

Conditions of quoting

1. Definitions

1.1 General

Where a word or phrase is defined in the Purchase Order Terms and Conditions then such word or phrase shall have the same meaning in these Conditions of Quoting unless the context otherwise requires.

1.2 In these Conditions of Quoting, unless the context otherwise requires:

Addenda means additional information issued by the Purchaser to Bidders via email to modify or clarify the Request for Quotation in any manner whatsoever, including but not limited to, as a response to any queries from Bidders

Alternative Quotation means a Quotation that is not a Conforming Quotation but that may be considered by the Purchaser subject to the requirements set out in Clause 4 of these Conditions of Quoting

Bidder means the company, firm, person or persons identified as such on the Quotation and includes all persons on whose behalf the person named therein has or may be deemed to have submitted the Quotation

Business Day means Monday to Friday inclusive, but excludes public holidays in Queensland

Conforming Quotation means an offer that complies with the requirements set out in Clause 4 of these Conditions of Quoting

Goods means the tangible items to be provided as described in the Request for Quotation

Intellectual Property Rights includes the protected rights attaching to inventions, patents, registered designs, trademarks, trade secrets, copyright, circuit layouts and confidential information

Personal Information has the meaning given to it under Privacy Legislation

Purchaser means Gladstone Ports Corporation Limited ABN 96 263 788 242

Purchase Order means a purchase order issued by the Purchaser in accordance with the Purchase Order Terms and Conditions

Purchase Order Terms and Conditions means the Purchaser's Purchase Order Terms & Conditions which are published and available for viewing on the Purchaser's website at: <http://gpcl.com.au/operations/procurement-and-tenders>

Purchaser's Representative means the person named as such in the Request for Quotation email

Privacy Legislation means any law governing privacy or Personal Information, including *the Privacy Act 1988* (Cth), the *Information Privacy Act 2009* (Qld) and any codes of conduct, directives or orders made or issued under such law

Quotation means the documents completed by or on behalf of the Bidder and any and all drawings, written statements and any other matter submitted by the Bidder as part of its Quotation and received by the Purchaser, in accordance with these Conditions of Quoting

Quotation Closing Time means the date and time nominated in Request for Quotation email by which the Quotation is to be submitted

Rapid Global means the Rapid Global workplace health and safety software described further in Clause 15

Request for Quotation means the Purchaser's Request for Quotation email and includes all documents attached to or referenced within this email including (where applicable):

- 1 Request for Quotation email
- 2 these Conditions of Quoting
- 3 Purchase Order Terms and Conditions
- 4 Pricing Schedules

- 5 Specifications and Drawings
- 6 all Addenda.

Services means the activities to be completed as described in the Request for Quotation

Special Conditions means the Special Conditions described in Annexure 1 of these Conditions of Quoting

Site Inspection means a meeting arranged to brief all Bidders to be attended by at least one representative of the Bidder for the duration of such meeting, the particulars of which are given in the Request for Quotation email

Site means the location specified in the Request for Quotation email.

2. General

These Conditions of Quoting are applicable for all instances where the Purchaser has requested quotations or proposals via email except where specifically noted otherwise in writing by the Purchaser.

These Conditions of Quoting are not applicable to any Request for Expressions of Interest (EOI) or Invitation to Tender (ITT) procurement process carried out by the Purchaser.

The Bidder must comply with these Conditions of Quoting and any special conditions contained elsewhere in the Request for Quotation.

The Purchaser reserves the right, at its discretion, to exclude any Bidder from the procurement process that does not comply with these conditions.

3. Conflicts and ambiguities

If the Bidder discovers any conflict or ambiguity in or between any documents that make up the Request for Quotation, the Bidder must as soon as reasonably practicable, notify the Purchaser's Representative of the ambiguity or conflict.

If an ambiguity or conflict is discovered by or notified to the Purchaser's Representative, the Purchaser's Representative will (where time permits) issue an Addenda setting out the interpretation to be followed by the Bidder/s.

The Bidder is not entitled to and waives any rights it may have, in relation to any claim arising out of or in connection with:

- 1 any ambiguity, conflict, inconsistency or discrepancy within or between any one of the documents that make up the Request for Quotation
- 2 any action or interpretation of the Purchaser's Representative under this clause.

4. Quotation submission

The Bidder must submit a Conforming Quotation.

