



**Buildings and Contracts**

**Project Title**

Eucla Townsite's 2025/2026 Water  
Treatment Plant Maintenance  
Servicing.

**Contract Description**

MINOR WORKS

**On behalf of the**

Department of Primary Industries and  
Regional Development & Western  
Australia Police.

**Consultant Firm**

N/A

**Principal**

MINISTER FOR WORKS

**Lodgement of Tender**

Date: **18.6.2025**  
Time: **Before 2:30pm**  
Electronic: Tenders WA

**Tender No**

**FINW0190225**

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**Eucla Townsite's Water Treatment Plant Routine Maintenance Servicing  
(July 2025 to June 2026)**

**WORKS CONTRACTING**

**(DATE OF LAST UPDATE TO MASTER – QUARTER 3.1 2024)**

Tender File Number: FINW0190225

Witness .....

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# NOTICE TO TENDERERS

## AUSTRALIAN STANDARD METHOD OF MEASUREMENT

### AMENDMENTS TO AUSTRALIAN STANDARD METHOD OF MEASUREMENT 6<sup>th</sup> EDITION

Tenderers are advised that the Bill of Quantities (if any) that applies to this Contract has been measured in accordance with the Australian Standard Method of Measurement (ASMM) 6<sup>th</sup> Edition except for Mechanical Services trades, which have been measured in accordance with an amended Section 35 of the ASMM described on the following WA.gov.au webpage:

<https://www.wa.gov.au/government/publications/cost-planning-method-of-measurement>

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## **SECTION A PRELIMINARIES**

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### **1. CONDITIONS OF TENDERING**

#### **1.1. TENDER DOCUMENTS**

Documents for the purpose of tendering ("Tender Documents") are:

##### **(A) BOUND INTO THIS VOLUME**

- (a) Form of Tender – BC 03
- (b) Minor Works Conditions of Tendering and Conditions of Contract
- (c) Preliminaries – Conditions of Tendering
- (d) Preliminaries – Specification Preliminaries
- (e) Specification
- (f) Schedules

##### **(B) SEPARATE DOCUMENTS**

- (a) Drawings as listed in Specification
- (b) Addenda and any other special correspondence issued to tenderers by the Principal

#### **1.2. TENDER ENQUIRIES**

Any enquiries regarding the provisions of the Tender Documents during the period prior to the close of tenders should be referred to Andrew Dooley Telephone No 9076 4001

#### **1.3. BEST PRACTICE IN TENDERING**

In consideration of being permitted to tender, the tenderer promises to work with the Principal to achieve best practice in relation to the tender process. To this end both parties acknowledge that:

- (a) they have not engaged in any anti-competitive or unethical behaviour that has the potential to disadvantage other participants in the tender process, including any form of collusion;
- (b) they will declare any conflict of interest to the affected party as soon as the conflict is identified and will endeavour to resolve that conflict in favour of the public interest.

#### **1.4. LODGEMENT OF TENDERS**

##### **1.4.1. TIME**

Tenders must be lodged electronically before 2.30pm on the advertised date for closing of tenders via Tenders WA.

Any tender submitted after this time will not be accepted by Tenders WA.

##### **1.4.2. SUBMITTED FROM**

Tenders must be submitted from the permanent operational office where the tenderer intends to manage the Contract.

Where the tender follows an expression of interest or other earlier stage of tendering to this Request, tenders must be submitted from the same office from which the tenderer

submitted its expression of interest or otherwise responded to that earlier stage, unless otherwise approved by the Principal.

The Principal may request that the tenderer demonstrate the bona fides of the permanent office from which the tender is received. Where the Principal considers that the tenderer has not adequately demonstrated the bona fides of that office the Principal may declare the status of that office for the purposes of the tender, its evaluation or compliance with the terms of the Contract or may exclude the tender from further consideration.

#### **1.4.3. SUBMISSION OF TENDER VIA TENDERS WA WEBSITE**

Tenders must be submitted electronically by uploading to the Tenders WA website (<http://www.tenders.wa.gov.au>) in an approved format ([Tenders WA File Formats](#)). Tenderers must ensure the tender response:

- (a) is submitted in full via the Tenders WA website on or before the date and time of close of tenders;
- (b) is complete, signed, legible and includes all necessary information, schedules, etc. essential for establishing a bona fide tender capable of meaningful comparison with other tenders;
- (c) is equal to or less than 100 megabytes in size;
- (d) is lodged in accordance with the Tenders WA Terms of Use; and
- (e) contains file names with no more than 125 characters in length.

The tenderer must be registered with Tenders WA to submit a tender response electronically. The Tenderer is encouraged to register well before the closing time and utilise the online assistance available on the Tenders WA website.

Tenderers must upload their tender response to the corresponding tender number in Tenders WA in accordance with clause 1.4. Tender responses loaded to the incorrect tender number in Tenders WA constitute an incorrect lodgment and will not be accepted.

## **1.5. REVIEW AND ACCEPTANCE OF TENDERS**

### **1.5.1. GENERAL**

The Principal is not obliged to accept the lowest or any tender and may reject without liability any or all tenders submitted.

The Contract, if any, will be awarded to the tenderer that in the opinion of the Principal meets the requirements described in the Tender Documents and offers the best value for money.

If the Tenderer makes reference in its Tender to information on the Tenderer's website, or on any other website, the Principal will not take into account that information when evaluating the Tender. Any information on the Tenderer's website or on any other website which the Tenderer wishes the Principal to rely must be set out in full in the Tender

### **1.5.2 VALUE FOR MONEY**

Value for money will be determined solely by the Principal and will take into consideration, but is not bound or limited to:

- (a) tendered price, including:
  - (i) Regional Business and Regional Content preference adjustments if applicable; and
  - (ii) Imported Content adjustments if applicable.(see clause 1.21 Buy Local Policy);
- (b) the Tenderer's or a Tenderer's Related Corporate Entity's (as defined in the Department of Finance Builders Prequalification Scheme and if approval has been granted pursuant to Section 2.4(h) of the Department of Finance Builders Prequalification Scheme) past performance in relation to:
  - (iii) compliance with any applicable code of practice for the building and construction industry;
  - (iv) payment of subcontractors, suppliers and/or workers;
  - (i) quality, time and cost under previous contracts;
- (c) the tenderer's current workload and technical resources and the delivery risk to the Principal. In considering these factors, the Principal may take into account the volume and value of any contracts it has awarded to the tenderer which are still under construction, in the defects liability period or the Principal is considering awarding to the tenderer;
- (d) the tenderer's financial viability and capacity;
- (e) whole of life costs including likely maintenance, disposal, replacement and repair costs associated with goods, materials, subcontractors and suppliers proposed by the tenderer;
- (f) compliance with the State Government's social, economic and environmental policies outlined within this Request;
- (g) compliance with relevant local, state and federal government requirements; and
- (h) compliance with the requirements of the Tender Documents;
- (i) whether or not the tenderer, or any director, officer or other key personnel of the



Tenderer:

- (i) has experienced; or
- (ii) had a controlling interest in any other legal entity besides the Tenderer that has experienced,

in the last three years a Bankruptcy Event or an Insolvency event as defined in Section 1 of the “Builders Prequalification Scheme” document available for download from the WA Government website at:

<https://www.wa.gov.au/government/publications/builders-prequalification-scheme-department-of-finance>

(j) the:

- (i) number and value of any overdue tax debts currently owed, including any overdue tax debt for which the Tenderer is jointly and severally liable;
- (ii) details on any other outstanding taxation obligations including the provision of information and returns; and
- (iii) the amount of any tax debts that have been written off.

(k) the Department of Finance’s obligations under the Government of Western Australia’s Aboriginal Procurement Policy;

(l) any demerits or sanctions issued against the Tenderer or a Tenderer’s Related Corporate Entity (as defined in the Department of Finance Builders Prequalification Scheme and if approval has been granted pursuant to Section 2.4(h) of the Department of Finance Builders Prequalification Scheme) under the Department’s “Supplier Demerit Scheme” as set out on the WA Government’s webpage at [www.wa.gov.au/government/multi-step-guides/supplying-works-related-services/supplier-performance-management-government-non-residential-building-projects](http://www.wa.gov.au/government/multi-step-guides/supplying-works-related-services/supplier-performance-management-government-non-residential-building-projects); and

(m) any prohibition notices issued, any enforceable undertakings accepted, prosecutions commenced by WorkSafe WA or any convictions recorded as a result of prosecutions commenced by WorkSafe WA under the Occupational Health and Safety Act 1984 (WA) or the Work Health and Safety Act 2020 (WA) (and associated regulations) in the last 4 years in respect of work health and safety issues in relation to the Tenderer or the Tenderer’s Related Corporate Entity (as defined in the Department of Finance Builders Prequalification Scheme and if approval has been granted pursuant to Section 2.4(h) of the Department of Finance Builders Prequalification Scheme).

If, in the Principal’s opinion, a tenderer fails to meet, or is otherwise deficient in respect of, any one or more of the above criteria, the tenderer may be excluded from further consideration.

