

Kowanyama Aboriginal Shire Council

Tender

Kowanyama Cattle Muster 2026-2027 - Kowanyama

Reference: KASC-2026-050
Date of Issue: 10 June 2026
Closing Date: 1 July 2026

Tender

This Tender comprises:

- Tender Overview
- Tender Scope
- Conditions of Tendering
- General Conditions of Contract
- Special Conditions of Contract
- Tender Response Schedules

Council:	Kowanyama Aboriginal Shire Council (KASC)
Council Address:	Lot 30 Chapman Road, Kowanyama 4892
Contact (Principal):	Chris McLaughlin
Contact number:	07 40404500
Request for Quote (RFQ):	Council is seeking tenders from suitably experienced cattle musters to perform muster services in Kowanyama, including the catch and transport of cattle from the Land to sale, as directed by the Principal and its nominated Sales Agent.
RFQ Number:	KASC-2026-050
Closing date and time:	4:00PM, 1 July 2026

Instructions for completing this Tender:

- Tenderers should ensure they read all parts of this Tender fully to ascertain the services to be performed and the terms on which the services are to be performed.
- Tenderers must respond to all sections of the Tender Response Schedule (Section 6).
- Tenderers may provide supplementary material to support their offer. All supplementary material must be cross referenced to the relevant section of this Tender.
- The Council will confirm in writing to suppliers, to advise if their tender has been accepted or unsuccessful.
- Notification by letter to the successful Tenderer will create a contract between the parties, based on the tender documents presented.
- Responses are to be submitted via email to tenders@kowanyama.qld.gov.au and must include the Tender number in the subject line (i.e., KASC-2026-050). Council reserves the right to not consider submissions sent to any other email address. Do not forward enquiries to this email address.

1. Tender Overview

Following the 2020/21 acquisition from the former Kowanyama Cattle Company Pty Ltd, the Kowanyama Aboriginal Shire Council ("the Principal") now owns and manages more than 8,000 head of branded and cleanskin cattle which graze across 244,000 hectares of Aboriginal Land across lots 19 on Survey Plan 224321 and 53 on Survey Plan 252503 comprising **PIC QBCP0029** located in Kowanyama, Queensland.

The Aboriginal Land is subject to Native Title determination and since 19 June 2013, is held by the *ABM Elgoring Ambung Aboriginal Corporation RNTBC* under the *Aboriginal Land Act 1991* (Qld) on behalf of common law holders of Native Title (Traditional Owners). The Principal has received a destock notice from the Aboriginal Landowner to remove its cattle from the Aboriginal Land.

The Principal is seeking tenders from suitably experienced tenderers to undertake Muster Services over the 2026 and 2027 seasons (2 years) on the Aboriginal Land to fulfill the destock notice. The expected duration each season will be 6+ months over the dry season (July – December). It is common that the community of Kowanyama and surrounds are cut off due to inclement weather from December to May annually.

Since July 2021, the following annual volumes of cattle have been removed by the Principal's contracted Musterer under destock notice, namely:

Year (Season)	Duration	# removed
2021	Aug – Nov (4 Months)	1,480
2022	Jun – Dec (6 months)	2,509
2023	Jun – Dec (6 months)	2,580
2024	Sept – Nov (3 months)	1374
2025	July – Nov (5 months)	1774
	TOTAL	9,714

Council is seeking experienced tenderer who can demonstrate superior knowledge and connection to Kowanyama and its people, as well as strategies that will both maintain animal welfare whilst maximising cattle volumes, weight, and sale price for program sustainability.

Important Notes:

- Musters are instructed that unless directed otherwise by the Principal, it is not permitted to muster North of the Mitchell River, notwithstanding being part of the Aboriginal Land. All muster operations must occur South of the Mitchell River.**
- The Principal notes that Tender KASC_2026_051 (Oriners and Sefton Cattle Muster 2026-2027) is being advertised concurrently with this Tender. Where Tenderers wish to apply for both Tenders, separate tenders must be submitted. Cross-referencing is permitted.**

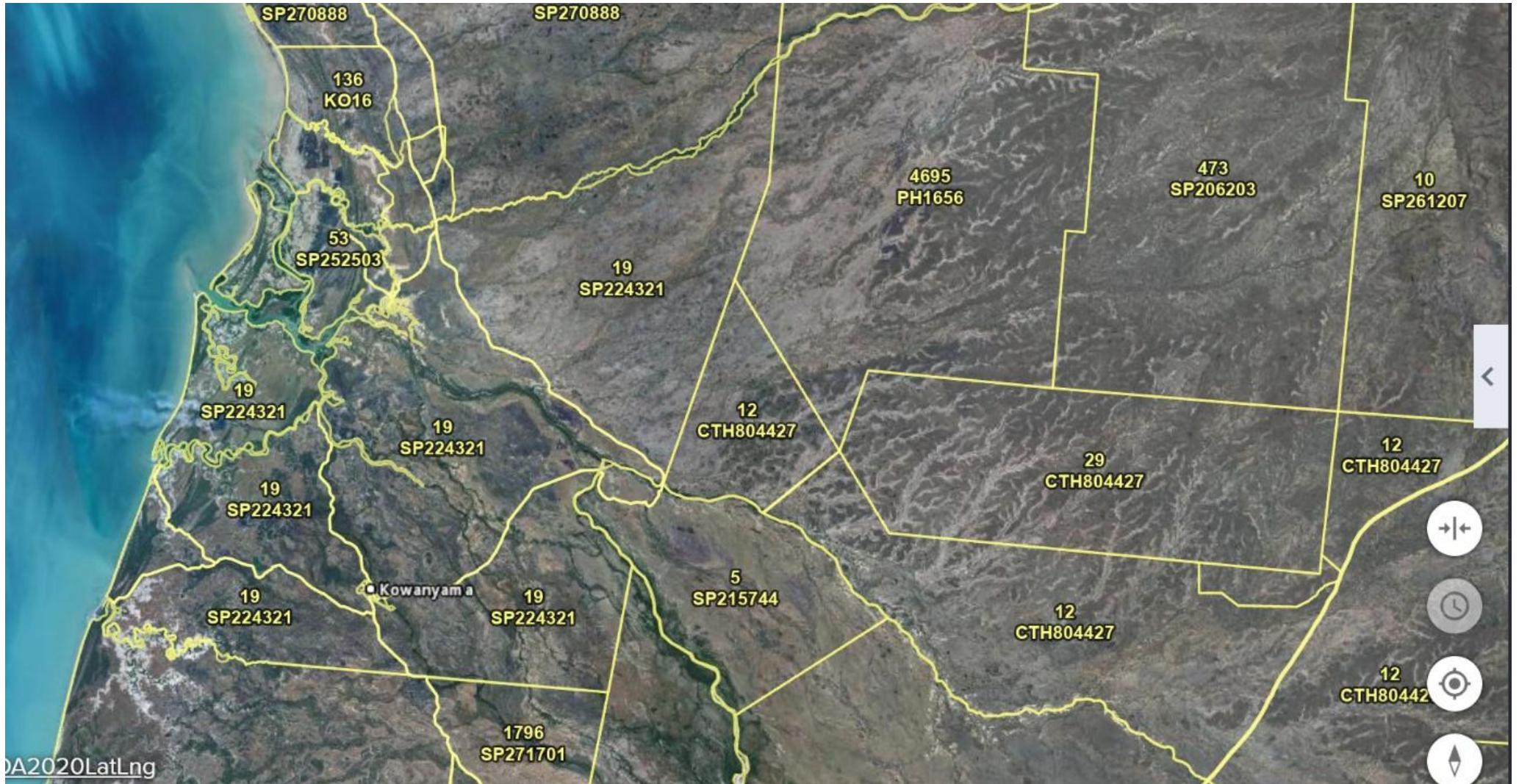




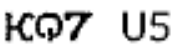



Figure 1 – Map of the Land.

The Principal owns four (4) brands:

Identifier	District	Description	Type
		K lazy C 7	B
		M lazy R 0	B
 Letters "MR" under inverted angle 			S
 	Normanton		E

1.1. COVID-19 General Resources

All restrictions related to COVID-19 and workers entering Kowanyama have been removed.