A Conforming Quotation will be a Quotation that complies with each of the following:

- a the Quotation has not been identified as an Alternative Quotation
- b the Quotation is made in accordance with the Request for Quotation except for departures which the Purchaser determines, in its absolute discretion, to be minor departures and which the Purchaser may accept
- c the Quotation includes all of the information requested except for omissions which the Purchaser determines, in its absolute discretion, to be minor
- d where any requirements (or criterion) have been identified as mandatory in the Request for Quotation, the Bidder met each and every one of these mandatory requirements
- e the Quotation has been submitted in accordance with Clause 10 – Submission of Quotations
- f where required under Clause 8 – Site Inspection, the Bidder has attended the Site Inspection.

The Purchaser will determine, in its absolute discretion, whether a Quotation is a Conforming Quotation or not.

The Bidder may submit one or more Alternative Quotations but only where the:

- a Request for Quotation email nominates that Alternative Quotations are invited
- b Bidder has clearly identified that the Quotation is an Alternative Quotation
- c Bidder has also submitted a Conforming Quotation.

Alternative Quotations that do not meet the requirements of this clause will not be evaluated further.

5. Bidder to inform itself fully

The Bidder must, at its own cost, acquaint itself with all conditions relating to or affecting the proposed Quotation, including (without limitation) physical and/or site conditions where the Services will be carried out and/or the Goods utilised. Bidders shall be deemed to have allowed in their Quotation for all particulars of the existing Site, buildings and structure that may affect or be required for the proper provision of the Goods and/or Services, even though they may not be specifically referred to in the Request for Quotation.

The Purchaser has endeavoured and shall endeavour to ensure that any information given to a Bidder in connection with this Request for Quotation is accurate but gives no warranty as to the accuracy, sufficiency, completeness or otherwise of this information. The Purchaser will not be liable for any claim on the grounds of erroneous or insufficient information.

6. Contact and queries during quotation period

Bidders should note that all communication relating to this Request for Quotation process must, unless specified otherwise, be with the Purchaser's Representative.

Where the Bidder has written queries or requests for clarification, these are to be submitted via email to the Purchaser's Representative only, and not copied to any other email address of the Purchaser, not later than two (2) Business Days before the Quotation Closing Time.

The Bidder is asked to ensure that its proposed consultants, subcontractors and/or suppliers do not make direct contact with the Purchaser. The Purchaser is under no obligation to respond to written queries or telephone calls from any of these parties.

The Purchaser reserves the right, in its absolute discretion, to exclude any Bidder from the procurement process that does not comply with the requirements of this clause.

7. Addenda

At any time, up to one Business Day before the Quotation Closing Time, the Purchaser may issue Addenda via email.

8. Site inspection

If attendance at the Site Inspection is noted in the Request for Quotation email to be mandatory then a representative of the Bidder must attend. Unless agreed otherwise, no more than two representatives of a Bidder may attend the Site Inspection. If the Bidder fails to attend a mandatory Site Inspection it will be disqualified from further participation in the Request for Quotation process and any subsequent Quotation submitted by the Bidder will be considered invalid.

The Bidder will be responsible for all costs associated with the attendance of its personnel at the Site Inspection.

9. Intellectual property, confidentiality and privacy

9.1 Confidentiality

The Request for Quotation documents are the property of the Purchaser. They are to be always treated and maintained by the Bidder as confidential and should not be used by, or disclosed to, others at any time except as is necessary to prepare the Quotation. These obligations are continuing obligations.

If requested by the Purchaser, the Bidder will immediately return all copies and electronic versions of the documents provided by the Purchaser for this Request for Quotation.

9.2 No publication

The Bidder must not publish alone or in conjunction with any other party or organisation any information, drawing or photograph concerning this Request for Quotation, the Purchaser or the Site except with the Purchaser's written consent and subject to such conditions as the Purchaser may prescribe.

9.3 No prohibition

Nothing in this Request for Quotation prohibits disclosure of information which is:

- a in the public domain, otherwise than as a result of a breach of this clause 9
- b received from a third party provided that it was not acquired directly or indirectly by that third party as a result of a breach of this clause 9
- c required to be disclosed by Law or any Authority having authority over a party (except this paragraph does not permit disclosure of any information under section 275(4) of the PPSA unless section 265(7) of the PPSA applies)
- d required to be disclosed to a Related Body Corporate (as that term is defined in the Corporations Act)
- e required to be disclosed by the Purchaser to its Shareholding Ministers
- f for the purposes of receiving legal, accounting or engineering advice.