### **1.5.3 NOT USED**

### **1.5.4 KEY PERSONNEL**

Tenderers should note that the Contract (if awarded) will require the Contractor to retain the personnel nominated in their tender (if any) in the roles assigned to them in performing the Contract and to seek prior approval to replace any of the nominated personnel.

## **1.6. KEY DOCUMENTS TO BE SUBMITTED WITH TENDER**

The following information and completed documentation must be submitted electronically with the tender response on or before the date and time for lodgement of tenders (see clause 1.4 Lodgement of Tenders):

- (a) the Department of Finance Form of Tender – BC 03, all parts duly completed, signed, dated and containing the legal entity of the tenderer, their contact details and the tender price inclusive of GST;

Any tender that is not accompanied by completed documents required under this clause may not be considered.

## **1.7. OTHER DOCUMENTS TO BE SUBMITTED WITH TENDER**

If applicable, the following information and completed documentation must be submitted electronically with the tender response on or before the date and time for lodgement of tenders:

- (a) acknowledgement of addenda to Tender Documents (see clause 1.33 Addenda to Tender Documents);
- (b) the Claim for Direct Employment Costs of Aboriginal Persons form;
- (c) the Claim for Aboriginal Persons or Businesses Engaged as Suppliers or Subcontractors form;
- (d) the Imported Content Declaration;
- (e) the Declaration of Tax Status and Consent to Office of State Revenue Disclosure of Tax Information form;
- (f) the Claim For Regional Business Preference form
- (g) the Claim For Regional Content Preference form;

If a tender is accompanied by the documents and information required by clause 1.7 – Key Documents to be Submitted with Tender - but is not accompanied by any document or information required under this clause the Principal may, in its absolute discretion:

- (a) consider the tender in the absence of the required documents or information;
- (b) request that the tenderer provide the document or information required under this clause and subsequently take the document or information into account when assessing the tender; or
- (c) may exclude the tender from further consideration.

## **1.8. DOCUMENTS TO BE SUBMITTED AFTER THE CLOSE OF TENDER AND ONLY UPON REQUEST OF THE PRINCIPAL**

### **1.8.1. REQUESTS FOR DOCUMENTS AND INFORMATION**

The tenderer shall lodge with the Principal within two days from the date of the request from the Principal:

- (a) A detailed breakdown of the Tender Sum in a format the same as that shown on form “Breakdown of Tender Sum” included in the specification;
- (b) Completed Recipient Created Tax Invoice Agreement, signed by a person authorised to do so;
- (c) Financial details including, but not limited to:

- (i) details of the legal structure and ownership of the tenderer and or the tenderer's relationships with, for example, parent companies or joint venture parties;
  - (ii) the previous three years Financial Reports prepared by a qualified accountant;
  - (iii) the previous three years Financial Reports prepared by a qualified accountant and audited by a registered auditor for projects that require prequalification at Level 5;
  - (iv) the previous three years Financial Reports prepared by a qualified accountant for any corporate entity required to provide a Deed of Guarantee;
  - (v) quarterly management accounts for the current financial year certified by a director;
  - (vi) aged creditor reports for the reporting dates of the latest financial year and the management accounts;
  - (vii) current year budgets and forecasts;
  - (viii) details of debt facilities, financial covenants and contingent liabilities;
  - (ix) details of any current or pending legal action; and
  - (x) details of directors and senior management; and
  - (xi) details of current workload.
- (d) Any information, documents or other evidence necessary to demonstrate the bona fides of the office from which the tender is received;
- (e) A submission in relation to the tenderer's past performance, including details of any past performance issues specified at clause 1.5 Review and Acceptance of Tenders.; and

The Principal reserves the right to request further details relating to any information provided by tenderers. Tenderers must provide any additional information reasonably requested by the Principal within two days of notification unless otherwise specified.

The Principal reserves the right to provide any information submitted by tenderers, including financial details provided under this clause, to a third party for the purposes of tender evaluation.

### **1.8.2. ADDITIONAL CLARIFICATIONS OF TENDER**

After the close of the tender and prior to the conclusion of the assessment by the Principal of all Tenders, the Principal may in its absolute discretion seek clarification from any one or more Tenderers in respect of any element of their tender in order to ensure that the Principal has understood the Tender properly and that the Tenderer has understood the requirements of the Request properly. If clarifications are sought, they must:

- (a) be sought by the Principal in writing and define a time and place by which the Tenderer must provide those clarifications before the conclusion of the Principal's assessment;
- (b) be responded to by the Tenderer as requested by the Principal, being either:
  - (i) in writing; or
  - (ii) by an interview between the Tenderer's representatives and the Principal's evaluation panel, provided that all clarifications and information received in that interview are confirmed in writing by the Tenderer within 24 hours of the interview;

- (c) not be of a nature that would materially alter any part of the Response or be a negotiation of any terms of the Request or Tender.

This clause is solely for the benefit of the Principal in its assessment of Tenders. It is envisaged that the Principal will only use this discretion in rare circumstances. Tenderers must not submit their Tenders with, and hereby warrant that they have not submitted their Tender with, any expectation that they may receive any opportunity under this clause or otherwise to provide any clarification of the Tender.

## **1.9. DECLARATION OF TAX STATUS AND CONSENT TO OFFICE OF STATE REVENUE DISCLOSURE OF TAXPAYER INFORMATION**

### **1.9.1. DECLARATION OF TAX STATUS**

The Tenderer must in its Tender declare whether it, any related entities, or a director, officer or majority shareholder of the Tenderer:

- (a) are currently or have ever been in liquidation, receivership, under external administration or bankrupt;
- (b) have any outstanding State tax, duty, interest, penalties or charges;
- (c) have or have had any outstanding State tax, duty, interest, penalties or charges that have been written off either in whole or in part, regardless of whether a payment arrangement has been entered into or not.

If the Tenderer's tax status is subject to any of the above, it must attach (with the OSR Consent and Declaration Form) a completed statutory declaration and copies of supporting documents as required.

### **1.9.2. CONSENT TO DISCLOSURE OF TAX INFORMATION**

The Tenderer for the purpose of determining its suitability to undertake work with the Government of Western Australia and for the duration of this tender and any resulting contract period consents to the Western Australian Commissioner of State Revenue or their delegate(s) disclosing its tax information upon request other areas of the Department of Finance in accordance with the *Taxation Administration Act 2003* (WA) limited to:

- (i) the number and value of any State taxes, interest, penalties, or charges that are outstanding, overdue or subject to a deferred payment plan(s), and/or any such debts for which the Tenderer is jointly and severally liable;
- (ii) the status and details of any State taxation obligations including assessment, returns lodgement, payment and audit history;
- (iii) whether the Tenderer has been a party to an arrangement in which any State taxes, interest, penalties, or charges were sought to be recovered, were determined as not recoverable, or were written off in whole or in part, and details of those arrangements.

## **1.10. UNINTENTIONAL ERRORS OF FORM**

If the Principal considers that there are unintentional errors of form in the tender submitted by the tenderer where the error is clear and not critical to comparative evaluation of tenders, the Principal may request the tenderer to correct or clarify the error, but will not permit any material alteration or addition to that tender. The decision to permit a tenderer to correct such an error is only within the sole and absolute discretion of the Principal, exercised by the Assistant Director of Commercial Services, Buildings and Contracts, Department of Finance.

## **1.11. NOT USED**

## **1.12. REQUIREMENTS UNDER THE BUILDING SERVICES (REGISTRATION) ACT 2011**

Tenderers shall evaluate the work required under the Contract and ensure that they are able to meet the requirements of the *Building Services (Registration) Act 2011* (WA).

## **1.13. NOMINATED SUBCONTRACT AGREEMENT**

The Contractor shall be prepared to enter into an agreement with the Nominated Subcontractor(s) using AS 2545 - 1993 General Conditions of Subcontract

## **1.14. GENERAL CONDITIONS OF CONTRACT**

A copy of the Minor Works Conditions of Contract is included in the Tender Documents.

Tenderers shall include in their tender for the costs of complying with the terms of these Conditions of Contract and addenda.

## **1.15. TENDER DOCUMENTS**

### **1.15.1. CONTROL OF TENDER DOCUMENTS**

Documents issued for tender purposes are the property of the Principal.

Tenderers shall keep the documents in a secure place and shall not divulge information contained within the documents except as is necessary for the compilation of a tender.

The Tender Documents shall not be used for any purpose other than the transmission of information concerning the tender.

### **1.15.2. PRESENTATION OF TENDER DOCUMENTS**

The specification has been collated by mechanical means and tenderers should check to ensure that it includes all pages that are numbered consecutively and that all supplements referred to are also included.

Supplements, which have been referred to in any section of the specification, are included at the back of the document and shall be read with the section to which they refer.