Please note all workers are to ensure they are healthy and well prior entering Kowanyama. It is recommended anyone suffering a cold / flu symptoms undertake a COVID-19 test and await results prior to travelling into the Community.

For additional resources please visit: <https://www.kowanyama.qld.gov.au/covid-19>

1.2. About Kowanyama

Kowanyama is a town on the Gulf of Carpentaria side of the Cape York Peninsula. Suppliers are reminded of the remoteness of the locality and must make allowance for all costs associated with mobilisation, demobilisation, waiting time, accommodation and transportation for all personnel and equipment necessary to carry out the works.

Kowanyama is accessed by an all-weather airstrip, as well as unsealed roads in the dry season which are used for transport of all materials.

Kowanyama is subject to an Alcohol Management Plan and strict alcohol carriage limits apply. Suppliers should familiar themselves and their staff – strict fines and penalties apply for breach.

2. Tender scope

Principal:	Kowanyama Aboriginal Shire Council		
Project Name:	KOWANYAMA MUSTER 2024 – 2025 (KASC-2025-050)		
Scope:	To perform muster services in Kowanyama, including the catch and transport cattle from the Land to sale, as directed by the Principal and its nominated Sales Agent.		
Site:	Aboriginal Land - Lots 19 and 53 comprising PIC QBPC0029		
Proposed timetable:	Action	Proposed Date	
	Tender due	4:00PM 1 st July 2026	
	Contract announced	July 2026	
	Contractor Mobilisation to Kowanyama	July / August 2026	
Communication method:	<input checked="" type="checkbox"/> Email: tenders@kowanyama.qld.gov.au		
Communication closing time:	Two (2) calendar days prior to the Tender Close, as amended.		
Evaluation criteria:	Requirement	Criteria	Weighting (%)
	This response is to be accompanied by a cover letter responding to each evaluation criteria.	1. Price See Pricing Methodology Guidance below	40%
		2. Experience and Methodology <i>(a) Detailed proposal/ program of method to be used, contractors to be engaged (eg. helicopters/ transport etc), preferred sales method (eg. mareeba salesyard/ private meatworks sale), animal welfare commitments, and WHS commitments and systems etc.</i> <i>(b) Demonstrated experience as lead musterer of greater than 10+ years on large muster projects (>\$1M revenue per season).</i> <i>(c) Estimates of expected cattle yeild and sales for 2024 and 2025.</i> <i>(d) Connection to Kowanyama Country and its people.</i> <i>(e) Financial acumen in running a successful and resilient business in a highly-fluctating market.</i>	40%
		3. Indigenous Employment Business Plan (IEBP) <i>The tenderer must specify expected Indigenous expenditure (including Indigenous employment hours and Indigenous Goods and Service provision).</i>	20%

		<i>Tenderers should addition make clear commitments to supporting annual local events.</i>	
Tender box:	Tenders must be lodged at: tenders@kowanyama.qld.gov.au strictly by close time (4:00PM).		
Tender format:	Tenders must consist of: <ul style="list-style-type: none"> • 1x complete copy of the contractor's cover letter and response to evaluation criteria in a single PDF document; and • 1x set of the Response Schedules (Part 6). File names must include the contract number and a brief description of the document		
Tender validity period:	90 calendar days from the Tender close.		
Procurement Contact:	Dr. Chris McLaughlin Contracts Manager Ph: 0400 726 329 Email: chris@culturev8.com.au		

Pricing Methodology Guidance – Criteria 1 (Price)

Tenderer pricing methodology shall be as a percentage split of GROSS profit based on the average sale price (c/kg) achieved at each sale/ consignment.

Out of the Tenderer's share of GROSS profit, shall be deducted all project-related expenses other than those listed below as payable directly by the Principal (inclusive of all costs incl. labor, plant and equipment purchase, hire and maintenance, helicopter, cattle transport/ transit costs to sale/ transit insurance, yard dues, food and accommodation for labor, feed, basecamp mobilisation and demobilisation, training, insurances etc).

Out of the Principal's share of GROSS profit, shall be deducted the following expenses only:

- Sales Agent/ Vendor Commission
- NLIS Tags and NVD Books (Council is now utilising Electronic NVD)
- Land Access Fees
- Maintenance and/or replacement of Council-owned plant and equipment
- PIC/ Registered Biosecurity Entity registration
- Site and Transport Inspections

All other expenses should be assumed to be absorbed within the Tenderer's share of GROSS profit.

The pricing criteria shall be properly answered by the Tenderer completing the following table in Part 6:

Average cents per kg price on sale	Contractor's Share of GROSS profit (%)	Principal's Share of GROSS profit (%)	TOTAL (%)
Less than 200			100%
200 - 299			100%
More than 300			100%

Market pricing brackets are offered to help balance Tenderer financial sustainability with Kowanyama return on investment during times of market fluctuation.

Average cents per kg price will be applied to each sale/ consignment (which may comprise bulls/ mickeys/ cows/ yearlings etc). The Contractor, in conjunction with the Principal's Sales Agent, will utilise its experience and market knowledge to select the combination which will best maximise the average cents per kg price on sale, to which the respective GROSS profit share % will be applied by the Sales Agent.

This methodology is explained in the following historical sales report which shows the average cents per kg being 301.2 achieved at sale/ consignment, with the GROSS profit share thereby falling within bracket 3 (More than 300).

Gross \$ (Ex GST) would then be split in accordance with bracket 3 above between Contractor and Principal.

Pen	Paint	Lot	Head	Breed and Sex	Vendor PIC	HGP	C/kg	Avg kg	Tot kg	\$ / Head	Gross \$
63		122	7	Brahman X Bulls	QBCP0029	N	322.2	506.4	3545.0	1631.71	11421.99
64		123	4	Brahman X Bulls	QBCP0029	N	324.0	508.8	2035.0	1648.35	6593.40
75		141	3	Brahman X Bulls	QBCP0029	N	290.2	425.0	1275.0	1233.35	3700.05
76		142	7	Brahman X Bulls	QBCP0029	N	296.2	450.7	3155.0	1335.02	9345.11
77		143	7	Brahman X Bulls	QBCP0029	N	290.2	441.4	3090.0	1281.03	8967.18
78		144	6	Brahman X Bulls	QBCP0029	N	270.2	450.8	2705.0	1218.15	7308.91
78	L	145	1	Brahman X Bulls	QBCP0029	N	200.0	495.0	495.0	990.00	990.00
79		146	7	Shorthorn X Bulls	QBCP0029	N	300.2	468.6	3280.0	1406.65	9846.56
80		147	9	Brahman X Bulls	QBCP0029	N	310.0	391.7	3525.0	1214.17	10927.50
80	L	148	1	Brahman X Bulls	QBCP0029	N	242.2	385.0	385.0	932.47	932.47
81	L	149	4	Brahman X Bulls	QBCP0029	N	320.0	388.8	1555.0	1244.00	4976.00
81		150	5	Brahman X Bulls	QBCP0029	N	278.2	402.0	2010.0	1118.36	5591.82
82		151	13	Brahman X Bulls	QBCP0029	N	286.2	356.2	4630.0	1019.31	13251.06
285		370	6	Brahman X Bulls	QBCP0029	N	310.2	347.5	2085.0	1077.95	6467.67
286		371	9	Shorthorn X Bulls	QBCP0029	N	310.2	278.3	2505.0	863.39	7770.51
286	L	372	1	Brahman X Bulls	QBCP0029	N	220.2	240.0	240.0	528.48	528.48
307		373	8	Shorthorn X Bulls	QBCP0029	N	310.2	285.6	2285.0	886.01	7088.07
307	L	374	1	Shorthorn X Bulls	QBCP0029	N	220.2	300.0	300.0	660.60	660.60
308		375	16	Shorthorn X Bulls	QBCP0029	N	310.2	270.6	4330.0	839.48	13431.66
309		376	12	Shorthorn X Bulls	QBCP0029	N	310.2	262.5	3150.0	814.28	9771.30
310	LSC	377	11	Brahman X Bulls	QBCP0029	N	280.0	254.1	2795.0	711.45	7826.00
310	L	378	4	Brahman X Bulls	QBCP0029	N	400.2	321.3	1285.0	1285.64	5142.57
311		379	14	Brahman X Bulls	QBCP0029	N	384.2	180.0	2520.0	691.56	9681.84
312		381	12	Shorthorn X Bulls	QBCP0029	N	270.2	212.1	2545.0	573.05	6876.59
313		382	2	Shorthorn X Bulls	QBCP0029	N	280.2	307.5	615.0	861.62	1723.23
314		383	7	Shorthorn X Bulls	QBCP0029	N	260.2	263.6	1845.0	685.81	4800.69
314	L	384	1	Shorthorn X Bulls	QBCP0029	N	180.2	295.0	295.0	531.59	531.59
Bulls				Total Head:	178		Av KG:	328.5			
				Av. C/KG:	301.2		Total KG:	58,480			
Total Livestock:				178	Av. \$ / Head:	989.62	Gross \$ (Ex GST):	176,152.85			