9.4 Intellectual Property

Intellectual Property Rights in all material, whether of the Bidder or a third party, submitted by a Bidder in its Quotation is assigned to the Purchaser, without any requirement for further documentation or writing, upon the Purchaser's issuance of a Purchase Order.

To the extent that any material submitted by a Bidder is the subject of pre-existing Intellectual Property Rights of third parties, the Bidder warrants that it is able to procure an assignment of all such Intellectual Property Rights to the Purchaser and agrees to obtain such assignment upon receipt of a Purchase Order issued by the Purchaser.

The Bidder indemnifies the Purchaser against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of any claim by a third party against the Purchaser alleging that the material contained in the Quotation or acts by the Purchaser in relation to the Purchaser's use of the Quotation material infringe any Intellectual Property Rights of that third party.

9.5 Right to Information

The *Right to Information Act 2009* (RTI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.

The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest.

Information contained in a Quotation is potentially subject to disclosure to third parties.

In the assessment of any disclosure required by the Purchaser pursuant to the RTI Act, the Bidder accepts that any information provided by a Bidder, including information marked as confidential, will be assessed for disclosure in accordance with the terms of the RTI Act.

Notwithstanding any other provision of the Request for Quotation Documents or a Quotation, if a Quotation is accepted, the Purchaser may publish on its website or by any other means, all or any of the following details:

- a the name and address of the Purchaser and the successful Bidder
- b a description of the goods and/or services to be provided pursuant to the Purchase Order
- c the date of award of Purchase Order
- d the Purchase Order value (and advice as to whether any non-price criteria were used in the evaluation of Quotations)
- e the procurement method used.

9.6 Privacy

The Bidder:

- a acknowledges that the Purchaser is required to comply with Privacy Legislation
- b acknowledges that it is bound by its obligations under the Request for Quotation even if the Bidder would not otherwise be subject to Privacy Legislation
- c must establish effective measures to:
 - i) safeguard Personal Information from unauthorised access, modification, use, loss or disclosure
 - ii) ensure that any Personal Information will be held, used and disclosed in a manner consistent with the Privacy Legislation
 - iii) ensure accurate and complete records are kept of the Bidder's use, copying and disclosure of Personal Information provided by the Purchaser
- d must ensure that its terms and conditions for engaging employees or subcontractors, so far as possible, authorise the Bidder to disclose to the Purchaser, and the Purchaser to collect and use, Personal Information about those employees or subcontractors for the purposes of the Quotation.

10. Submission of quotations

Quotations are to be submitted via email to contracts@gpcl.com.au. Unless agreed otherwise by the Purchaser's Representative, this is the only means by which a valid Quotation can be submitted.

Quotations must be submitted by the Quotation Closing Time. The Quotation Closing Time may be extended by the Purchaser, at any time and for any reason, by notice via email.

The Purchaser acknowledges that there may be some instances where the Purchaser's email or network is not operational. Should this be the case it is the Bidder's responsibility to contact the Purchaser's Representative to request that its Quotation be submitted by another means (at the Purchaser's absolute discretion).

The Purchaser is under no obligation to consider requests for extensions to the Quotation Closing Time.

Quotations received after the Quotation Closing Time will only be considered where there are exceptional circumstances. Any decision to consider, or not consider a Quotation received after the Quotation Closing Time will be at the Purchaser's absolute discretion.

11. Validity of quotation

The Purchaser reserves the right to withdraw this Request for Quotation at any time prior to the Quotation Closing Time. No charges shall be payable by the Purchaser in the event this Request for Quotation is withdrawn.

The Quotation constitutes an irrevocable offer that will remain open for acceptance by issuance of a Purchase Order by the Purchaser for the period nominated in the Request for Quotation email.

12. Quotation price

All amounts making up the Quotation price shall be expressed in the Australian currency. Where the Quotation price (or part thereof) is derived from a foreign currency, the Bidder shall clearly state the exchange rate used.

In all cases, a firm price Quotation is required.

The Quotation must be submitted on the basis that the Quotation price will not be subject to any adjustment for variations in costs.

13. Costs of quotation

Any costs associated (whether directly or indirectly) with the preparation of any Quotation or any discussions, negotiations or enquiries in relation to a Quotation or any work undertaken by a Bidder after its Quotation is submitted shall be borne by the Bidder.