## **1.16. OWNERSHIP OF TENDER RESPONSES**

All documents, materials, articles and information submitted by a tenderer as part of, or in support of a tender shall become upon submission the absolute property of the Crown in right of the State of Western Australia and will not be returned to the tenderer at the conclusion of the tender process provided that the tenderer shall be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided in the Contract.

## **1.17. GOODS AND SERVICES TAX**

Tenderers must be registered for goods and services tax (**GST**) under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) and have an Australian Business Number.

Where the requirement the subject of this Request or any part thereof is a taxable supply under the GST Act, the price, fee or rates tendered by the tenderer shall be inclusive of all applicable GST at the rate in force for the time being.

In evaluating the tenders, the Department of Finance and the Principal shall be entitled

(though not obliged) to take into account the effect of the GST upon each tender.

#### **1.17.1. RECIPIENT CREATED TAX INVOICE AGREEMENT**

The tenderer shall lodge with the Principal within two days from the date of the request from the Principal, the “Recipient Created Tax Invoice Agreement” included in the specification. The lodged “Recipient Created Tax Invoice Agreement” shall be completed and signed by a person authorised to do so.

Failure to lodge the completed and signed “Recipient Created Tax Invoice Agreement” within the time frame, when requested by the Principal, may result in the tender being passed over.

#### **1.17.2. OTHER DEFINITIONS and impact of GST registration**

##### **(A) TENDER SUM**

The Tender Sum is deemed to be GST inclusive.

The Tender Sum will be the value on which the tender is accepted.

##### **(B) VALUE OF WORK**

The Value of Work, where referred to under the Contract, shall be deemed to be ten elevenths of the Tender Sum.

### **1.18. MONETARY VALUES**

Monetary values that appear in the Tender Documents, such as provisional sums, prime cost amounts, value of Principal supplied items, etc are net values. They do not include GST.

### **1.19. VISITING THE SITE**

Should tenderers choose to visit the Site and familiarise themselves with the Site upon which the work is to be undertaken then they shall comply with any Site access requirements specified in the Tender Documents.

### **1.20. BUY LOCAL POLICY**

#### **1.20.1. GENERALLY**

The State Government’s Buy Local Policy (**Buy Local Policy**) applies to this tender and any Contract that results.

The policy reflects the State Government’s intention to maximise opportunities for regional Western Australia by supporting small and medium sized enterprises (**SMEs**) to successfully tender for Government contracts with the intention that increasing government contracts in the regions will positively drive regional jobs and growth.

The Buy Local Policy provides Regional Price preferences to local Western Australian businesses when they compete for regionally based Government contracts and applies an Imported Content Imposition on imported items.

Tenderers are encouraged to obtain a copy of the Buy Local Policy available for download from the WA Government website:

<https://www.wa.gov.au/government/publications/western-australian-buy-local-policy-2020>.

The Department of Jobs, Tourism, Science and Innovation (**JTSI**) is the policy owner and administrator.

**JTSI’ contact details are:**

Phone: (08) 6277 2999

Email: [industrylink@jtsi.wa.gov.au](mailto:industrylink@jtsi.wa.gov.au)

Tenderers should direct any Buy Local Policy enquiries to JTSI using their contact details above.

### Policy Intent

The Buy Local Policy is a commitment to:

- (a) Supporting SMEs in WA by ensuring opportunity to supply to agencies;
- (b) Requiring procurement decisions to be based on value for money considerations;
- (c) Linking agency procurement to relevant government economic and social policies;
- (d) Buying close to home to support improved government services and enhanced service access particularly in regional WA;
- (e) Providing increased opportunities for regional businesses to bid competitively for agency contracts;
- (f) Fostering competition by giving full, fair and reasonable opportunity to WA based businesses; and
- (g) Maintaining and increasing employment and workforce skills in WA.

The '**buy close to home**' principle applies to all tendering for regional work.

State Government agencies are guided by the 'buy close to home' principle that prioritises businesses or industries located within the regional location where the contract is to be delivered.

### 1.20.2. POLICY REQUIREMENTS

Tenderers must:

- (a) comply with the Buy Local Policy requirements set out in this clause for the purpose of the tendering process; and
- (b) if awarded the contract, comply with the Buy Local Policy and any undertakings given in respect of the policy for which it obtained a regional price preference.

Tenderers must submit with their Tender claims for Regional Price Preferences in accordance with clauses 1.21.5 (Regional Business Preference) and 1.21 (Regional Content Preference) and declare any Imported Content in accordance with clause 1.21.8.

### 1.20.3. REGIONAL PRICE PREFERENCES

#### OVERVIEW

The Buy Local Policy provides Regional Price Preferences to businesses that tender for works contracts delivered in regional Western Australia.

There are two types of Regional Price preferences:

- (a) **Regional Business Preference** – where eligible businesses that are tendering for contracts within a prescribed distance can receive a regional price preference (see clause 1.21.5 below); and
- (b) **Regional Content Preference** – where eligible businesses can claim the cost of services or supplies provided by regional businesses located within a prescribed distance (see clause 1.21.6 below).

However, the Australia and New Zealand Government Procurement Agreement (**ANZGPA**) may impact when Regional Price Preferences can be applied:

- (a) **Regional Price Preferences cannot be applied** where a Tender Response is

received from a Tenderer located in another Australian State or Territory or New Zealand (**ANZ**) and it is being considered in the final analysis.

- (b) **Regional Price Preferences can be applied** where an ANZ Tender Response is received but is not being considered in the final analysis.

The Principal retains complete discretion to determine the tenders to be considered in the 'final analysis' for Buy Local Policy purposes.

## TENDER EVALUATIONS

For tender evaluation purposes, Regional Price Preferences apply to the Tender price component only. The Department of Finance will adjust the Tender Sum (GST inclusive) during tender evaluation to account for any claimed Regional Price Preference. However, Tenders must represent value for money and meet all Conditions of Tendering outlined in these Preliminaries.

The Principal reserves the right during tender evaluation to request the Tenderer provide documentary evidence to the Principal's reasonable satisfaction to verify the validity of any claim for Regional Price Preference. Where the Tenderer is unable to provide evidence to the Principal's reasonable satisfaction to verify its claimed preference(s), the Principal may consider any such applicable preference to be invalid and not applied to the Tender.

## REGIONAL ZONES AND PRESCRIBED DISTANCE

The Buy Local Policy defines the regional zones and the prescribed distance of each zone in accordance with the *Regional Development Commissions Act 1993* (WA).

The prescribed distance:

- (a) is the maximum allowable radius from the contract point of delivery (i.e. the Works location) that enables a tenderer to claim an eligible Regional Price Preference (Regional Business and/or Regional Content Preference); and
- (b) varies according to the regional zone that the contract point of delivery is located in (i.e. the Works location).

For the purpose of determining Regional Price Preferences:

- (a) The **contract delivery point** for this contract is in: Zone 3
- (b) The **prescribed distance** for this contract is: 400 KM radius

Enquiries regarding a town not nominated here should be directed to the nominated contact person in the specification.

## 1.20.4. DEFINITIONS AND INTERPRETATIONS

For the purposes of Buy Local Policy preferences in this Tender and any Contract that may result, the following definitions and interpretation apply unless the context requires otherwise.

### PERMANENT OPERATIONAL OFFICE

A permanent operational office may be the tenderer's bona fide principal place of business or bona fide branch office of the tenderer's principal place of business.

The Department of Finance may request that the tenderer demonstrate the bona fides of the office. In doing so the Department may, and without limiting itself to the following, take into consideration whether the office:

- (a) Is a permanent fixed establishment (not a post office box or temporary facility such as a site office or caravan);
- (b) Has been operational in the zone, as defined by the Buy Local Policy, and active in the local building and construction industry for a period of not less than (six) 6 months prior to bids being sought;
- (c) Will continue to remain operational and active in the local building and



construction industry after the completion of the Contract;

- (d) Is resourced by a person(s) that reside within the region, who is a permanent employee(s) of the tenderer (not contract staff) and who has relevant building and construction qualifications and experience; and
- (e) Is marketed by the legal entity by way of corporate publications (letterheads), telephone directory listings, etc.

#### **TENDER FROM THE PERMANENT OPERATIONAL OFFICE**

The Tenderer must submit its Tender from the permanent operational office that it intends to manage the Contract from to be eligible for the Regional Business Preference. The Tenderer must identify the permanent operational office and confirm the Tender is being submitted from that office on its submitted Form of Tender.

#### **MANAGE THE CONTRACT FROM THE PERMANENT OPERATIONAL OFFICE**

When considering whether the Contract will be managed from the Tenderer's permanent operational office that is within the prescribed distance the Department of Finance may request that the Tenderer demonstrate that the permanent employee(s) located in that permanent operational office will be actively involved in the day to day technical performance of the works under the Contract. This does not prohibit the Tenderer from carrying out some of the works under the Contract from another office or by employees from other offices. The Tenderer must otherwise be registered and/or licensed as this tender and the law requires as at the date of the Tender response to operate within Western Australia including the regional business location in order to perform the work the subject of the Tender. The Tenderer must bid from, manage and deliver the majority of the works from the regional business location from which the Tenderer is tendering in order to be eligible.

