

1. Terms defined in the Conditions of Contract have those meanings in the Tender Documents unless the context otherwise requires.
2. The Tender Documents are as set out in the Invitation to Tender letter to which these Conditions of Tendering are attached at Part A.
3. The Tenderer is the person who submits a tender and who is identified as such on the form of tender.

## Status of tenders

4. The Tenderer is invited to submit a tender in accordance with these Conditions of Tendering. This invitation to tender is an invitation to treat. It is not an offer capable of acceptance, nor should it be relied upon, construed or interpreted as such.
5. Tenders will remain valid for a period of ninety (90) days from the expiration of the closing date for tenders. The closing date for tenders is as shown in the Letter of Invitation.
6. Addenda may be issued by Laing O'Rourke to clarify or to amend the Tender Documents. Every addendum issued will upon issue form part of the Tender Documents. Receipt of each addendum must be acknowledged on the form issued with the addendum, and the completed form must be lodged with the tender. Failure to acknowledge the receipt of any addendum may render a tender non-conforming.
7. By submitting a tender the Tenderer acknowledges that:
  - (a) the submission of a tender does not create a contract between the Tenderer and Laing O'Rourke; and
  - (b) Laing O'Rourke will not be under any obligation to evaluate or otherwise consider any tender, accept any tender; or act in any particular manner in the event that Laing O'Rourke chooses to evaluate or otherwise consider a tender.
8. Tenderers acknowledge that no agreement has been formed between Laing O'Rourke and a Tenderer as a result of the tender process and Laing O'Rourke is not obliged to accept the lowest or any tender.
9. A tender must be made by fully completing in ink, dating and duly executing the form of tender and completing, signing and dating the numbered tender schedules, and attaching to the tender schedules all information required by those schedules. If the Tenderer considers any part or parts of its tender is confidential then it should mark such part or parts as "strictly private and confidential". If Laing O'Rourke proposes to disclose any information so marked for any purpose other than assessing the tender, then Laing O'Rourke will notify the Tenderer.
10. The amount entered on the form of tender is for execution of the Works, supplying the Goods or performing the Services (as applicable) strictly in accordance with the requirements of the Tender Documents and is deemed to include all incidental and all contingent costs, expenses and profit. Tenderers are required to submit their tender by excluding any allowance for GST in respect of any of the monetary amounts which they are required to tender.
11. The Tender Documents and any documents made available by Laing O'Rourke for the information of Tenderers including the Information Documents (if any) (Confidential Information) are confidential and are furnished to the Tenderer on that basis. The Tenderer must comply with the obligations set out in the Conditions of Contract in dealing with all Confidential Information as if it was the Laing O'Rourke counter party referred to in that clause. The Tenderer acknowledges and agrees that the Tenderer

has no copyright or intellectual property rights in the Tender Documents or Information Documents and that the Tender Documents and Information Documents are and will always remain the property of Laing O'Rourke.

## Information documents

12. If Laing O'Rourke has provided Information Documents as part of the Tender Documents, then the Tenderer:
  - (a) must not in any way rely upon:
    - (i) any Information Document or any other data, representation, statement or document made by or provided to Tenderers by Laing O'Rourke which will not form part of the contract with Laing O'Rourke; or
    - (ii) the accuracy, adequacy, suitability or completeness of the Information Documents or any other such information, data, representation, statement or document;
  - (b) must prepare and submit its tender based on its own investigations, interpretations, deductions, information and determinations; and
  - (c) acknowledges that Laing O'Rourke will be entering into the Contract relying upon the successful Tenderer fulfilling the obligations in paragraphs (a) and (b).
13. If Laing O'Rourke has provided a Bill of Quantities to the Tenderer as part of the Tender Documents, then the Tenderer warrants that:
  - (a) it placed no reliance on any information, representation, statement or documentation provided by Laing O'Rourke or anyone on its behalf in relation to this Bill of Quantities; and
  - (b) it prepared its tender based on its own investigations, interpretations and information, and is aware that Laing O'Rourke may enter into a contract relying upon these warranties.

## Non-conforming tenders

14. Without limiting any clause of these Conditions of Tendering, Laing O'Rourke may, in its absolute discretion and without being under any obligation to do so, reject or otherwise not consider, evaluate or otherwise consider or accept any tender which is not a conforming tender.
15. Any tender may be regarded as non-conforming if:
  - (a) Laing O'Rourke considers that it does not comply with a requirement of these Conditions of Tendering; or
  - (b) it contains qualifications, assumptions, or conditions which are inconsistent with or in conflict with the Conditions of Contract or with any significant constraints or restrictions set out in Laing O'Rourke's project requirements.

## No collusion

16. The Tenderer must, for so long as its tender remains capable of acceptance:
  - (a) not collude with, or communicate with any other Tenderer concerning its tender or the tender process;
  - (b) in relation to its tender, behave ethically and in accordance with generally accepted standards of commercial behaviour; and



- (c) advise Laing O'Rourke in writing as soon as is practicable if it becomes aware that any of the information supplied by it, or any statement made by it, is or becomes incorrect, inaccurate or potentially misleading.
17. Without limiting any other clause in the Conditions of Tendering, or any right Laing O'Rourke may have pursuant to these Conditions of Tendering or otherwise, if the Tenderer does not comply with clause 16, Laing O'Rourke may immediately terminate the involvement of the Tenderer in the tender process.
18. If Laing O'Rourke suspects that a Tenderer is breaching, may breach or has breached any relevant anti-corruption or bribery law, regulation or code anywhere in Australia and each of its States or Territories or overseas, the Tenderer will be immediately disqualified from the tender process.