14. Acceptance and/or rejection

Notwithstanding the evaluation of Quotations (if any) in accordance with this clause 14, the Purchaser may, in its absolute discretion, and at any time accept, or decline to accept, any Quotation.

The Purchaser may negotiate with any one or more Bidders after the Quotation Closing Time, and award a Purchase Order to any Bidder on the same or different terms to those in the Request for Quotation.

The Purchaser may at any time, including after the Quotation Closing Time, in its absolute discretion and without liability:

- a reject any Quotation that is neither a Conforming Quotation nor an Alternative Quotation complying with the requirements of Clause 4
- b request written clarification or additional information from any or all Bidders following the submission of Quotations. This request may be issued via email, phone call or at a clarification meeting at the Purchaser's discretion
- c shortlist or prefer any one or more Bidders
- d request and/or allow written clarification or additional information from shortlisted or preferred Bidders
- e enter into negotiations with shortlisted or preferred Bidders
- f negotiate with any Bidder that has responded to the exclusion of, and without notice to, other Bidders that have responded without the need to re-propose or resubmit altered Request for Quotation documents to all Bidders that have responded
- g re-assess or amend policy or weighted criteria relating to participation in this Request for Quotation process
- h permit any person or organisation to participate in the Request for Quotation process
- i repackage the Purchaser's requirements and call for submissions on sub-packages of work
- j re-advertise for Quotations
- k call for Quotations for the provision of the same or similar services
- l discuss, negotiate and/or receive final offers (including pricing) in any such manner as the Purchaser determines
- m accept one Quotation, or more than one Quotation, for the whole of its requirements
- n accept separate Quotations for any portion of its requirements
- o accept one Quotation, or more than one Quotation for any portion of its requirements
- p not accept the lowest price, the highest price or any Quotation submitted
- q reject any or all of the Quotations
- r suspend or cancel this Request for Quotation process by notice (for any or all Bidders that have responded)
- s terminate any negotiations being conducted at any time with any Bidder that has responded
- t consider any Alternative Quotation
- u not give any reason for the acceptance or non-acceptance of any Quotation or the cancellation of this Request for Quotation process or the exercise of any rights under this clause
- v waive any irregularities or informalities in the Request for Quotation process
- w amend this Request for Quotation document or any associated documents by the issue of a written amendment notice
- x change any date, time, timeframe in, or any other aspect of, this Request for Quotation process (for any or all Bidders that have responded, or any other person) by notice
- y freely negotiate or contract with anyone at any time and create any type or number of contracts to meet its requirements
- z delete or change its requirements for any Goods and/or Services covered by this Request for Quotation process.

A Quotation will only be deemed accepted by the Purchaser only when the Purchaser issues the Bidder with a Purchase Order.

Under no circumstances will a Quotation be deemed to be accepted as successful.

The Bidder acknowledges and agrees that no legal rights or obligations will be deemed to have arisen between the Purchaser and the Bidder until a Purchase Order has been issued to the Bidder by the Purchaser.

15. Rapid Global

Where compliance with the Rapid Global system is shown as being mandatory for the Services in the Request for Quotation email, the Bidder must allow for compliance with this system in its Quotation including:

- a company registration via the online Rapid Global system
- b online lodgement of safety and environmental documentation. All documentation is to be submitted in Rapid Global, reviewed and approved by the Purchaser prior to the Bidder providing Services on Site
- c achievement of 'approved company' status (for work with the Purchaser) in Rapid Global prior to the Bidder providing Services on Site
- d completion of inductions for all personnel via the Rapid Global online system at a cost of \$25 excluding GST per person.

For further details on the Rapid Global System contact the Rapid Induct Client Services Team on 1800 307 595 or + 61 8 405 1100 (for international callers) or via email on support@rapidglobal.com

16. Complaints about quotation process

If the Bidder has any complaint relating to this Request for Quotation process, this complaint should be referred, in the first instance, to the Gladstone Ports Corporation's Supply Superintendent via telephone 07 49761330 or via email supplyadmin@gpcl.com.au.

A complaint may also be reported to Gladstone Ports Corporation's Company Secretary or to the confidential reporting hotline (refer to Gladstone Ports Corporation's website for Hotline details). A complaint might also be referred for external independent review to the Queensland Ombudsman.

Allegations of corrupt conduct in relation to procurement must be referred to the Crime and Corruption Commission as required by the *Crime and Corruption Act 2001*.