### **1.20.5. REGIONAL BUSINESS PREFERENCE**

#### **GENERAL**

In accordance with the Buy Local Policy, eligible tenderers for these Works may claim a Regional Business Preference.

A Regional Business Preference may be afforded to tenderers that tender and manage the Contract outcomes from a permanent operational office that is located in regional Western Australia and is within the prescribed distance from the work under the Contract.

#### **TENDER CONSIDERATION OF REGIONAL BUSINESS PREFERENCES**

For tender evaluation purposes, the Tenderer must:

- (a) claim the Regional Business Preference on the Form of Tender;
- (b) on or before the close of the tender submit a completed Claim for Regional Business Preference form; and
- (c) provide all other information the Principal may request after the close of the tender.

#### **ELIGIBILITY**

To be eligible for the Regional Business Preference, the Tenderer must meet the following conditions:

- (a) be a regional business located within the prescribed distance of the contract point of delivery;
- (b) maintain a permanent operational office within the prescribed distance;
- (c) have had its office established and its business maintained and conducted from the office for at least the past six months prior to the release of the Tender;

- (d) be resourced by at least one person who permanently resides in the region;
- (e) be registered and/or licensed as the Tender and the law requires as at the date of the Tender response to operate within Western Australia including the regional business location and perform the work the subject of the Tender;
- (f) tender from, manage and deliver the majority of the works from the regional business location from which the Tenderer is tendering.

#### **THE AVAILABLE PREFERENCE**

For tender evaluation purposes only, the Regional Business Preference is available when comparing bids received from regional businesses located within the prescribed distance, with bids received from Western Australian businesses located outside the prescribed distance, including the Perth region. When available, the Tender Sum from eligible regional businesses located within the prescribed distance will be reduced by 5% of the Tender Sum, up to a maximum preference of \$250,000

#### **1.20.6. REGIONAL CONTENT PREFERENCE**

##### **GENERAL**

In accordance with the Buy Local Policy, Tenderers for these Works may claim a Regional Content Preference for eligible costs for goods, materials or services provided by regional businesses located within the prescribed distance and eligible internal business costs associated with contract delivery (**regional content**).

Eligible costs have been varied for the establishment of temporary accommodation acquired from within the prescribed distance where the point of delivery is in remote WA.

A tenderer may claim a Regional Content preference irrespective of its eligibility for a Regional Business Preference.

##### **TENDER CONSIDERATION OF REGIONAL CONTENT PREFERENCES**

For tender evaluation purposes, the Tenderer must:

- (a) submit its tender response from a permanent operational office located in Western Australia;
- (b) claim the Regional Content Preference on the Form of Tender;
- (c) on or before the close of the tender submit a completed Claim for Regional Content Preference form; and
- (d) provide all other information the Principal may request after the close of the tender.

##### **THE AVAILABLE PREFERENCE**

The Regional Content Preference is to be applied at the rate of 5% of the total value (GST inclusive) of claimed regional content, up to a maximum preference of \$500,000.

#### **1.20.7. SANCTIONS**

A tenderer may be awarded a contract based on a Regional Price Preference under the Buy Local Policy. If the appointed Contractor, in carrying out the Contract, unjustifiably fails to deliver on any undertaking given in a granted Regional Price Preference, the Principal:

- (a) will report the failure to JTSI; and
- (b) may, in addition to any other remedies available to it, exercise any one or more of its discretionary rights specified in clause 2.5.2. (Enforcement of Buy Local Policy) of the Specification Preliminaries.

### 1.20.8. IMPORTED CONTENT IMPOST

Tenders that include goods, services or items that are imported into Australia from another country (**Imported Content**) (excluding New Zealand and applicable Free Trade Agreement (FTA) countries) for use in the Works will have a 20 percent (%) price impost applied (**Imported Content Impost**). Imported Content does not include items purchased from ANZ suppliers that have or may have been imported.

The Imported Content Impost is calculated on the value of the Imported Content and added to the Tender Sum (GST inclusive) for comparative tender assessment.

Tenderers that include Imported Content in their Tenders must provide details of the Imported Content in the Imported Content Declaration form included in these Tender Documents. Tenders found to include an incomplete or inaccurate Imported Content Declaration form may not be considered.

Successful Tenderers found to be using Imported Content in the Works from other countries (excluding New Zealand or applicable FTA countries) not declared at time of tender, may have tendering sanctions imposed in addition to any contractual remedies available.

Refer to section 6 (Imported Content Impost) and Appendix B of the Buy Local Policy for further guidance.

## 1.21. ABORIGINAL PARTICIPATION

### 1.21.1. ABORIGINAL BUSINESS AND EMPLOYMENT TENDERING PREFERENCE

#### GENERAL

The Department of Finance supports Aboriginal participation by offering a Aboriginal Business & Employment Tendering Preference (**Aboriginal Tendering Preference**). The Aboriginal Tendering Preference applies to this tender to the extent specified here.

#### DEFINITIONS

In this clause, the following definitions apply unless the context requires otherwise:

- (a) **Aboriginal Person** means a person who is of Aboriginal descent who identifies as such and is accepted as such by the community in which he or she lives or has lived.
- (b) **Aboriginal Business (or Businesses)** means a business registered on the Aboriginal Business Directory WA (**ABDWA**) at <http://www.abdwa.com.au> and/or Supply Nation at <http://supplnation.org.au>.
- (c) **Aboriginal Employer** is any legal entity that employs any Aboriginal Person, including an apprentice or trainee.
- (d) **Joint Venture with Aboriginal Participation** means a joint venture registered with Supply Nation or the ABDWA, formed through the incorporation of an Aboriginal business and a non-Aboriginal business and at least 50% equity owned by Aboriginal person(s).

#### ELIGIBILITY

Any tenderer that is an Aboriginal Business, Aboriginal Employer, Joint Venture with Aboriginal Participation, or an Aboriginal Person, may be eligible for the Aboriginal Tendering Preference.

For tender evaluation purposes, Aboriginal businesses or Joint Ventures with Aboriginal Participation (including subcontractors and suppliers) must be registered at time of tender with the ABDWA (<http://www.abdwa.com.au>) or Supply Nation (<http://supplnation.org.au>) to be eligible for the preference.

Refer to <http://www.abdwa.com.au> and <http://supplnation.org.au> for a complete list of

registered Aboriginal businesses.

### THE AVAILABLE PREFERENCE

The Tenderer's Tender Sum (GST inclusive) may be subject to a preference, calculated at a rate of 10% of the total value of the preference amount, up to a maximum of \$250,000.

The **preference amount** is determined as follows:

- (a) The Tender Sum if the Tenderer is an Aboriginal Person, an Aboriginal Business or a Joint Venture with Aboriginal Participation; or
- (b) The Tender Sum portion attributable to Aboriginal Persons or Aboriginal Businesses that are subcontractors or suppliers engaged for the Works under the Contract; or
- (c) The Tender Sum portion attributable to the direct employment costs of Aboriginal Persons engaged for the Works under the Contract, by either the Tenderer or its subcontractors or suppliers. It is not a requirement that Aboriginal Persons to be employed at the close of the tender or award of the Contract; or
- (d) Any combination of the above.

### Tender consideration of Aboriginal Tendering Preferences

For Tender evaluation purposes, the Tenderer must:

- (a) claim the preference on the Form of Tender; and
- (b) on or before the close of the tender submit:
  - (i) A completed Aboriginal Claim Suppliers or Subcontractors form (for Aboriginal Persons or Businesses Engaged as Suppliers or Subcontractors); and, where appropriate
  - (ii) A completed Aboriginal Claim Direct Employment form (for direct employment costs of Aboriginal Persons).

However, the Aboriginal Tendering Preference is subject to ANZGPA provisions (and applicable FTAs). In accordance with the ANZGPA provisions:

- (a) the **Aboriginal Tendering Preference cannot be applied** where a Tender Response is received from a Tenderer located in another Australian State or Territory or New Zealand (**ANZ**) and it is being considered in the final analysis.
- (b) the **Aboriginal Tendering Preference can be applied** where an ANZ Tender Response is received but is not being considered in the final analysis.

### 1.21.2. VERIFICATION OF CLAIMS FOR ABORIGINAL TENDERING PREFERENCES

The Principal reserves the right during tender evaluation to request the Tenderer provide documentary evidence to the Principal's satisfaction to verify the validity of any claim for Aboriginal Tendering Preference. Where the Tenderer is unable to provide evidence to the Principal's satisfaction to verify its claimed preference, the Principal may consider that preference to be invalid and not applied to the Tender.

## 1.22. ANTI-DUMPING

Tenderers must ensure their Tender does not include any dumped goods (i.e. goods from overseas that are imported into Australia at less than their normal value, causing or threatening to cause material injury to an Australian industry producing like goods, or materially hindering the establishment of such an industry).