Conditions of Tendering

1. BACKGROUND

- 1.1 **(Invitation to tender)** The Principal invites tenders from suitably qualified contractors for the provision of the work, services and/or goods detailed in the Scope.
- 1.2 **(Proposed Timetable)** The Principal proposes to adopt the process and timing identified in the Proposed Timetable but may change these in accordance with these conditions of tendering.
- 1.3 **(Acceptance of terms)** By submitting a tender, the tenderer will be taken to have accepted and be bound by these conditions of tendering.
- 1.4 **(Interpretation)** Unless otherwise separately defined in these conditions of tendering, capitalised terms used in these conditions of tendering have the meanings given in the Tender Information. References to time are to local time in Queensland.

2. COMMUNICATIONS

- 2.1 **(Communication Method)** Subject to clause 2.5, all communications by the Procurement Administrator to the tenderer or by the tenderer to the Procurement Administrator regarding this tender shall be conducted at first instance using the Communication Method. Where the Communication Method is email, the Procurement Administrator shall direct communications to the email address notified by the tenderer to the Procurement Administrator.
- 2.2 **(Tenderer's responsibility)** The tenderer must ensure that it is capable of receiving and does receive all communications to the tenderer in connection with the request for tender process.
- 2.3 **(Communication Closing Time)** The Principal will not respond to any communication received after the Communication Closing Time. In the event of technical difficulties only, the tenderer may contact the Procurement Administrator directly.
- 2.4 **(No reliance)** The tenderer must not rely on any information which is communicated by a means other than that described in paragraph 2.1 unless and until it is communicated in writing in accordance with paragraph 2.1.
- 2.5 **(Complaints)** Complaints in relation to this process should be directed to the Principal's Complaints Manager.

3. TENDER BRIEFING AND SITE INSPECTION

- 3.1 **(Tender briefing and site inspection)** The tenderer must attend any tender briefings and site inspection that is identified in the Tender Information as mandatory. The tenderer must confirm that it intends to attend a tender briefing or site inspection to the email address and by the time and date stated in the Tender Information.
- 3.2 **(No reliance)** The tenderer must not rely on any verbal statements made during a tender briefing or site inspection unless those statements are confirmed in writing by the Procurement Administrator.

4. LODGEMENT OF TENDER

4.1 **(Method of lodgement)** A tender must be lodged via the designated email address, by sending it as an attachment to an email to the Tender Box.

The Procurement Administrator may, on request by the tenderer, allow a tender to be lodged by an alternative method.

4.2 **(Time of Lodgement)** A document forming part of a tender shall be deemed to have been lodged:

- (a) where the Tender Box is a website, at the time that the document is successfully uploaded to the Tender Box, as indicated on the electronic receipt issued to the tenderer;
- (b) where the Tender Box is an email address, at the time that an email attaching the document is successfully delivered to the Tender Box, as indicated on the email system on which the Tender Box is hosted;
- (c) where the Tender Box is a physical address, at the time that the document is physically received at the Tender Box; or
- (d) where the tender is lodged by an alternative method allowed by the Procurement Administrator, when it is received by the Procurement Administrator by that method.

4.3 **(Tender opening)** Tenders will not be opened publicly and the tenderer will not be permitted to attend the opening of tenders.

4.4 **(Tender format)** A tender must be lodged in the Tender Format.

4.5 **(Tender Validity Period)** A tender must remain valid and open for acceptance for the Tender Validity Period.

4.6 **(Conforming tender)** A tender is a conforming tender if, in the opinion of the Principal, it:

- (a) is substantially in the form of and contains substantially all information and documentation required by, the response schedules included in Part 6 – Response Schedule;
- (b) is substantially in accordance with the Tender Format;
- (c) does not substantially exceed the Page Limit (if any); and
- (d) contains no significant alternatives, qualifications or amendments to or departures from the Scope or the form of contract contained or referenced in Part 4 – Contract ('the Contract').

4.7 **(Non-conforming tender)** A tender which does not comply with the requirements of paragraph 4.6 is a non-conforming tender ('Non-conforming Tender').

4.8 **(Alternative tender)** A tender which, in the opinion of the Principal contains significant alternatives, qualifications or amendments to or departures from the requirements of the Scope or the Contract but otherwise complies with paragraph 4.6 is an alternative tender ('Alternative Tender').

4.9 **(Late tender)** A tender which is not received in the Tender Box by the Tender Closing Time is a late tender ('Late Tender').

5. CONDUCT OF PROCESS

5.1 (General) The Principal:

- (a) **(conduct of process)** may conduct the request for tender process in any manner which it sees fit, but will endeavour to do so in a manner which is consistent with this request for tender and the sound contracting principles in section 104 of the *Local Government Act 2009* (Qld) ('sound contracting principles'); and
- (b) **(no representation or undertaking)** makes no representations and provides no undertakings other than to invite the submission of tenders.

5.2 (Specific rights) Without limiting clause 5.1, the Principal may do anything which it considers to be prudent or necessary for the proper conduct of the request for tender process at its absolute discretion, without reference to the tenderer and without providing reasons, including, without limitation:

- (a) **(alteration of request for tender documents)** amend, add to or delete any part of this request for tender including:
 - (i) the procedures and timeframes provided in the request for tender;
 - (ii) the evaluation criteria (including weightings); and/or
 - (iii) any document issued by or on behalf of the Principal in connection with the request for tender, including the scope and the Contract;
- (b) **(suspension or termination)** suspend or terminate the request for tender process;
- (c) **(attendances)** request any one or more tenderers to attend a tender briefing, site inspection or other meeting or to make a presentation of their tender in person at the Principal's office at no cost to the Principal;
- (d) **(change or error in request for tender documents)** request any one or more tenderers to change their tender to take account of a change in the scope or other document issued in connection with this request for tender or any error in such documents;
- (e) **(clarification or alteration)** request any one or more tenderers to clarify or alter any aspect of the tenderer's tender;
- (f) **(additional information)** request additional information from one or more tenderers relating to a tender, the request for tender process, the tenderer's compliance with the conditions of tendering or any other matter which the Principal considers relevant to its assessment (including information that should have been, but was not, included in the tenderer's tender);
- (g) **(investigations)** undertake its own investigations, or engage third parties to do so on its behalf, in relation to any aspect of a tender or any other matter which it considers relevant to the conduct of the request for tender process;
- (h) **(negotiation)** negotiate amendments to any aspect of a tender with any one or more tenderers and suspend or terminate such negotiations at any time.

6. PRINCIPAL'S LIABILITY

6.1 Neither the Principal nor any of its officers, employees, agents, contractors, consultants, agents, representatives (including elected representatives) or other persons for whom it is vicariously liable shall under any circumstances, whether in tort (including for negligence), contract (including for breach of an express or implied term), statute, equity or otherwise at law be liable to the tenderer for any special, indirect or consequential loss, damage, cost or expense in connection with this request for tender process (including, without limitation, loss of or loss of anticipated profit, income, opportunity or contract).