17. Collusive or anti-competitive conduct

The Purchaser reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by Bidders to the appropriate regulatory authority and to provide that authority with any relevant Quotation information.

The Purchaser reserves the right, at its discretion, to exclude any Bidder from the procurement process if the Bidder, or any corporation or person, including directors or senior managers associated with its Quotation, have ever contravened the anti-competitive provisions of the *Competition and Consumer Act 2010* or equivalent laws in Australia or overseas.

Evidence of collusive quoting or other improper practices connected with quoting may lead to the rejection of the relevant Quotations and will entitle the Purchaser to terminate without compensation any Purchase Order issued to the relevant Bidder.

The Purchaser reserves the right, at its discretion, to exclude any Bidder from the procurement process if full disclosure of any or all contraventions of the anti-competitive provisions of the Competition and Consumer Act or equivalent laws in Australia or overseas has not been made by the Bidder in its Quotation.

18. Evaluation criteria

For details of the evaluation criteria to be used for evaluation of the Quotations refer to the Request for Quotation email.

Bidders should note that the evaluation criteria nominated are not listed in any order of priority and that the Purchaser will not provide Bidders with any further information on the evaluation criteria used either before, during or after the completion of this Request for Quotation process.

Where Alternative Quotations are to be evaluated, the Purchaser reserves the right to evaluate these on the basis of best value for money for the Purchaser which may, or may not, align with the evaluation criteria listed in the Request for Quotation email.

19. Quotation debrief

Where a Bidder has submitted a Conforming Quotation that has not been accepted, upon completion of the Request for Quotation process the Bidder may contact the Purchaser to request a Quotation debrief meeting.

Debrief meetings may be held either via a teleconference or a face to face meeting at the Purchaser's discretion.

Where a debrief meeting is held, the Purchaser will endeavour to provide constructive feedback on the Bidder's Quotation focussing on areas where the Bidder performed well and where the Bidder could improve.

The Purchaser will not provide pricing or other confidential information relating to the Quotations submitted by other Bidders.

Where Quotation debrief meeting notes are provided by the Purchaser, these will be set out in the Purchaser's preferred format.

Where a Bidder has submitted a Conforming Quotation that has not been accepted, upon completion of the Request for Quotation

20. Queensland Code of Practice for the Building and Construction Industry

As a QLD Government owned corporation the Purchaser supports the application of the *Queensland Code of Practice for the Building and Construction Industry* (the Code).

If Bidders have any questions or concerns relating to the application of the Code they should contact the GPC Supply Superintendent (contact details provided above).

21. Queensland Procurement Policy 2017

As a QLD Government owned corporation, the Purchaser supports the application of the *Queensland Procurement Policy 2017* which takes effect from the 1st September 2017.

This policy is available for review at www.hpw.qld.gov.au/Procurement/ProcurementStrategy

If Bidders have any questions or concerns relating to the application of this policy they should contact the GPC Supply Superintendent (contact details provided above).

Annexure 1

Special conditions – for quotations under an existing standing offer or forward purchasing contract only.

These Special Conditions only apply where the Request for Quotation indicates that Quotations are being sought under an existing standing offer or forward purchasing contract.

Where these Special Conditions are applicable, the following amendments take precedence over the relevant Conditions of Quoting clauses listed as shown:

Conditions of Quoting Clause	Amendment
Definitions – 1.1	Replace existing clause with: "Where a word or phrase is defined in the Existing Standing Offer then such word or phrase shall have the same meaning in these Conditions of Quoting unless the context otherwise requires"
Definitions – 1.2	Add a new definition as follows: "Existing Standing Offer means a standing offer or forward purchasing contract in place between the Bidder and the Purchaser at the time of the issuance of the Request for Quotation email"
Definitions – 1.2	Add a new definition as follows: "Existing Standing Offer Terms and Conditions means the terms and conditions of the Existing Standing Offer"
Definitions – 1.2	Amend the Definition of Purchase Order to read: "Purchase Order means a purchase order issued by the Purchaser in accordance with the Existing Standing Offer Terms and Conditions (as amended, where required by the Purchaser, following the Request for Quotation process)" For the avoidance of doubt, the Purchase Order Terms and Conditions are not applicable to Purchase Orders issued for Goods and/or Services that are to be provided under an Existing Standing Offer
Definitions – 1.2	Amend the definition of Request for Quotation by deleting the reference to: "Purchase Order Terms and Conditions" and replacing this with "Existing Standing Offer Terms and Conditions"