Refer to clause 2.7. (Anti-Dumping) of the Specification Preliminaries.

## 1.23. DEBARMENT REGIME

### 1.23.1. THE POLICY

In January 2022 the Western Australian supplier debarment regime commenced operation. The debarment regime establishes grounds and processes through which a supplier can be excluded (by suspension or debarment) from supplying goods, services and works to State Agencies. The regulatory scheme is established under Part 7 of the Procurement Act 2020 and the Procurement (Debarment of Suppliers) Regulations 2021. Further information about the regulatory scheme is available from <https://www.wa.gov.au/organisation/departments/departments-of-finance/debarment-regime-exclusion-table> and <https://www.tenders.wa.gov.au/watenders/news/browse.do?CSRFNONCE=ADB6ADF3E6A5FA508703E7C5CB641F89&&ss=1>

### 1.23.2. POLICY REQUIREMENTS

Unless operation of the Procurement (Debarment of Suppliers) Regulations 2021 has been excluded, the Department will exclude from consideration any Offer received from a Respondent who is suspended or debarred, and will exclude any Offer which includes a subcontracting arrangement with a suspended or debarred subcontractor.

If awarded the Contract, the Tenderer will be required as a condition of the Contract to obtain consent from each subcontractor permitting the Tenderer to receive information from the Department as to whether the subcontractor is a suspended supplier within the meaning of the Procurement (Debarment of Suppliers) Regulations 2021.

If awarded the Contract, Tenderers are required to not subcontract to suppliers who have been suspended or disbarred under the debarment regime.

## 1.24. CONSTRUCTION INDUSTRY PORTABLE LONG SERVICE LEAVE SCHEME

The Construction Industry Long Service Leave Scheme known as 'MyLeave' established under the *Construction Industry Portable Paid Long Service Leave Act 1985* (WA) applies to this tender and any contract that results.

Tenderers that meet the definition of employer under the Act must be registered with MyLeave.

In order to be awarded the Contract, tenderers will be required to provide with their Tender Response either:

- (a) if required to be registered with MyLeave, their registration number for verification purposes; or
- (b) if not required to be registered with MyLeave, a letter of determination from MyLeave as evidence of this.

If awarded the Contract, the Tenderer will be required to:

- (a) comply with all applicable conditions under the Act and MyLeave including payment of the relevant contribution levy; and
- (b) ensure any subcontractors carrying out the works similarly comply with all applicable conditions under the Act and MyLeave.

## 1.25. TECHNICAL INFORMATION TO ACCOMPANY TENDER

Where a schedule of technical information is to be submitted with the tender, it shall be accompanied by such additional information, by way of further details, illustrations,

catalogues, brochures and the like, as may be necessary to fully describe the offer.

## **1.26. BREAKDOWN OF TENDER SUM**

The breakdown of Tender Sum shall be used during the currency of the Contract for the valuation of progress payments under clause G.13 and variations under clause G.12 of the Minor Works Conditions of Contract.

## **1.27. REGISTRATION OR LICENSING OF CONTRACTORS**

Where an Act or ordinance of the State of Western Australia requires that a Contractor (as defined by the Act or ordinance) be registered or licensed to carry out the work described in the Tender Documents, the tenderer shall state on the tender form in the space provided, its registration or licence number.

The tender may not be considered if the tenderer fails to provide such registration or licence number.

## **1.28. ALTERNATIVE PROPOSALS**

Tenderers may alternative proposals on any matter the subject of the Tender Documents. Any tenderers submitting alternative proposals must also submit a tender that complies with the Tender Documents.

For an Alternative Proposal to be considered, Tenderers must ensure it:

- (a) fully addresses the Tender requirements and is fully costed;
- (b) is submitted on a separate Form of Tender – BC 03, all parts duly completed, signed, dated and is marked “Alternative Proposal”;
- (c) is submitted in accordance with clauses 1.4 (Lodgement of Tenders) and 1.6.1.1 (Tender Format); and
- (d) fully details the proposed departure(s) from that specified.

## **1.29. ADDENDA TO TENDER DOCUMENTS**

The tenderer shall acknowledge with its tender the receipt of each addendum to the Tender Documents issued by the Principal and received by the tenderer during the period prior to the close of tenders.

## **1.30. CUSTOMS DUTY**

The tenderer shall allow in its tender for any customs duty and primeage applicable to all imported materials, plant and equipment required in connection with the Works.

## **1.31. SITE ALLOWANCES**

The Contract shall not be subject to adjustment for site allowances.

Tenderers are to allow in their tender submission for any site allowances that may be awarded by State or Federal Industrial Commissions on this project.

## **1.32. POST TENDER NEGOTIATIONS**

- (a) The Principal may in its sole and absolute discretion:
  - (i) decline all tenders and end the tender process; or
  - (ii) commence post tender negotiations with the tenderer identified by the Principal as being the most preferred tenderer following the evaluation of the submissions received.
- (b) Where the situation dictates the Principal may commence negotiations with more

than one tenderer at the same time but in doing so the Principal undertakes not to trade off one tenderer's prices against another.

- (c) Where more than one tenderer is subject to post-tender negotiation and it becomes apparent that new or revised tender information is required from remaining tenderers, a common deadline for providing that information will be set by the Principal and all remaining tenderers must submit that additional information by the time and date specified.

### 1.33. REVIEW OF TENDER SUM IF TENDER ASSESSMENT PERIOD BECOMES LONGER THAN 90 DAYS

#### (a) Definitions

For the purposes of this clause the following words shall have the following meaning:

- (i) **"Index"** means the index number *3020 Non-residential building construction Western Australia A2333763W* being a data set of the *6427.0 Producer Price Indexes, Australia, in table 17 "Output of the Construction industries, subdivision and class index numbers"* published by the Australian Bureau of Statistics.
- (ii) **"Current Index Number"** means the last published index number of the Australian Bureau of Statistics, Cat 6427.0 Producer Prices Indexes, Table 17, 3020 Non-residential building construction Western Australia at 12:01 am WST on the date of award .
- (iii) **"Base Index Number"** means the last published index number of Australian Bureau of Statistics, Cat 6427.0 Producer Prices Indexes, Table 17, 3020 Non-residential building construction Western Australia at 12:01 am WST on the date 14 days prior to the date on which tenders closed (or if there is no such date, the date of the Contractor's offer).
- (iv) **"Reviewed Tender Sum"** means the Tender Sum as reviewed by the formula contained in sub-clause (c) below.
- (v) **"Tender Sum"** means the Tender Sum submitted by the tenderer in its tender pursuant to the terms and conditions of this Request.

#### (b) Review of Tender Sum

Where 90 days has elapsed since the closing date for the lodgement of tenders and the contract has not been awarded, the Tender Sum will be adjusted in accordance with the formula set out in subclause (c) below if:

- (i) the contract does not contain Rise and Fall provisions; and
- (ii) the Tenderer requests a Tender Sum adjustment prior to the award of the contract.

#### (c) Formula for Review of Tender Sum

Where a Tender Sum is to be reviewed pursuant to sub-clause (b) above, the tenderer's Tender Sum shall be reviewed using the following formula:

$$\text{Reviewed Tender Sum} = \text{Tender Sum} \times \left( \frac{\text{Current Index Number}}{\text{Base Index Number}} \right)$$

#### (d) Changes to Indexes

Where the Index is either renamed, varied, discontinued or revised then this clause shall be applied using the equivalent renamed, varied, replacement or revised index published by Australian Bureau of Statistics as determined by the Principal by notice in writing to the affected tenderers.

### **1.34. GOVERNMENT OF WESTERN AUSTRALIA ABORIGINAL PROCUREMENT POLICY**

The State Government Aboriginal Procurement Policy (**APP**) sets targets for the number of government contracts awarded to registered Aboriginal businesses. The APP seeks to develop entrepreneurship and business opportunities for the Aboriginal community, supporting employment and business opportunities available to Aboriginal persons.

The APP applies to Government contracts awarded from 1 July 2018. Under the APP, Government agencies are required to award three percent (3%) of their contracts to registered Aboriginal businesses by the end of June 2022. The targets apply to all contracts for goods, services, community services and works. With respect to works contracts awarded by the Minister for Works, the responsible Agency is the agency that provides majority funding.

Targets will apply as set out below:

- (a) 2021/2022 financial year – three percent of the number of awarded contracts;
- (b) 2022/2023 financial year – three point five percent of the number of awarded contracts;
- (c) 2023/2024 financial year – four percent of the number of awarded contracts;
- (d) from 2024 onwards – four percent of the number of awarded contracts onwards.

Tenderers accept that the agencies' obligations under the APP and compliance with the APP will be a factor taken into account in the assessment of tenders and may affect the Principal's decision on who to award a contract to pursuant to this Request, subject to existing legislation, policies and internal obligations.

The targets will be measured on contracts awarded in each financial year. If the term of a contract extends beyond that financial year, the contract will not be included in the following years.