7. TENDERER'S WARRANTIES AND REPRESENTATIONS

7.1 By submitting a tender, the tenderer warrants and represents that:

- (a) **(reliance)** the tenderer:
 - (i) has received or obtained copies of all of the documents referred to in this request for tender;
 - (ii) has not relied on the accuracy, adequacy or completeness of any documents or information provided by or on behalf of the Principal in connection with this request for tender in preparing its tender and has notified the Principal of any ambiguity, inconsistency, uncertainty, error or omission which it has discovered in or from any document supplied by or on behalf of the Principal in connection with the request for tender on which the tenderer intends to rely;
 - (iii) has undertaken its own enquiries and investigations to satisfy itself of:
 - A. the nature and extent of the Scope, its contractual obligations and all other risks, contingencies and other circumstances which could have an impact on its ability to carry out and complete the obligations which it will have under the Contract if its tender is accepted for its tendered price; and
 - B. the suitability, appropriateness and adequacy of the Scope (including, in respect of contracts under which the successful tenderer is required to design works, any preliminary design included in the Scope) for the purposes stated in or to be reasonably inferred from the Scope;
- (b) **(accuracy of tender)** all information provided in or with the tender is accurate;
- (c) **(ability)** the tenderer and to the extent relevant to them, the tenderer's officers, employees, agents, subcontractors, consultants, representatives, and other persons who will carry out an obligation of the tenderer under the Contract in the event that the tenderer's tender is accepted:
 - (i) hold (and are compliant with all requirements of) all necessary competencies, licences, accreditations, certifications, permits, clearances and other authorisations which will be required; and
 - (ii) have and will maintain the necessary experience, expertise, and skill,

to perform the obligations that the Tenderer will have under the Contract if the tenderer's tender is accepted, in accordance with the requirements of the Contract;
- (d) **(price)** the tendered price (along with any rates, sums and prices included in the tender) allows for:
 - (i) all of the risks, contingencies and other circumstances which could have an effect on the tenderer's ability to carry out and complete the obligations which it will have under the

- Contract if its tender is accepted, except to the extent that the Contract expressly allows an adjustment;
- (ii) the provision of all materials, plant, labour and other services necessary for the proper completion of the obligations it will have under the Contract if its tender is accepted, whether or not those items are expressly mentioned in the Contract; and
 - (iii) unless the Contract expressly allows an adjustment, rise and fall in costs;
- (e) **(conduct of tenderer)** neither the tenderer nor any of its officers, employees, agents, subcontractors, consultants, representatives or other persons for whom it is vicariously liable has:
- (i) engaged in misleading or deceptive conduct in connection with the request for tender process;
 - (ii) engaged in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other tenderer, or any other person in connection with the request for tender process;
 - (iii) attempted to improperly influence any of the Principal's officers, employees, agents, contractors, consultants or representatives (including elected representatives) or violated any applicable law regarding the offering of inducements in connection with the request for tender process;
 - (iv) accepted or invited improper assistance of any current or former officer, employee, agent, contractor, consultant or representative (including an elected representative) of the Principal, in preparing the tenderer's tender;
 - (v) used any information improperly obtained, or obtained in breach of any obligation of confidentiality in preparing the tender;
 - (vi) breached any law in connection with the request for tender process;
 - (vii) engaged in any aggressive, threatening, abusive, offensive, or other inappropriate behavior in connection with the request for tender process; or
 - (viii) engaged in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld).
- (f) **(Intellectual Property Rights)** the exercise by the Principal of any right provided in these conditions of tendering will not infringe the Intellectual Property Rights of a third party in connection with the Tenderer's Tender;
- (g) **(conflicts of interest)** the tenderer has disclosed in its tender any conflict of interest (whether actual, potential or perceived) arising or which is likely to arise as a result of this request for tender process or the performance of the obligations which it will have under the Contract if its tender is accepted; and
- (h) **(competitive neutrality)** if the tenderer is required by law to comply with principles of competitive neutrality, the tenderer has properly considered, assessed and complied with the applicable competitive neutrality principles in relation to the Request for tender process and the acceptance by the Principal of the tenderer's tender will not breach those principles.

- (i) **(location)** the tenderer is ready, willing, and able to commence the Work at the work site, from 1 August 2023.

8. ASSESSMENT OF TENDER

- 8.1 **(Criteria)** The Evaluation Criteria will be considered but not necessarily exclusively in assessing tenders.
- 8.2 **(Considerations)** In assessing tenders, the Principal may consider any information which the Principal reasonably considers to be relevant to its assessment (however obtained), including:
- (a) information contained in the tender, any amendment to or clarification of a tender or provided at a meeting with or presentation by the tenderer;
 - (b) information obtained from the tenderer's referees (if any);
 - (c) information obtained pursuant to clause 5.2(g);
 - (d) the tenderer's past performance under other contracts with the Principal or third parties; and
 - (e) the reasonably held subjective opinions of the persons appointed by the Principal to evaluate tenders or any advisor to such persons.
- 8.3 **(Uncertainties)** The Principal may ignore any part of a tender which is ambiguous, uncertain, unclear or illegible without seeking clarification from the tenderer and may assess the balance of the tender.
- 8.4 **(Right to exclude)** The Principal may, but shall not be obliged to, reject or exclude from assessment any tender including:
- (a) a Non-conforming Tender, an Alternative Tender or a Late Tender;
 - (b) a tender, in respect of which the Principal reasonably believes that:
 - (i) the tenderer has failed to comply with these conditions of tendering or any request made by or on behalf of the Principal pursuant to them within the time required;
 - (ii) the tenderer has breached a warranty given or representation made pursuant to these conditions of tendering or that a warranty or declaration given or representation made in the tenderer's tender was false or misleading any material respect;
 - (iii) the tenderer cannot comply with the obligations which it will have under the Contract if its tender is successful for the tendered price;
 - (c) a tender which fails to achieve a satisfactory score against any of the Evaluation Criteria, even if the overall score of the tender is satisfactory.
- 8.5 **(Local preference)** The Principal may accept a tender lodged by a Local Supplier in preference to comparable tenders from Non-Local Suppliers even if the tenders from the Non-Local Suppliers have been assessed as more favourable in terms of one or more criteria, so long as the overall differences are not substantial, and so long as it is clear that the Local Supplier can meet the Principal's requirements at an acceptably high standard which is generally comparable to that of the Non-Local Suppliers. In this clause:
- (a) Local Supplier has the same meaning as in the Principal's published procurement policy or where the Principal does not publish such a policy, or the policy does not contain a definition of 'local supplier', means a supplier that:

- (i) is beneficially owned and operated by persons who are residents or ratepayers of the local government area of the Principal has determined under the *Local Government Regulation 2012* (Qld); or
 - (ii) has its principal place of business within that local government area; or
 - (iii) otherwise has a place of business within that local government area that solely or primarily employs persons who are residents or ratepayers of that local government area; and
- (b) Non – Local Supplier means a supplier that is not a Local Supplier.

9. ACCEPTANCE OF TENDER

- 9.1 **(No obligation)** The Principal is not bound to accept the tender with the lowest price, or the tender with the highest score against the Evaluation Criteria, or any tender but will, if it accepts a tender, accept the tender which is most advantageous to the Principal having regard to the sound contracting principles, to the extent that they are applicable and relevant to the request for tender process.
- 9.2 **(Form of acceptance)** A tender will not be taken to be accepted, and no contract for the provision of any work, services and/or goods will exist, unless and until the successful tenderer receives written confirmation of the acceptance from the Principal.
- 9.3 **(Form of Contract)** If a tender is accepted, the tenderer will be required to enter into a contract with the Principal in the form contained in Part 4 – Contract as amended, if at all, by agreement between the parties. The contract will not include any alternative terms, conditions or qualifications which the tenderer submits with a tender unless specifically and expressly accepted in writing by the Principal.
- 9.4 **(Unsuccessful tenderers)** Unsuccessful tenderers will be notified after a tender has been accepted. The Principal may provide feedback to unsuccessful tenderers if requested to do so, but such feedback, if given, may be general in nature and limited to the tenderer's tender only.