## Tender evaluation

19. The object of the evaluation will be to determine which tender Laing O'Rourke considers offers best value to Laing O'Rourke. The evaluation will assess tenders against technical aspects of the tender, financial aspects of the tender, legal and commercial aspects of the tender and general aspects of the tender including the criteria referred to in clause 22.
20. The evaluation of tenders will be based on (but is not limited to) the information provided in the tender schedules submitted by Tenderers. This information may be supplemented or qualified by responses by Tenderers to requests for information or clarification from Laing O'Rourke or any other information which Laing O'Rourke considers relevant, including any information or clarification obtained at interview or as part of the tender process. Laing O'Rourke may engage any third party necessary to assist it in the evaluation of the tender and any assessment of whether the Tenderer complies with legislative requirements.
21. Laing O'Rourke may choose, after submission of your tender (and at its sole and absolute discretion), to shortlist or negotiate directly with the preferred tenderer(s) based on, but not limited to, the following criteria:-
- (a) Ability to perform the works safely;
  - (b) Ability to demonstrate understanding of the Laing O'Rourke Safety in Design Guidelines (if applicable);
  - (c) Demonstrated understanding of the Project requirements;
  - (d) Capacity to deliver the technical and performance requirements of the works;
  - (e) Adequacy of the Quality Management systems for the works;
  - (f) Competitiveness of Price;
  - (g) Previous experience in undertaking similar works;
  - (h) Conformance with the tender documents;
  - (i) Adequacy of resources to meet the required programme;
  - (j) Adequacy of financial resources to deliver the works; and
  - (k) Any other assessment criteria deemed relevant by Laing O'Rourke to this tender.
22. To assist Laing O'Rourke in tender evaluation following receipt of tenders, Laing O'Rourke may request the Tenderer to supply further information, to clarify or elaborate on aspects of its tender, to provide a more detailed breakdown of the price, and may require the Tenderer's personnel and proposed subcontractors named in the tender schedules attend at interviews.



## Acceptance of tender

23. Laing O'Rourke is not bound to accept the lowest or any tender or to give reason for rejecting a tender.
24. Laing O'Rourke may accept a tender even if that tender does not conform to Laing O'Rourke's project requirements as set out in the Tender Documents.
25. The Tenderer will have no claim against Laing O'Rourke arising out of Laing O'Rourke's exercise, or failure to exercise, any rights pursuant to these Conditions of Tendering. Laing O'Rourke will not be responsible for or pay for any costs, losses or expenses suffered or incurred by the Tenderer out of or in the connection with the preparation and submission of tenders.
26. A tender will not be deemed to have been accepted and no contract in respect of the Works, supplying the Goods or performing the Services (as applicable) will arise between any Tenderer and Laing O'Rourke until the successful tenderer and Laing O'Rourke execute the Formal Instrument of Agreement.
27. Laing O'Rourke may terminate the tender process at any time. Laing O'Rourke will notify all tenderers of the termination of the tender process. Laing O'Rourke will not be liable to the Tenderer for any costs, losses, damages or expenses suffered or incurred by the Tenderer in preparing or submitting its tender or in respect of any discussions, enquiries or negotiations undertaken by the Tenderer after its tender is submitted, whether or not the tender process is terminated by Laing O'Rourke.
28. Laing O'Rourke reserves the right at any time and on any grounds to:
  - (a) amend the Tender Documents, the scope of the Works or Supply or Services ;
  - (b) amend or terminate the tender process or withdraw the invitation to tender, or extend the closing date;
  - (c) require additional information, clarification or further offers from any Tenderer;
  - (d) elect not to select any Tenderer as preferred Tenderer; and
  - (e) negotiate with one or more Tenderers and enter into final contract documents without notice to any other Tenderer.
29. Laing O'Rourke is not obliged to attribute or provide any reasons for any actions or decisions taken arising out of or in respect of the tender process including in respect of the exercise of any or all of the above mentioned rights.
30. Laing O'Rourke may, at any time following receipt of tenders, request any or all of the Tenderers to supply any further information or clarification concerning a tender which Laing O'Rourke considers necessary or desirable to enable Laing O'Rourke to better understand or evaluate a tender. For example, a request for information or clarification may require a more detailed breakdown of the prices submitted as part of the tender.
31. The Tender Documents do not form part of the Conditions of Contract unless expressly included in the final agreed Conditions of Contract with the successful tenderer.

## Code for the Tendering and Performance of Building Work 2016

32. If included in the Tender Documents, Section 1 of Part G applies to the Works.

## State codes and guidelines

33. If included in the Tender Documents, Section 2 of Part G applies to the Works.



## Anti-bribery and anti-corruption

34. Laing O'Rourke has a zero tolerance culture for any kind of dishonest or unethical conduct. Laing O'Rourke is committed to operating in a manner consistent with the laws of the jurisdictions in which it operates, including anti-bribery and anti-corruption legislation and will require the Tenderer to comply with the same obligations as set out in the Conditions of Contract.
35. The Tenderer's attention is drawn to the Laing O'Rourke Code of Conduct and associated policies: <http://www.laingorourke.com/who-we-are/governance/code-of-conduct.aspx>
36. Prior to the acceptance of any Tender by Laing O'Rourke, Laing O'Rourke will assess the Tenderer in accordance with the Laing O'Rourke Code of Conduct and may require the Tenderer to duly:
  - (a) provide copies of any written code, procedure or policy addressing business ethics, anti-bribery and anti-corruption or related topics.

## Industrial relations

37. The Tenderer agrees that Laing O'Rourke, or a person authorised by Laing O'Rourke, may access and audit the Tenderer's records in relation to industrial matters from time to time but only to the extent required or authorised by the ABCC, the Code for the Tendering and Performance of Building Work 2016 (available at [www.legislation.gov.au](http://www.legislation.gov.au)) made under the BCIIIP Act as amended and replaced from time to time, or the Fair Work Act 2009 (Cth).