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## SECTION A PRELIMINARIES

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### 2. SPECIFICATION PRELIMINARIES

#### 2.1. GENERAL CONDITIONS OF CONTRACT

The General Conditions governing the Contract are the Minor Works Conditions of Contract as issued by the Department of Finance.

#### 2.2. W.A. GOVERNMENT SPECIAL CONDITIONS OF CONTRACT

##### 2.2.1. SUBCONTRACTOR AND SUPPLIER ARRANGEMENTS

###### SECURITY OF PAYMENT

It is a fundamental term of this Contract that the Contractor comply with all payment obligations under agreements between the Contractor and its subcontractors and suppliers in respect of the carrying out of the work under this Contract.

Failure, without good cause, to so comply with any of such payment obligations will constitute a default for the purposes of clause G.19 of the Minor Works Conditions of Contract notwithstanding the provisions of clause G.18 of the Minor Works Conditions of Contract.

###### PRIVITY OF SUBCONTRACT

The Contractor shall inform all subcontractors that the relationship between the Contractor and the subcontractor, as evidenced by a contract or otherwise, does not impose on the Principal any express or implied legal obligation to the subcontractor of any nature whatsoever in contract or by any other means.

###### SUBCONTRACTOR AWARENESS PACKAGE

The Contractor shall ensure that prior to any subcontract being entered into with a subcontractor for the provision of goods or services required to enable the Contractor to meet the Contractor's obligations under the Contract, the Contractor will provide to any such subcontractor a hard copy in colour of the subcontractor awareness brochure titled "*Subcontracting in the building and construction industry – Understanding your rights and obligations*" which can be obtained and must be printed by the Contractor from the following internet link:

<http://www.wa.gov.au/government/publications/subcontracting-the-building-and-construction-industry>

##### 2.2.2. DISCLOSURE OF CONTRACT INFORMATION AND DOCUMENTS

###### PUBLIC DISCLOSURE OF CONTRACT DETAILS

- (a) The Contract Award information for all contracts above \$50,000 will be publicly available and published on the TendersWA website after the Contract is legally established.
- (b) Documents and other information relevant to the Contract may be disclosed when required by law, under the *Freedom of Information Act 1992* (WA), under the *Building Act 2011* (WA), tabling of documents in Parliament, under court order or subpoena.

###### DEFINITIONS

"Contract Award information" includes Contractor's name(s) and Contract Prices.

##### 2.2.3. ACCESS BY THE AUDITOR GENERAL

###### AUDITOR GENERAL ACT 2006 (WA) AND FINANCIAL MANAGEMENT ACT 2006

**(WA)**

The Parties acknowledge and agree that, notwithstanding any provisions of this Contract to the contrary, the powers and responsibilities of the Auditor General for the State of Western Australia under both the *Auditor General Act 2006* (WA) or the *Financial Management Act 2006* (WA) are not limited or affected by the terms of the Contract.

**2.3. NOT USED.****2.4. NOT USED.****2.5. BUY LOCAL POLICY****2.5.1. CONTRACTOR BUY LOCAL POLICY OBLIGATIONS**

Where the Contractor claimed a Regional Price Preference (Regional Business Preference and/or a Regional Content Preference) that influenced contract award, the Contractor must comply with the Buy Local Policy, any undertakings given in its Tender Response and any other applicable government procurement policies as set out in the Request for Tender and Contract documents.

The Contractor must use the regional content detailed in its Tender Response or where agreed by the Principal, alternative regional content to the same value.

If the Contractor is unable to use the agreed regional suppliers or subcontractors detailed in its Tender Response, the Contractor must:

- (a) Immediately notify the Principal; and
- (b) Where agreed by the Principal in writing, use substitute regional suppliers or subcontractors of comparative qualifications, skill and experience ensuring the substitute business(es) use eligible regional content.

**2.5.2. CONTRACTOR BUY LOCAL POLICY OBLIGATIONS**

Where the Contractor fails to comply with its Buy Local (or Aboriginal Tendering Preference) undertakings (in whole or part), the Principal may, in addition to any other contractual or common law remedy available to it, do any one or more of the following:

- (a) recover from the Contractor any Regional Price Preference it received being the whole or any part of the difference between the sum of the Contractor's Tender and the amount of the lowest conforming tender;
- (b) require the Contractor to use eligible regional content (i.e. goods, materials or services) in accordance with the Buy Local Policy and/or its undertakings referred to above;
- (c) exercise a right under clause G.19 of the Minor Works Conditions of Contract; or
- (d) suspend the Contractor from further contracting opportunities with the Principal for a period of time determined by the Principal.

The Principal will, in its absolute discretion, determine if the Contractor has failed to comply with the Buy Local Policy and/or its undertakings set out in its tender and the extent of any such failure. In the absence of manifest evidence to the contrary, the Principal's determination will be final and binding on the parties to this Contract.

If the Principal determines the Contractor is non-compliant and exercises its rights under option one (1), the difference between the amount of the Contractor's offer and the amount of the lowest conforming tender will be a debt due to the Principal, which the Principal is entitled to deduct from the Contract Sum or any security it holds, or to recover from the Contractor in any court of competent jurisdiction.

### 2.5.3. BUY LOCAL COMPLIANCE REPORTING

Where the Contractor was granted a Regional Content Preference (or an Aboriginal Tendering Preference through the ABETP), it must submit a *Monthly Compliance Report* (using the Department's Monthly Compliance Report template available on the WA Government website: <https://www.wa.gov.au/government/publications/monthly-compliance-report-template>) and adequate supporting evidence:

- (a) where the Contract Sum is less than \$1,500,000.00 and if requested by the Principal, to the Principal reporting on its compliance with the Buy Local Policy and its tender commitments, and all regional spend (including but not limited to tender specified spend); or
- (b) where the Contract Sum is \$1,500,000.00 or more, with each progress payment claim to the Superintendent reporting on its compliance with the Buy Local Policy and its tender commitments, and all regional spend (including but not limited to tender specified spend).

The report must detail the Contractor's regional content expenditure to the date of the progress payment claim for each item of regional content included in the Contractor's tender response and any regional content not claimed in their submitted tender.

The Superintendent may direct the Contractor to provide further supporting evidence of cost to demonstrate to the Superintendent's reasonable satisfaction that the Contractor is actually using or has used the regional content outlined in its tender, or where agreed by the Principal, alternative regional content to the same value.

The Principal may provide the Monthly Compliance Reports to the Department of Jobs, Tourism, Science and Innovation (**JTSI**), the Buy Local Policy owner and administrator. JTSI may appoint an independent auditor to confirm if the Contractor has met its regional content commitments. The Contractor acknowledges and consents to the Principal's disclosure of its Monthly Compliance Reports to JTSI for Buy Local Policy administration purposes.

## 2.6. ABORIGINAL PARTICIPATION

### 2.6.1. CONTRACTOR ABORIGINAL PARTICIPATION OBLIGATIONS

The Contractor must comply with the Aboriginal Procurement Policy requirements and any other applicable government procurement policies as set out in the Request for Tender and Contract documents.

### 2.6.2. ABORIGINAL PARTICIPATION COMPLIANCE REPORTING

Where the Contractor has claimed in its tender an Aboriginal Tendering Preference, the Contractor must provide details of its aboriginal participation on its submitted Monthly Compliance Report (refer to clause 2.5.3 (Buy Local Compliance Reporting)).

## 2.7. ANTI-DUMPING

Dumped goods (i.e. goods from overseas that are imported into Australia at less than their normal value, causing or threatening to cause material injury to an Australian industry producing like goods, or materially hindering the establishment of such an industry) must not be used in the performance of this Contract.

Where a tender involving the supply of goods from overseas has been accepted and the Commonwealth Minister for Industry, Science, Energy and Resources (or their equivalent) subsequently determines the goods as dumped, the Principal may either direct the substitution of such goods or terminate the Contract. Any consequential costs or losses of the Contractor shall be borne and paid for by the Contractor. In

addition, any extra costs or losses incurred by the Principal will constitute a debt recoverable from the Contractor.

Where it is reasonably suspected that any goods subject to a Contract constitute dumped goods, the Contract may be suspended to enable the suspicion to be confirmed or dismissed under the Commonwealth Customs legislation. Any costs or losses incurred by the Principal as a result of any suspension under this clause shall be borne and paid by the Contractor.

## **2.8. RETENTION OF KEY/SPECIFIED PERSONNEL / TEAM NOMINATED AT TENDER STAGE**

### **2.8.1. DEFINITIONS**

In this special condition, the term “Key Personnel” means the Contractor's personnel listed in the Contractor's accepted tender as nominated key personnel, and any personnel replacing such key personnel in accordance with paragraph (c) below.