10. DOCUMENTS AND INFORMATION

- 10.1 **(Ownership of tender)** The tender will become the property of the Principal upon submission.
- 10.2 **(Intellectual Property Rights)** All rights of intellectual property, including copyright, in documents and information provided on behalf of a party in connection with this request for tender remain, as between the parties, with the party on whose behalf they were provided. The tenderer grants to the Principal irrevocable, perpetual, non-exclusive, royalty free licence to exercise the rights provided to it in clause 10.5 and the Principal grants the tenderer a revocable, non-exclusive, royalty free licence to exercise the rights provided to it in clause 10.5.
- 10.3 **(Information Privacy Act)** If the tenderer collects or has access to 'Personal Information' as that term is defined in the *Information Privacy Act 2009* (Qld) in connection with the request for tender process, the tenderer must comply with Parts 1 and 3 of Chapter 2 of that Act in as if the tenderer was the Principal.
- 10.4 **(Confidentiality)** Subject to clause 10.5, each party shall keep confidential the documents and information provided by the other party in connection with this request for tender which are of their nature confidential.
- 10.5 **(Use of documents and information)** Documents and information provided on behalf of a party to the other party in connection with this request for tender (including, if the tenderer's tender is accepted, information relating to the tenderer's price) may be used, copied, modified or disclosed as required by any law and otherwise:

- (a) by the Principal, as the Principal considers to be reasonably necessary to properly conduct the request for tender process and/or to properly carry out its functions as a local government authority;
- (b) by the tenderer, as is reasonably necessary to enable the tenderer to:
 - (i) prepare the tender;
 - (ii) obtain legal, accounting, or other professional advice; or
 - (iii) comply with the tenderer's corporate governance requirements.

(Media) The tenderer must not, either on its own account or in conjunction with other parties, issue any publication, advertisement, document, article, or information whether verbal or written, in connection with the request for tender process in any media without the prior approval of the Principal

3. General Conditions of Contract

1. General

- a) The entire agreement between the parties is comprised of the Conditions of Tenders, Tender, Purchase Order, these General Conditions of Contract, and any other documents expressly referred to in the Purchase Order (**Agreement**). If there are inconsistencies or ambiguities between documents comprising the Agreement, Council will direct the Supplier as to the interpretation and the Supplier must comply with the direction and will not be entitled to Claim as a result of the direction. For the avoidance of doubt, if the Supplier has been engaged by Council under a standing offer arrangement or a panel agreement (as applicable), the terms of that standing offer arrangement or panel agreement will apply to the extent of any inconsistency.
- b) The Supplier is deemed to have accepted the terms of this Agreement (and the Agreement shall be binding) when both of the following have occurred:
- i. the Supplier has received Council's written or verbal confirmation to perform the Supply; and
 - ii. the Supplier irrevocably accepts that only the documents set out in clause 1(a) shall form part of the Agreement (unless there are any Variations making alterations to those documents).
- c) The parties agree that the terms and conditions of the Agreement supersedes any previous negotiations and apply notwithstanding and to the exclusion of any subsequent terms and conditions issued by the Supplier (including without limitation on any order confirmation or similar document).

2. Warranties

- a) The Supplier represents and warrants to Council that it has:
- i. carefully examined and acquired actual knowledge of the contents of information made available by Council.
 - ii. made investigations and assessments of the work, risks, contingencies, and circumstances involved in performing the Supply and it has reviewed all information Council has made available and is otherwise obtainable by reasonable enquiries, in relation to the Supply.
 - iii. satisfied itself that the Price covers the cost of complying with all obligations under the Agreement; and
 - iv. the necessary authority and power to enter into the Agreement and to perform the obligations under it.
- b) The Supplier warrants to Council that the Supply will:
- i. match the description of the Supply ordered by Council and comply with any scoping documentation or specifications supplied by Council.
 - ii. comply with any applicable laws, regulations, licences, permits, approvals, and Australian Standards; and
 - iii. be fit for the purpose(s) described in the Agreement or which Council has otherwise made known to the Supplier, or in the absence of such expressed purpose, be fit for the purposes for which goods or services of the same kind as the Goods or Services are commonly procured.
- c) Any review, comment, approval, or non-approval by Council of the Supply, including without limitation any documents provided by the Supplier, does not relieve the Supplier of its obligations or liabilities under the Agreement.

3. Goods

- a) The Supplier warrants that any Goods supplied will:
- i. correspond with any sample the Supplier provided to, or showed to, Council prior to or after a Purchase Order is issued by Council;
 - ii. unless agreed otherwise, be new, of merchantable quality and free from defects in materials and workmanship; and
 - iii. be free from liens, charges, and encumbrances of any kind and that the Supplier is able to pass good title to the Goods.
- b) Delivery of the Goods will have occurred only when the Supplier has:
- i. delivered the Goods to the Site in accordance with the Agreement and (unless otherwise agreed) unloaded the Goods at the part of the Site designated by Council;
 - ii. received a delivery receipt or other written acknowledgment email from Council's Personnel for the Goods delivered; and
 - iii. provided all installation instructions, maintenance and operating manuals, engineering data, spare parts lists, and other information as reasonably required for the installation, operation, and maintenance of the Goods, as applicable.
- c) The Supplier must properly pack and protect any Goods to ensure they are not damaged during delivery, unloading and storage.
- d) Risk in the Goods only passes to Council upon delivery of the Goods in accordance with clause 3(b) subject to risk passing back to the Supplier for any period when the Goods are made available by Council for the purposes of clauses 5(b)(iii) and 5(b)(v).
- e) Unencumbered title to the Goods passes to Council on payment or delivery (whichever occurs first).
- f) Neither the Sale of Goods Act 1986 (Qld) (or similar legislation in any other jurisdictions) nor any international conventions or recognised customs in relation to similar rules that may otherwise apply in respect to the international sale of goods, have any application to any matter in connection with the Agreement.

4. Service

The Supplier warrants that any Services provided will be performed:

- a) with skill, due care, and diligence and by appropriately qualified, licenced, skilled and trained Personnel;
- b) in an efficient, professional, and cost-effective manner; and
- c) using materials and equipment which (unless expressly stated otherwise) comply with the requirements of this Agreement and are new, of merchantable quality and fit for the purpose for which they are used.

5. Defects

- a) The Supplier must, at its cost, rectify any Defect while carrying out the Supply and during any applicable Defects Liability Period.
- b) Without limiting clause 5(a), Council may direct the Supplier to, at the Supplier's cost and risk, do any one or more of the following as determined by Council in its absolute discretion:
 - i. take such steps as are necessary to ensure that the Goods or Services comply with the Agreement;
 - ii. refund to Council any payments made by Council in respect of the Defective Goods or Defective Services;
 - iii. re-take possession of any Defective Goods and refund the Price for the Defective Goods to Council;
 - iv. collect and deliver replacements of any Defective Goods, or repair any Defective Goods; or
 - v. re-perform any Defective Services.
- c) If any Defect is not rectified within 5 Business Days of a direction by Council, Council may itself or by others, rectify the Defect and the cost of remedying the Defect will become a debt due and payable to Council from the Supplier.
- d) Any repaired or replaced Goods provided by the Supplier or any re-performed Services are subject to the same warranties as the original Goods or Services, from the date of repair, replacement or re-performance and the Defects Liability Period will recommence from such date.
- e) Any loss or damage that Council has incurred as a result of any Defect will be a debt due and payable to Council.

6. Completion

- a) The Supplier must:
 - i. deliver the Goods by the Completion Date; and/or
 - ii. complete the Services by the Completion Date and carry out the Supply expeditiously and without delay.
- b) If the Supplier believes that anything may delay the progress of the Supply, the Supplier must notify Council with details of the estimated extent of the delay and the cause.
- c) Subject to clauses 6(d) and 6(e), the Supplier will only be entitled to an extension of time to the Completion Date where:
 - i. the Supply is delayed by an act, default or omission of Council or its Personnel in Council's capacity as a party to the Agreement which prevents the Supplier completing the Supply by the Completion Date (**Qualifying Cause**);
 - ii. the Supply is not concurrently delayed (in whole or to the extent of any part) by a cause other than a Qualifying Cause; and
 - iii. within 5 Business Days after commencement of the Qualifying Cause, the Supplier gives notice to Council setting out the Qualifying Cause, the delayed activities, and the extension of time to the Completion Date claimed.
- d) Provided the requirements of clause 6(c) are satisfied, Council will determine the period of delay caused by the Qualifying Cause and extend the Completion Date by that period. If the Supplier does not make a Claim for an extension of time within the time or in the form specified in clause 6(c), the Supplier is not entitled to an extension of time for any delay and shall have no Claim.
- e) Council may (at any time in its sole and unfettered discretion (without obligation)) for any reason it thinks fit, extend the Completion Date. This right is solely for Council's benefit and may be exercised in its absolute discretion including if the Supplier has not requested an extension of time.

