duration of the Arrangement
 - b) Providing up to date certificates of currency to the Principal upon renewal of insurances nominated in the Arrangement
 - c) The Supplier's timely responses to the Principal's Request for Quote
 - d) Adherence to the commitments to the development of local business as outlined in the Supplier Offer
 - e) Support for local business generally
 - f) Acceptable level of service measured by Key Performance Indicators (KPI) included with request for quotes and/or as observed/advised by the Principal.
 - g) Availability of resources nominated in the Offer.
 - h) Completion of contracts in accordance with agreed timeframes.
 - i) Maintenance of satisfactory communication during project completion.
 - j) Accurate pricing and invoicing.
 - k) Performance in relation to site environmental issues.
- 11.2 The Supplier will be treated as a breach of the arrangement contract conditions and may result in removal of a Supplier from the Arrangement.

12. GOVERNING LAW

- 12.1 This Arrangement is governed by and construed in accordance with the laws of Queensland.
- 12.2 The Supplier must comply with all relevant laws in performing its obligations under this Arrangement and any Contract under this Arrangement.

13. SEVERABILITY

- 13.1 If any part of this Arrangement is determined to be invalid, unlawful or unenforceable for any reason then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of this Arrangement and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

14. RELATIONSHIP OF PARTIES

- 14.1 The Supplier is not by virtue of this Arrangement, in partnership or joint venture with the Principal and must not represent itself or allow itself to be represented as a partner, joint venture, officer or employee of the Principal.

15. RIGHT TO INFORMATION

- 15.1 *The Right to Information Act 2009* (RTI Act) provides members of the public with a legally enforceable right to access documents held by the Principal.
- 15.2 The RTI Act requires that documents be disclosed upon request, unless the documents are exempt, or on balance, disclosure is contrary to the public interest.
- 15.3 Information relating to the Contract is potentially subject to disclosure to third parties.
- 15.4 If disclosure under the RTI Act, and/or general disclosure of information provided by the Supplier in connection with the Arrangement would be of substantial concern to the Supplier, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be indicated by the Supplier at the time of disclosing the information to the Principal. The Principal cannot guarantee that any information provided by the Supplier will be protected from disclosure under the RTI Act.

16. DISCLOSURE

- 16.1 Despite any other provision of the Arrangement, the Principal is entitled to publish the following details:

- a) the name of the Supplier;
- b) a description of the Services;
- c) commencement Date of the Arrangement or award date;
- d) value of Contract/s under the Arrangement;
- e) arrangement expiry or end date; and
- f) options available to extend (if any).

17. TERMINATION

- 17.1 Suppliers once accepted onto this Arrangement must maintain their ability to meet the qualifications and criteria requirements of their awarded categories in order to remain qualified to receive work under this Arrangement. Failure to remain qualified may result in the Principal suspending or removing the Supplier from the Arrangement.
- 17.2 If the Principal terminates a Contract for breach by the Contractor, the Principal may at its entire discretion suspend or remove the Supplier from this Arrangement.
- 17.3 The Principal at its sole discretion may suspend or terminate this Arrangement at any time, or remove Suppliers from the arrangement at its sole discretion.

18. USE BY OTHER LOCAL GOVERNMENTS

- 18.1 A Local Government ("Other Local Government") other than Noosa Shire Council may access the Contract subject to mutual agreement in writing of the Principal, the Contractor and the Other Local Government.
- 18.2 Responsibility for establishing and managing any contract between the Supplier and the Other Local Government rests with the Other Local Government.