### **2.8.2. OBLIGATION TO RETAIN**

- (a) The Contractor acknowledges that the Principal has engaged the Contractor on the basis that the Key Personnel will be involved in the performance of the Contract. The Contractor must employ or engage the Key Personnel, as applicable, in the roles assigned to them for the period during which those roles are required to be performed under the Contract.
- (b) The Contractor must not remove or replace Key Personnel unless:
  - (i) the person is unable to perform the services required of their position because of serious injury or illness, death or because they have ceased to be employed or engaged by the Contractor;
  - (ii) the Contractor has obtained the prior written approval of the Superintendent (which approval must not be unreasonably withheld); and
  - (iii) the Contractor has demonstrated to the Superintendent that the proposed replacement Key Personnel is of good repute, has availability for the proposed role and has at least the same level of skill, capability and experience as the person they are replacing.

## **2.9. BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND LEVY**

The Contractor is deemed to be the project owner under the *Building and Construction Industry Training Fund and Levy Collection Act 1990* (WA) and shall pay all levies required to be paid under this Act to the Building and Construction Industry Training Fund. The Contractor must not commence work on the Site until it has paid the levy.

The *Building Act 2011* (WA) requires a permit issuing authority to be satisfied that the Building and Construction Industry Training Fund and Levy has been paid prior to the issuance of a building permit. Within 7 days of the Date of Acceptance of Tender, the Contractor must provide evidence in writing that the Building and Construction Industry Training Fund and Levy has been paid. A failure to provide such evidence has the potential to delay the issuance of a building permit by the permit issuing authority.

Prior to Superintendent's Representative issuing a Certificate of Practical Completion, where the costs of the Works increase by an amount greater than \$25,000, then:

- (a) Notwithstanding any provision of the Minor Works Conditions of Contract, the Contractor shall not become entitled to receive any outstanding progress payments until it provides evidence to the Superintendent's Representative that it has paid any additional levy required to be paid into the Fund under the Act; and
- (b) Notwithstanding any provision of the Minor Works Conditions of Contract, the

Contractor shall not become entitled to the release of any remaining security or retention money until it provides evidence to the Superintendent's Representative that it has paid any additional levy required to be paid into the Fund under the Act. The payment of any additional levy under this clause shall constitute a variation in favour of the Contractor, however the Contractor shall not be entitled to an Extension of Time or margin or profit as a result of such a variation.

## **2.10. BUILDING SERVICES LEVY AND BUILDING, DEMOLITION AND OCCUPANCY PERMIT FEES**

The Principal shall be liable to pay the Building Services Levy, together with any applicable building, demolition and occupancy permit fees (as the case may be).

## **2.11. CONSTRUCTION INDUSTRY PORTABLE LONG SERVICE LEAVE SCHEME**

### **2.11.1. CONTRACTOR MYLEAVE OBLIGATIONS**

To the extent the Contractor is an employer as defined in the *Construction Industry Portable Paid Long Service Leave Act 1985* (WA), the Contractor must ensure it:

- (a) is registered with MyLeave; and
- (b) has paid its compulsory long service leave contributions to MyLeave based on the ordinary pay of all workers it employs, except apprentices, for the days those employees are engaged in on site construction work. Contributions are calculated as a percentage of an employee's ordinary pay for those days, and the contribution rate is assessed annually.

If the Contractor was ineligible for registration at time of tender, but becomes eligible during contract delivery, it must register with MyLeave.

The Contractor, whether registered with MyLeave as an employer or not, must also ensure any subcontractors carrying out the works comply with all applicable conditions under the Act and MyLeave.

### **2.11.2. MYLEAVE REPORTING AND LEVY REQUIREMENTS**

The Contractor must every three months during the term of the Contract:

- (a) pay contribution levies to MyLeave; and
- (b) submit to the Construction Industry Long Service Leave Payments Board a Quarterly Return showing the information required to be provided on the Return form.

The Return forms are sent to employers at the end of each quarter by the Board and must be completed and submitted with payment to the Board by the 15<sup>th</sup> of the following month.

The current contribution levy rate and further details about the scheme are available from the MyLeave website: [www.myleave.wa.gov.au](http://www.myleave.wa.gov.au).

## **2.12. CONTRACTOR PERFORMANCE**

### **2.12.1. CONTRACTOR PERFORMANCE REPORTING**

In consultation with the Superintendent's Representative, the Principal will, at various stages during this Contract, prepare a report for the sole use of the Principal in respect to aspects of the Contractor's performance. Once a contractor performance report is prepared it is subject to review at least once and may be reviewed and updated a number of times in the Principal's sole discretion. As a guide:

- (a) For contracts with a construction period of 6 months or more but less than 18 months, a contractor performance report is produced 3 months after the Date of Practical Completion;
- (b) For contracts with a construction period of 18 months or more but less than 30 months, contractor performance reports are produced:
  - (i) 6 months after the Date of Acceptance of Tender; and
  - (ii) 3 months after the Date of Practical Completion;
- (c) For contracts with a construction period of 30 months or more, contractor performance reports are produced:
  - (i) 6 months after the Date of Acceptance of Tender; and
  - (ii) 18 months after the Date of Acceptance of Tender; and
  - (iii) 3 months after the Date of Practical Completion.

In all cases in (a), (b) and (c) above, contractor performance reports may be reviewed by the Principal and, if necessary, updated following the date of the end of the Defects Liability Period.

A sample report is included at the back of the Specification.

The Contractor is entitled to the opportunity to respond to the contractor performance report and any update or review of the report.

The Contractor is to be aware that the outcome of these contractor performance reports will be used by the Principal in consideration of the Contractor's level of prequalification under the Department's Builders Prequalification Scheme for Works Contracts and in future tendering and contracting opportunities with the Principal.

### **2.12.2. SUPPLIER DEMERIT SCHEME**

The Contractor agrees to be subject to the operation of the Department's "Supplier Demerit Scheme" (**Scheme**) set out on the WA Government's webpage [www.wa.gov.au/government/multi-step-guides/supplying-works-related-services/supplier-performance-management-government-non-residential-building-projects](http://www.wa.gov.au/government/multi-step-guides/supplying-works-related-services/supplier-performance-management-government-non-residential-building-projects).

If the Contractor fails to meet Departmental requirements (as a defined "Infraction" for the purposes of the Scheme) the Department will, unless it determines otherwise, apply one or more demerits to the Contractor under the Scheme depending on the severity of the "Infraction".

When the Contractor has received three demerits under the Scheme within a three-year period, the Department will, unless it determines otherwise, apply a sanction set out under the Scheme to the Contractor.

The Department's operation of the Scheme is in addition to and does not limit any other rights the Principal itself may have under the Contract or at law in relation to any act, matter or thing that may be treated as an "Infraction" for the purposes of the Scheme.

The Contractor's agreement to be subject to the operation of the Scheme pursuant to this clause will survive the performance, expiration frustration, rescission, novation, assignment or termination of the Contract for any reason for as long as the Department operates the Scheme in its sole discretion.

### **2.12.3. ADVERTISEMENTS AND PROMOTIONS**

The Contractor may erect on site, or permit to be erected on site, only those signs

- (a) Required by law;
- (b) Specified in the Contract documents; and

- (c) Required to identify the Contractor's premises.

The Contractor must not erect on site, or permit to be erected on site, any other sign, advertisement, promotion or other display without the written approval of the Superintendent.

## 2.13. SITE SIGNBOARD

Within fourteen (14) days of commencing work on the Site, the Contractor must erect or cause to be erected the site signboard detailed in the Tender Documents in a location at the Site approved by the Superintendent. The Contractor must ensure the site signboard is sign written, constructed and erected in accordance with the drawings and the Western Australian Government *Capital Works Projects Signage Style Guide* ("the Style Guide"). A copy of the Style Guide is available on the WA Government website at: <https://www.wa.gov.au/government/publications/signage-guidelines-capital-works> and maintained in a good condition during the term of the Contract. The Contractor is responsible for all costs associated with the construction, sign writing, delivery, erection, maintenance and removal of the site signboard and must include these costs in its Tender Sum.

Within seven days of the Date of Acceptance of the tender, the Superintendent will provide an electronic copy of the site signboard design which the Contractor must check to confirm that its details are correct. No amendments may be made to the signboard design without the written approval of the Principal.

The Contractor must procure the site signboard (which includes the sign written sign face, and sign frame, but excludes the signposts) and supply the signposts, delivery of the site signboard to the site, and the installation of the signboard.

As soon as practical after the Date of Practical Completion, the Contractor must remove or cause to be removed from the Site the site signboard at the Contractor's own cost.

No other name board, sign or advertisements are permitted on the Site without the prior written approval of the Superintendent, unless authorised or required by any law.

## 2.14. DESCRIPTION OF THE WORKS

The Works comprise Eucla Townsite's Water Treatment Plant Maintenance Servicing and such other work as shown on the drawings or included in the specification.

Premises will be occupied during the term of the Contract. The Contractor shall ensure that it causes minimal inconvenience and disturbance to the occupants.

## 2.15. MONETARY SUMS

The Contractor shall pay all fees to all relevant authorities for the connection to services or for the extension of services to the Site.

The Contractor shall provide a copy of receipts from authorities to the Superintendent.