7. Site matters

- a) Entry to the Site by the Supplier and its Personnel is at their own risk. To the extent permitted by law, Council will not be responsible for any loss of or damage to property or for any personal injury or death to persons while on the Site.
- b) When accessing the Site, the Supplier must comply with all policies and procedures relating to the Site.
- c) If the Supply constitutes 'building work' for the purposes of the Queensland Building and Construction Commission Act 1991 (Qld) (**QBCC Act**), the Supplier must supervise and manage the performance of the Supply (including any building work performed by subcontractors) personally or by a competent representative and must otherwise comply with the requirements in sections 43 and 43A of the QBCC Act.
- d) Council may direct the Supplier to have removed from the Site or any activity in respect to the Supply, any of the Supplier's Personnel engaged in the Supply who, in Council's opinion, is incompetent, guilty of misconduct or for any other reason notified to the Supplier.
- e) The Supplier must coordinate the Supply on the Site with activities of Council, Council's Personnel and any other contractors or consultants and has no entitlement to any Claim for doing so or for any impact or interference caused to the Supplier.

- f) The Supplier must avoid disruptions or inconvenience to the usual and safe operations of the Site and the users of the Site, except to the extent expressly permitted by the Agreement.
- g) The Supplier must take all necessary steps to prevent damage to property on or near the Site, avoid unnecessary interference with the passage of people and vehicles on or near the Site and prevent nuisance, unreasonable noise, and disturbance on or near the Site. If any damage is caused by the Supplier or its Personnel, the Supplier must, at its own cost, remedy the damage to Council's satisfaction.

8. Work Health and Safety

- a) Without limiting any other clause, the Supplier must:
 - i. carry out the Supply in a safe manner;
 - ii. comply with, and do all things necessary to enable Council to comply with, all laws relating to workplace health and safety (WHS);
 - iii. comply with lawful directions issued by persons with control of the Site pursuant to any laws relating to WHS;
 - iv. have documented safe work practices and procedures for the Supply;
 - v. provide its Personnel with personal protective equipment, inductions, information, instruction, training and supervision to ensure their health and safety;
 - vi. provide, when requested by Council, evidence of its compliance with any laws relating to WHS; and
 - vii. immediately notify Council of accidents involving its Personnel.
- b) If urgent action is necessary to protect the Supply, property or people, and the Supplier fails to take the action, Council may take such action and the costs incurred in performing those actions will be a debt due and payable to Council from the Supplier.

9. Statutory declaration

The Supplier agrees that:

- a) any time, Council may request the Supplier to provide a signed statutory declaration (in a form and containing such detail as reasonably required by Council) from a current director of the Supplier confirming that the Supplier is solvent and not subject to any event set out in clause 15(b)(i); and
- b) the Supplier must provide Council with such completed and signed statutory declaration within 3 Business Days of such a request.

10. Variation

- a) Council may direct the Supplier at any time to vary, amend, increase, decrease, omit, change the timing of (including to accelerate), or change the quality, character, or extent of the Supply (Variation). No Variation will invalidate the Agreement and the Supplier must comply with the Variation.
- b) Council will determine the Price of each Variation by applying:
 - i. rate or prices agreed between the parties;
 - ii. rates or prices (if applicable) in the Agreement; or
 - iii. reasonable rates or prices.
- c) Council will not be in breach of the Agreement if it reduces the quantity or scope of the Supply and engages a third party for that Supply or undertakes the Supply itself.
- d) Within 3 Business Days of any request for a Variation, the Supplier must obtain written confirmation from Council before complying with the Variation. Compliance with this clause 10(d) is a condition precedent to any Claim and Council shall have no liability for any Claim in connection with the requested Variation to the extent the Supplier has failed to comply with this clause 10(d) (including without limitation any costs incurred prior to having obtained the written confirmation of Council).

11. Invoicing and payment

- a) Council will, subject to the terms of the Agreement, authorise payment to the Supplier of an amount not exceeding the Price. The Price is:
 - i. fixed and not subject to any adjustment whatsoever except to the extent expressly set out in the Agreement; and
 - ii. inclusive of all costs relating to the Supply, except the following which will be paid by Council out of its share of GROSS profit:
 - Sales Agent/ Vendor Commission
 - NLIS Tags and NVD Books (Council is now utilising Electronic NVD)
 - Land Access Fees

- Maintenance and/or replacement of Council-owned plant and equipment
 - PIC/ Registered Biosecurity Entity registration
 - Site and Transport Inspections
- b) The Principal will authorise payment of the Price to the Supplier on receipt of a valid sales report from its Sales Agent following each sale/consignment. The Supplier will be paid directly by the Sales Agent from the GROSS proceeds of sale in accordance with the Sales Agent's terms.

12. GST

- a) Unless otherwise defined in this Agreement, capitalised terms in this clause have the meanings given to them in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- b) Unless stated otherwise, the consideration for a Supply made under or in connection with the Agreement does not include GST. If a Supply made under or in connection with the Agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under the Agreement for that Supply and the Supplier must give the Recipient a Tax Invoice for the Supply.
- c) If either party has a right under the Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with the Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified.

13. Indemnity

The Supplier indemnifies Council from any Claims, actions, proceedings, costs, expenses, losses, and damages (including legal fees on an indemnity basis) incurred in connection with:

- a) any loss of or damage to real or personal property caused by the Supplier or its Personnel;
- b) personal injury or death caused by the Supplier or its Personnel;
- c) a breach of any third party Intellectual Property Rights by the Supplier or its Personnel;
- d) a breach of any laws in connection with the Agreement by the Supplier or its Personnel; and
- e) a breach of the Agreement by the Supplier or its Personnel.

14. Insurance

- a) The Supplier must effect and maintain at its own cost:
- i. public liability insurance for an amount no less than \$20 million (except where a lesser amount is agreed with Council);
 - ii. workers' compensation insurance as required by law;
 - iii. third party comprehensive motor vehicle insurance;
 - iv. transit insurance;
 - v. insurance of the Goods forming part of the Supply (for their full value) until delivery of the Goods in accordance with clause 3(b); and
 - vi. if the Services ordered by Council include elements of professional services such as design work, hydrology assessments, environmental assessments, engineering services and other similar categories, the Supplier must obtain professional indemnity insurance with a limit of liability of not less than \$10 million (except where a lesser amount is agreed with Council) covering the extent of the Services that is to be maintained until seven years after the Completion Date.
- b) The Supplier must provide Council with evidence of such insurances whenever requested by Council.

15. Termination

- a) Council may terminate the Agreement for any reason in Council's absolute discretion on 7 days' written notice to the Supplier.
- b) Council may terminate the Agreement immediately or take out of the hands of the Supplier the whole or any part of the Services remaining to be completed if:
- i. the Supplier becomes insolvent, commits an act of bankruptcy, enters into administration, appoints a liquidator, receiver, manager or controller, makes a statement or conducts itself in a manner from which it may reasonably be deduced that it is insolvent or is seeking to take advantage of the safe harbour against insolvent trading available under Division 3, Part 5.7B of the Corporations Act 2001 (Cth), stops or suspends (or threatens to stop or suspend) payment of all or a class of its debts, or anything analogous to these events;

- ii. the Supplier commits a default or breach of the Agreement that Council considers, in its sole and unfettered discretion:
 - A. has placed a person at an unacceptable risk of harm;
 - B. property is at risk of damage;
 - C. constitutes a major non-compliance with safety, animal welfare or environmental management systems, standards and/or commitments; or
 - D. has placed Council at an unacceptable risk of reputational damage;
 - III. the Supplier commits a default or breach of the Agreement and fails to remedy the default or breach within 5 Business Days of being directed in writing to do so by Council; or
 - IV. the Supplier commits a breach incapable of being remedied.
- c) If Council exercises its rights under clause 15(a), the Supplier will only be entitled to its reasonable direct costs incurred up to the date of termination as well as the reasonable additional costs of early de-mobilization above and beyond expected demobilisation costs budgeted for the end of the season. To avoid doubt, the Supplier will not be entitled to any loss of profit/ opportunity loss, or other compensation.
- d) If Council exercises its rights under clause 15(b), the Supplier will not be entitled to any Claim.
- e) If Council terminates, or purports to terminate, the Agreement under clause 15(b) and it is subsequently held to be invalid, void or otherwise unenforceable then Council will be deemed to have terminated for convenience under clause 15(a) as at the same date and time as the original notice of termination. The Supplier's sole entitlement will be a payment (if any) under clause 15(c) and the Supplier waives any Claim it has, or would have had, but for this clause, arising out of or in connection with any termination, or purported termination, by Council under the Agreement or otherwise at law being subsequently held to be invalid, void or otherwise unenforceable.

