



Contract No. NPARC\_BLD\_325POIPOI\_2025\_T

Community Housing Project – 325 Poi Poi Str

**Northern Peninsula Area Regional Council**

## **Conditions of Offer**

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## **1 CONFORMING OFFER**

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### **1.1 Conforming Offer**

To be considered to be a conforming Offer, an Offer must:

- a) Contain all the documents and information described in the Invitation to Offer
- b) Comply with the Project Scope and Specification;
- c) List all departures from any part of the Invitation to Offer; and
- d) In all other respects comply with this Invitation to Offer and all applicable Legislative Requirements and Policies and Plans.

### **1.2 Non-conforming Offer**

- a) An Offer that does not comply with Clause 1.1 is a Non-Conforming Offer.
- b) Council may, but is not bound to, consider or accept a Non-Conforming Offer.
- c) Council may consider the Non-Conforming Offer as an Alternative Offer.
- d) Council may reject the submission, or decline to consider a Non-Conforming Offer.

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## **2 ACCEPTANCE AND CONSIDERATION OF TENDERS**

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### **2.1 Council not obligated**

Council is under no obligation to:

- a) Review or consider any Offer submitted;
- b) Shortlist any Respondent (if applicable);
- c) Accept the lowest Offer (if applicable);
- d) Accept any Offer; or
- e) Negotiate or sign a contract with any Respondent.

### **2.2 Acceptance of an Offer**

An Offer is deemed to be accepted by Council only when Council provides to a Respondent a Letter of Acceptance. For the avoidance of doubt, a Letter of Acceptance under this Clause 2.2 will be a written notice given by Council which is expressly titled 'Letter of Acceptance' and expressly states that it is a notice given to the Respondent for the purposes of this Clause 2.2.

There shall be no Contract prior to the issue of a Letter of Acceptance. A Contract shall commence from the date of issue of a Letter of Acceptance to the successful Respondent.

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## **3 TENDERER TO FULLY INFORM ITSELF**

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The Tenderer shall (without limitation):

- a) Examine and carefully check and acquire actual knowledge of the contents of all of the Invitation to Offer Documents;
- b) Inform itself completely as to:
  - i. The risks contingencies and other circumstances which might affect the execution of the Works under Contract (WUC)
  - ii. The nature of the Work and of the plant, equipment, materials and other items necessary for the execution of the WUC and the means of access to and facilities and services at the Site and the means of transport, transport routes and facilities for making deliveries to and from the Site
  - iii. The availability and cost of labour, plant, equipment, materials and other items required (including all relevant industrial conditions)
  - iv. All applicable legislative requirements, taxes and insurance premiums (including compulsory insurance premiums)
  - v. All Authority requirements relating to the Contract and the WUC, and
  - vi. All measures necessary to protect the environment from any adverse effect or damage arising from the execution of the WUC or the operation of the Works;

- c) Satisfy itself as to the correctness and sufficiency of its Offer Price and that the price covers the cost of complying with all of its obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of its obligations under the Contract, including:
  - i. Licence fees, royalty payment and all charges and taxes, and
  - ii. Custom duty and any charges applicable to imported items, materials, plant or equipment required for the WUC; and
- d) Obtain all appropriate professional and technical advice with respect to the matters referred to in Clauses 3(b)(i) to 3(b)(iii) of these Conditions of Offer.

## **4 WARRANTIES**

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In submitting an Offer, the Respondent warrants:

- a) The accuracy of all information provided by the Respondent in the Offer;
- b) That it has all necessary experience, skill and resources to perform and carry out its obligations in accordance with the Invitation to Offer;
- c) That it has complied with the Invitation to Offer and any failure by the Tenderer to fully comply with the conditions within these documents shall not relieve the Tenderer of its obligation to perform and complete the WUC in accordance with the Contract should the Contract be awarded to it; and
- d) That its Offer complies with all applicable Legislative Requirements and Policies and Plans.

## **5 RELIANCE BY RESPONDENT**

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### **5.1 Council makes no representations**

Council does not make any representations, express, implied or inferred, or provide any undertakings to Respondents other than to invite them to submit an Offer.

### **5.2 Tender information for convenience only**

Any information supplied to a Respondent in the Invitation to Offer or otherwise or in subsequent oral or written communication by or on behalf of Council is provided to the Respondent for convenience only and may not be complete, up to date or accurate.

### **5.3 Respondent not to rely**

The Respondent must not rely upon any matter disclosed or representation, warranty or statement (oral or otherwise) made to the Respondent by Council, whether in the Invitation to Offer or otherwise, and must make and rely solely upon its own independent investigation, judgement and assessment of any such matter or representation.

### **5.4 Respondent to examine information**

The Respondent must carefully review the Invitation to Offer and all documentation and all other material provided and must make any enquiries which the Respondent considered necessary or desirable to verify the information and materials contained in the Invitation to Offer or in any subsequent oral or written communication or material.