16. Suspension

- a) Council may at any time and for any reason direct the Supplier in writing to suspend the performance of all or any part of the Supply and the Supplier must immediately comply. The Supplier's only Claim arising out of a suspension under this clause will be for an extension of time under clause 6, except that the Supplier will have no entitlement to Claim if the suspension was caused or contributed to by the Supplier or its Personnel.
- b) Council may at any time direct the Supplier to resume the performance of the Supply and the Supplier must promptly comply with such a direction at its cost.

17. Informality and intellectual property

- a) The Supplier must not disclose to any person, or use for any purpose other than carrying out the Supply, the contents of the Agreement and any other document or information obtained by the Supplier in the course of or in connection with carrying out the Supply (Confidential Information):
 - i. without the prior written consent of Council; or
 - ii. unless required by law.
- b) The Supplier must immediately notify Council if the Supplier becomes aware of any unauthorised disclosure or use of the Confidential Information and return any Confidential Information (including copies) on the written request of Council.
- c) The Supplier agrees, unless Council expressly agrees otherwise, any information (whether documented or otherwise) supplied or made available to the Supplier by or on behalf of Council:
 - i. is provided only for the Supplier's convenience;
 - ii. has not been and will not be relied upon by the Supplier for any purpose (including entering into or performing its obligations under the Agreement); and
 - iii. Council does not warrant, guarantee, or assume responsibility for such information (including its accuracy, completeness, or adequacy).
- d) Council will not be liable to the Supplier in contract, tort, equity, under statute or otherwise arising from or in connection with the supplied information (including its inaccuracy or adequacy), the provision of the supplied information or the non-provision of any other information by Council.
- e) The Supplier grants Council a transferable, irrevocable, royalty free licence, including the right to sub-licence, to use any material provided to Council in connection with the Agreement for use and enjoyment of the Supply, including (without limitation) any modification, repair or alteration of any Goods or Services.
- f) The Supplier warrants that the Supply will not infringe any Intellectual Property Rights in Australia or any other country.

18. Personal Property Securities Act

- a) If Council determines a 'security interest' as defined in the PPSA (Security Interest) arises under this Agreement, then the Supplier must do anything requested by Council (at the Supplier's cost) including executing documents, to ensure the Security Interest is registered, perfected and enforceable, including that through registration Council obtains the highest ranking priority possible for the Security Interest and the Supplier must assist Council to exercise any right in connection with a Security Interest.

- b) To the extent permitted by law:
- i. the Supplier waives any right it may have under the PPSA to receive anything from Council, including a notification that the Security Interest has been registered; and
 - ii. until title passes to Council in accordance with this Agreement, the Supplier agrees it will not do anything to prejudice any Security Interest in favour of Council, including that it will not permit a third party to register any Security Interest or obtain an interest in the Supply nor allow or permit anything to be installed in or affixed to Goods which are part of the Supply.

19. Quality assurance

- a) Without limiting its other obligations under the Agreement, the Supplier must carry out the Supply in accordance with a quality assurance system which establishes the qualities and performance of the Supply including quality manuals, plans, management structures and other critical issues.
- b) The Supplier must allow Council access to the Supplier's quality assurance system at all reasonable times for the purposes of quality monitoring and auditing.
- c) The Supplier's implementation of, or compliance with, a quality assurance system does not relieve the Supplier of its obligations under this Agreement.

20. Dispute

- a) If a dispute between the parties arises from or in connection with the Agreement, neither party may commence court proceedings concerning the dispute unless it has complied with this clause or seeks urgent injunctive or declaratory relief.
- b) A party claiming a dispute must notify the other party of the dispute and specify the claim (**Dispute Notice**). A party served with a Dispute Notice may give a written response within 14 days of the receipt of the Dispute Notice (**Response**).
- c) Within 28 days of service of a Dispute Notice, or within 14 days of the receipt of a Response, whichever is the earlier, the parties must confer to attempt to resolve the dispute. Each party must be represented by a person having authority to agree to a resolution of the dispute. If the dispute is not resolved under this clause 20(c) within 30 days, either party may commence litigation.
- d) Each party must continue to perform its obligations under the Agreement despite the existence of a dispute.

21. No fetter

- a) Despite anything in this Agreement to the contrary:
 - i. Council is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other government agency in the proper exercise and performance of any of its executive or statutory rights or duties; and
 - ii. nothing in this Agreement has the effect of constraining Council or placing any fetter on Council's discretion to exercise or not to exercise any of its executive or statutory rights or duties.
- b) Subject to clause 21(c), the Supplier will not be entitled to make any Claim against Council relating to any exercise or failure of Council to exercise its executive or statutory rights or duties.
- c) Clauses 21(a)(i) and 21(b) do not limit any liability which Council would have had to the Supplier under this Agreement as a result of a breach by Council of this Agreement but for these clauses.

22. General

- a) The Agreement may only be amended by written agreement between all parties.
- b) Reference to Council and the Supplier shall extend to their respective successors, administrators and permitted assigns.
- c) The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.
- d) A right under the Agreement may only be waived in writing signed by the party granting the waiver and is effective only to the extent specifically set out in that waiver. The failure of a party to require full or partial performance of a provision of the Agreement does not affect the right of that party to require performance subsequently.
- e) The law of the State of Queensland will apply. Each party irrevocably submits to the non-exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.
- f) A clause or part of a clause of the Agreement that is illegal or unenforceable may be severed and the remaining clauses or parts of the clause of the Agreement continue in force.
- g) The Supplier must at its own expense obtain all requisite permits, approvals and licences and comply with all laws and regulations in connection with the Agreement.
- h) The Supplier must keep Council fully informed in respect to the Supplier's performance of the Agreement.
- i) The Supplier must at its own cost supply all labour, tools, equipment, and materials necessary for the Supply.

- j) The Supplier must comply with all directions of Council.
- k) Where the Supplier comprises more than one entity, each will be jointly, severally, and vicariously liable for the full performance of the Supplier's obligations under the Agreement.
- l) Wherever the words 'include', 'included' or 'including' are used in this Agreement, those words will be interpreted in all cases as if they were preceded by the further words 'but not limited to' or the appropriate grammatical derivative.
- m) The Supplier must not assign or subcontract its rights or obligations under the Agreement without Council's prior written consent (and will be vicariously liable for the acts or omission of such subcontractors).
- n) No provision of the Agreement is to be constructed against Council's interests because Council prepared the Agreement.

23. Definitions

In the Agreement:

Business Day means a day that is not:

- a) a public holiday, special holiday or bank holiday in Gatton, Queensland.
- b) Saturday or Sunday;
- c) 24 December; or
- d) 27 to 31 December (inclusive).

Claim means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with the Agreement, the Supply or either party's conduct under the Agreement before or after it came into force, whether at law (including breach of contract) or in equity, by statute, in tort (including negligence), or otherwise including any claim, notice, demand, debt, account, lien, liability, action, proceeding or suit:

- a) for the payment of money (including for loss or damages);
- b) for an adjustment to the Price; or
- c) for delay or disruption or other time based claim.

Completion Date means the completion date specified in the Purchase Order as indicated in the 'Date Required' field, or if no date is specified, the completion date advised by Council.

Council means Kowanyama Aboriginal Shire Council).

Defects Liability Period means the period stated in the Purchase Order which commences on the date the Supplier completes the Supply (as determined by Council acting reasonably) or, if there is no period stated, 12 months.

Defect or Defective means any part of the Goods and/or Services which does not comply strictly with the requirements of the Agreement or is otherwise unsatisfactory to Council.

Goods means goods ordered by Council as part of the Supply.

Industry Practice means:

- a) that degree of care, skill, judgment, and foresight that would be expected of a skilled and experienced supplier regularly engaged in the business of supplying the goods and/or performing the services of the kind required by this Agreement; and;
- b) compliance with all relevant industry standards and any standards of Standards Australia Ltd applicable to the Supply (except to the extent that the Agreement prescribes a contrary standard) and the best practices, methods, and procedures applicable in the industry to which the Supply relates.

Intellectual Property Rights means any patent, design (whether registered or not), trademark or name, copyright or other protected right.

Personnel means the employees, agents, contractors, suppliers and consultants of a party, but Council's Personnel does not include the Supplier or the Supplier's Personnel and the Supplier's Personnel does not include Council or Council's Personnel.

PPSA means (as applicable to the Agreement) the Personal Property Securities Act 2009 (Cth).

Price means the price or prices agreed between Council and the Supplier for the Supply as set out in the Purchase Order.

Purchase Order means the purchase order attached or otherwise provided by Council to the Supplier for the Supply.

Services means services specified in the Purchase Order or any Variation (if any).

Site means any site, location or place which is made available to the Supplier, by or on behalf of Council, in connection with the Supply (including any place for delivery of the Goods or performance of the Services).

SOPA means the Building Industry Fairness (Security of Payment) Act 2017 (Qld) and its regulations.

Supplier means the party stated in the Purchase Order who is responsible for carrying out and completing the Supply.

Supply means the supply of Goods and/or Services.

4. Special Conditions of Contract

1. Indigenous Employment Business Plan

The Contractor shall meet its Tender commitments in relation to facilitating Indigenous Employment and Opportunities by specifically:

- a. Engaging local and Indigenous employees (including contractors, apprentices and trainees);
- b. Procuring local and Indigenous Goods and Services;
- c. Otherwise supporting local and Indigenous opportunity and business (eg. sponsorships etc).

The Contractor shall provide an IEBP Report in writing on a monthly basis to the Principal detailing particulars of IEBP having been provided by the Contractor in the preceding month.

2. Council Inspections

As Principal and Registered Biosecurity Entity, Council (and its agents) is legally required to undertake routine inspections of the Site for the duration of the Agreement, commencing upon the Contractor's arrival at the Site and concluding upon its departure. During its inspections, the Principal shall be observing all legal requirements pertaining to the muster of cattle, including but not limited to ensuring animal welfare. The Principal shall also be observing the Contractor's adherence to the terms of Agreement.

The Contractor acknowledges and agrees to comply with all lawful directions of the Principal, or Principal's agent, during these routine inspections. Routines are expected to occur fortnightly. Notice need not be given by the Principal to the Contractor. The Contractor agreed to provide the Principal with unfettered access to the Site for inspections.

3. Sales Agent

The Principal shall be at liberty to appoint, at its sole discretion, a Sales Agent to manage the sale of the cattle under this Contract. Payment shall be made directly by the Sales Agent to the Contractor based on agreed profit share (Price) following each sale/ consignment.

4. Firearms and Dogs

The Principal shall be permitted to have trained "cattle dogs" at the Site only to assist in the performance of the Work. At no time may the dogs participate in recreational hunting activities at the Site. Whilst not performing the Work, the Contractor assures the Principal that the dogs shall be appropriately restrained to prevent escape and/or danger to persons and/or animals. Appropriate animal welfare considerations shall extend to the dogs whilst on site. All dogs brought to the Site must be removed from the Site upon departure by the Contractor.

The Principal shall be permitted to have licensed firearms at the Site solely to assist in the performance of the Work. At no time may the firearms be used for any purpose other than the Work absent the express approval of the Principal (eg. firearms may not be used for recreational hunting etc). At all times whilst not in use for performance of the Work, firearms must be appropriately stored in a lockable container, as required by law. Only appropriately licensed users may access and use firearms in performance of the Work.

5. Total Fire Ban

A total fire ban is applicable across Oriners and Sefton as shown by signage. The Contractor agrees not to start any fires at Oriners and Sefton and will store flammable equipment in vegetation clear areas and in accordance with statutory requirements.

6. Asset Register

Whilst on Site, the Contractor shall develop at no additional cost to the Principal and provide to the Principal at its earliest possible opportunity, a basic list of cattle assets remaining at the Site. This will include brief particulars such as:

- Asset Description (eg. fence panelling x25 (2m x 1m))
- Approximate location
- Approximate age
- Condition (eg. New/ Satisfactory/ Poor)
- Recommended action (eg. Retain "as is" / Repair/ Dispose)

At conclusion of the Contract, the Contractor shall provide to the Principal, at no additional cost, a brief recommendations report detailing assets/ infrastructure which the Principal should invest in to facilitate a smooth Muster in future years.

7. Payment of Contractor employees/ sub-contractors

The Contractor agrees that all employees and/or contractors will be paid in a timely manner and strictly in accordance with applicable awards, enterprise agreements, registered agreements, contracts in a timely and compliant manner. A failure by the Contractor to pay employees/ sub-contractors in accordance with applicable awards/ agreements/ contracts, if unremedied, shall be a default of this contract, affording contract suspension or termination by the Principal, at its sole discretion.

5. Response Schedules

Please complete if Tenderer is a **COMPANY**

General Details		
Company or entity name:		
Trading name:		
Name of Trust: (if company entering into agreement as a trustee of a Trust)		
List of parent and/or subsidiary companies and year established:		
A.B.N and A.C.N:	A.B.N:	A.C.N
Address:		
Contact Person:		
Contact Number:		
Email:		
Full name of directors:		
Authorised signatory: (Name and Position)		
Year in business under current structure:		
Other business in which Tenderer has financial interest:		

Please complete if Tenderer is a **PARTNERSHIP**

General Details	
Trading name:	
A.B.N:	
Address:	
Contact Person:	
Contact Number:	
Email:	
Full name of each partner:	
Authorised signatory: (Name and Position)	
Year in business under current structure:	
Other business in which Tenderer has financial interest:	

Please complete if Tenderer is an **INDIVIDUAL**

General Details	
Full name of Sole Trader:	
Trading Name:	
A.B.N:	
Address:	
Contact Person:	
Contact Number:	
Email:	
Authorised signatory: (Name and Position)	
Year in business under current structure:	
Other business in which Tenderer has financial interest:	

5.1. Pricing Schedule

The Tenderer HEREBY applies for the following muster contract(s) with the Principal (**TICK**):

- Kowanyama (PIC QBCP0029)**

The below pricing will apply to this contract selection:

Average cents per kg price on sale	Contractor's Share of GROSS profit (%)	Principal's Share of GROSS profit (%)	TOTAL (%)
Less than 200			100%
200 - 299			100%
More than 300			100%

NOTE: Tenderer is encouraged to read the **Pricing Methodology Guidance** on page 9 of the Tender documents to ensure it understands what expenses are to be deducted from both the Contractor's and Principal's respective shares of GROSS profit listed above, in order to formulate a sustainable profit share model.

5.2. Qualifications and experience

Please outline below qualifications and experience of key personnel:

Name	Position	Qualification / Relevant experience

If there is not sufficient space in the above table, please provide on separate document labelled "6.2 Qualifications and Experience".

5.3. Plant and Equipment

Please outline below details of required plant and equipment:

Machine	Make / Model	Size / Capacity

If there is not sufficient space in the above table, please provide on separate document labelled "6.3 Plant and Equipment".

5.4. Subcontractors and suppliers

Please outline below any proposed subcontractors and suppliers to be used for this project:

Subcontractor or Supplier Name and Address	Value of works

If there is not sufficient space in the above table, please provide on separate document labelled "6.4 Subcontractors and Suppliers".

5.5. Insurance and quality assurance

Insurance Details

Please complete the below if contractor holds any of the below insurances, **please attach relevant certificate of currency.**

Insurance Type	Insurance Company	Policy No.	Extend of Cover	Expiry Date
Workers Compensation				
Public Liability				
Professional Indemnity				
Plant and Equipment				
Motor Vehicles				

Quality Assurance and Environmental Protection:

Does the Contractor have any documented quality assurance or quality assurance systems, environmental protection systems?

Yes No

Supply evidence or details of the Contractor's quality assurance/environmental protection position and where relevant of its supplier's or subcontractor's position, in an attachment labelled "Quality Assurance".

Attached: Yes No

Safe work Methods Statement

Does the Contractor have a generic Safe Work Methods Statement?

Yes No

If "Yes", please submit a copy and label it "SWMS".

Attached: Yes No