## **6 CONFLICTS OF INTEREST**

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### **6.1 Respondent to identify conflicts**

Respondents must clearly identify in the Returnable Schedules if they have any actual or perceived conflict in responding to this Invitation to Offer, and if so, identify the manner in which they intend to deal with that conflict.

### **6.2 Respondent to notify if conflict arises**

If, at any time, an actual or potential conflict of interest arises for any Respondent, that Respondent must immediately notify Council in writing of that conflict of interest.

### **6.3 Council's rights**

If a Respondent notifies Council of an actual or potential conflict of interest or Council becomes aware of the existing of an actual or potential conflict of interest, Council may, in its absolute discretion:

- a) Enter into discussions to seek to resolve such conflict of interest
- b) Cease further consideration of and disregard the Offer lodged by that Respondent; and/or
- c) Take any other action, as it considers appropriate.

### **6.4 Respondent must not canvas support**

Any respondent who directly or indirectly canvasses support from an elected member, employee or agent of Council will be disqualified and any Offer submitted will not be considered.

## **7 RESPONDENT'S COSTS**

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The Respondent acknowledges that Council is not responsible for any expense or losses which may be incurred in the preparation or submission of an Offer.

## **8 USE OF INFORMATION**

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### **8.1 Offers are Council property**

All Offers submitted by a Respondent become the property of Council and will not be returned to the Respondents.

### **8.2 Invitation to Offer Documents are Council Property**

The Invitation to Offer and all documents, information, drawings, specifications, technical information and other material and information provided to a Respondent (whether before or after the issue of this Invitation to Offer):

- a) Remain the property of Council;
- b) Must only be used for the purpose of preparing its Offer and for no other purpose; and
- c) Must not be disclosed to any person other than to a person who is assisting the Respondent in preparing its Offer.

### **8.3 Intellectual Property in Invitation of Offer Documents**

All intellectual property rights which exist in information contained in this Invitation to Offer or any related material will remain the property of Council but the Respondent is permitted to use that information and material for the purpose only of compiling its Offer.

### **8.4 Respondent licences Council**

Each Respondent licences Council and its officers, employees, agents, advisors and representatives (Personnel) to copy, adapt, amend, disclose or do anything else necessary (in Council's sole discretion) to all material (including that which contains intellectual property rights of the Respondent or other persons) contained in its Offer for the purpose of the Procurement Process.

### **8.5 Council may make copies**

Council and its Personnel may make copies of an Offer as it requires for the Procurement Process.

### **8.6 Right to Information Act 2009**

- a) The Right to Information Act 2009 (RTI Act) provides members of the public with a right to access documents held by Queensland Government agencies (including local governments).
- b) 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. Information provided by the Respondent is potentially subject to disclosure to third parties pursuant to the RTI Act.

- c) If disclosure under the RTI Act, or general disclosure of information provided by the Respondent, would be of substantial concern to the Respondent, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, including Personal Information, this should be indicated by the Respondent in its Tender. Council cannot guarantee that any information provided by the Respondent will be protected from disclosure under the RTI Act.
- d) The Respondent must familiarise itself with the relevant provisions of the RTI Act dealing with the requirements for disclosure of information by agencies, and the grounds on which access to information may be refused.
- e) Council accepts no responsibility for the accuracy or adequacy of any information it provides to Respondents concerning the content or effect of the RTI Act.
- f) Council reserves the right to disclose, by publication by means of media of its choosing upon conclusion of the Procurement Process and/or award of any contract, any details of the name and address of the successful Respondent, a description of the contract, the commencement date of any contract awarded, and the price or value of any contract awarded.

## **9 INFORMATION PRIVACY ACT 2009 COMPLIANCE**

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### **9.1 Compliance with the Information Privacy Act 2009**

By submitting an Offer, the Respondent warrants that it has obtained the consent of each individual whose Personal Information is included in the Offer for:

- a) The inclusion of their Personal Information in the Offer;
- b) The use of the Personal Information by Council for the purpose of the Procurement Process, including the evaluation of the Respondent's Offer; and
- c) The disclosure of the Personal Information to other parties (including professional advisors) as may be involved in assisting Council with the Procurement Process, including the evaluation of the Respondent's Offer.

### **9.2 Indemnity**

The Respondent must indemnify Council against any claim, damage or loss (including legal costs and expenses) that Council may incur as a consequence of a breach by the Respondent of the warranty in Clause 8.

### **9.3 Other**

- a) Any Personal Information exchanged between the Respondent and Council must be dealt with in accordance with the Information Privacy Act 2009.
- b) The respondent must immediately notify Council upon becoming aware of any breach of this Clause 8.

## **10 GOVERNING LAW AND JURISDICTION**

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### **10.1 Governing law**

This Invitation to Offer and the Offer Documentation are governed by the laws in force in Queensland.

### **10.2 Governing jurisdiction**

Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and the courts of appeal from them.