Variations to the Contract Sum will be made in accordance with the clause "ADJUSTMENT OF PROVISIONAL SUMS" where receipts from authorities differ from the monetary sums.

Allow for the following monetary sums:

Daily Onsite Routine Maintenance Services (Eucla Police Rep's Services) \$ 36,000.00  
GSTExcl

## PUBLICITY

The Contractor shall not issue any information, publication, document or article for

publication in any media that includes details of the work under the Contract without the written approval of the Principal.

## 2.16. NATURE OF CONTRACT

### RISE AND FALL APPLIES

#### 2.16.1. Payment

The Contractor shall be paid on a lump sum basis as adjusted pursuant to the terms of this clause.

In determining the amount of each progress payment and the final payment, the value of work executed will be increased or decreased in accordance with this clause. Such calculations shall be undertaken as at the date that the Contractor is entitled to submit a claim for payment to the Superintendent in accordance with the General Conditions of Contract (as amended).

Where any payment is made which omits an adjustment in the Contract Sum in accordance with this clause, the Superintendent may make correct such an omission except in respect of the Final Certificate.

#### 2.16.2. Effective Value

The Effective Value in respect of each progress payment or final payment is the value of work included in the progress valuation or the final value less:

- (a) the value of any work included therein on the basis of actual cost, unless the Superintendent agrees in writing that, for convenience of administration, a process equivalent to paragraph (b) will be used;
- (b) the value of any work included therein on the basis of current prices, unless the value has been de-escalated from the date the price was ascertained to the Date for the Base Index Number. This de-escalated value can be included in the Effective Value. The De-escalated Value is to be ascertained by reference to the following equation:

$$\text{De-escalated Value (for work on the basis of current prices)} = \text{Value of work} - \frac{\text{Value of work} \times 0.95 \times (\text{Index Number when price ascertained} - \text{Base Index Number})}{\text{Base Index Number}}$$

- (c) the value of any work which any clause of this Contract provides is not subject to adjustment for rise and fall in costs; and
- (d) the value of any work which any clause of this Contract provides is subject to adjustment for rise and fall in costs on a different basis from that provided for by this clause.

#### 2.16.3. Base Index Number

“Base Index Number” means the last published index number of Australian Bureau of Statistics, Cat 6427.0 Producer Prices Indexes, Table 17, 3020 Non-residential building construction Western Australia at 12:01 am WST on the date 14 days prior to the date on which tenders closed (or if there is no such date, the date of the Contractor's offer).

#### 2.16.4. Current Index Number

“Current Index Number” means the last published index number of the Australian Bureau of Statistics, Cat 6427.0 Producer Prices Indexes, Table 17, 3020 Non-residential building construction Western Australia at 12:01 am WST on the earlier of:

- (a) 28 calendar days prior to the last day of the period to which the valuation for the purpose of the relevant progress or final payment relates; or
- (b) the date for Practical Completion or, if the works comprise Separable Portions, the Date for Practical Completion of the relevant Separable Portion.



If the date for the Current Index Number is earlier than the date for the Base Index Number, the date for the Current Index Number will be the date for the Base Index Number.

#### **2.16.5. Renamed, Varied or Discontinued Indexes**

If the index referred to in clause 2.19 is renamed, discontinued or the basis on which an index is calculated is varied, the Superintendent will:

- (a) where an index is renamed, give a direction as soon as practicable, substituting the renamed index;
- (b) where an index is discontinued, give a direction as soon as practicable, substituting an index which will most closely correspond with the discontinued index; or
- (c) where the basis is altered and only if required, give a direction as soon as practicable, amending this clause 2.19, to ensure that as far as is practicable the intention of this clause is given effect to.

#### **2.16.6. Site Allowance, Productivity, Agreement, Special Allowances**

Rise and Fall will not include any adjustment to reimburse the Contractor for special payments or agreements paid to persons engaged in respect of the Contract (including any site allowance or over award payment). Such payments are included in the Contract Sum.

#### **2.16.7. METHOD OF CALCULATING PAYMENT IN ACCORDANCE WITH THIS CLAUSE**

So much of the value of work as is included in the Effective Value in each progress payment will be separately increased or decreased by multiplying it by Rise/Fall Rate calculated using the following formula.

$$\text{Rise/Fall Rate} = \frac{0.95 \times (\text{Current Index Number} - \text{Base Index Number})}{\text{Base Index Number}}$$

### **2.17. GOODS AND SERVICES TAX (GST)**

For the purposes of this clause:

1. **“GST”** means goods and services tax applicable to any taxable supplies as determined under the GST Act.
2. **“GST Act”** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and (where the context permits) includes the Regulations and the Commissioner of Taxation’s Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing with GST applying for the time being in the State of Western Australia.
3. **“Supply”, “taxable supply”** and **“tax invoice”** have the same meanings as in the GST Act.

Where the supply of the work under the Contract or any part thereof is a taxable supply under the GST Act:

- (a) The Contract Sum shall be inclusive of all applicable GST at the rate in force for the time being;
- (b) The Principal shall issue a Recipient Created Tax Invoice (“RCTI”) in respect of GST payable on each instalment of the Contract Sum and shall provide a copy of the RCTI to the Contractor. The RCTI shall contain all information required for a

tax invoice under the GST Act and shall bear the ABN of the Contractor.

- (c) The Principal shall issue an adjustment to the Contractor in relation to any adjustment events as they occur.
- (d) The Contractor shall not issue tax invoices in respect of the work under the Contract or any part thereof.

This provision applies notwithstanding any other provision of the Contract or any legislation or rule of law to the contrary but does not apply if the Contractor is not registered for GST, and is not required to be so registered, under the GST Act.

The Contractor shall at all times observe, perform and comply with all applicable provisions of the GST Act relative to the supply of the work under the Contract.

## **2.18. DOCUMENTS GENERALLY, DRAWINGS AND SPECIFICATION**

### **2.18.1. COPIES OF DOCUMENTS**

Where the Contractor requires copies of the documents in addition to its entitlements, such additional document copies will be provided to the Contractor electronically.

## **2.19. ASSIGNMENT AND SUBCONTRACTING**

The subcontractors, suppliers or other parties that the Contractor nominated in its tender and for which the Contractor has received a price preference in the consideration of its tender under the *Buy Local Policy* are deemed to be approved subcontractors in accordance with clause G.5 of the Minor Works Conditions of Contract.

The Contractor shall not without prior written approval of the Principal substitute a subcontractor deemed to be approved under this clause.

## **2.20. NOMINATED SUBCONTRACTORS**

### **2.20.1. GENERAL**

The Contractor is responsible for administering, coordinating, supervising and generally attending upon the execution of work under the Contract by each Nominated Subcontractor.

The Contractor shall provide for each Nominated Subcontractor all normal facilities for the proper performance of the Nominated Subcontract Work under the Contract including the following:

- (a) access to the Site;
- (b) storage areas;
- (c) use of water (Nominated Subcontractors shall provide their own hoses and fittings);
- (d) use of electric light and power supply (Nominated Subcontractors shall provide their own cables and portable lamps);
- (e) use of scaffolding and hoisting facilities as provided for the Contractor's own use while in position and at reasonable times including operators, but not the labour for loading or unloading such hoisting facilities (Nominated Subcontractors shall pay the Contractor for the use of such scaffold and hoisting facilities at rates agreed between them);
- (f) sanitary conveniences;
- (g) statutory amenities for drinking water, messing and changing;

- (h) storage of tools;
- (i) first aid and safety measures; and
- (j) rubbish removal from site.

Any additional facilities required and any cutting of holes, chases, making good or other builders work required in connection with the work of any Nominated Subcontractor, shall be the responsibility of the Nominated Subcontractor concerned, unless otherwise specified or shown on the drawings.

### **2.20.2. NOMINATED SUBCONTRACTOR**

The Contractor shall engage the Nominated Subcontractor (TBC) for the Daily Onsite Routine Maintenance Services (known as the Eucla Police Rep's Services).

If it appears to the Contractor that the Nominated Subcontractor above is in serious breach of its subcontract agreement with the Contractor, the Contractor shall immediately advise the Principal of that breach in writing.

## **2.21. NOMINATED SUBCONTRACT DIRECTION**

Where in any Nominated Subcontract document it is specified that any matter or thing is to be referred, submitted, supplied, handed over or notified by the Nominated Subcontractor to the Superintendent, or application is to be made to the Superintendent, then the Nominated Subcontractor shall as and when required initiate such action with the Contractor and thereafter the Contractor shall as soon as practicable take the matter or thing or application to the Superintendent together with any amendments pursuant to the subcontract as the Contractor may consider necessary.

Where in any Nominated Subcontract document it is specified that any action or approval is required of the Superintendent or that any work of the Nominated Subcontractor is to be done to the satisfaction of the Superintendent, then notification of such action, approval or work done to the satisfaction of the Superintendent or not approved or done as the case may be, shall be given by the Superintendent to the Contractor and thereafter the Contractor shall as soon as practicable give the notification to the Nominated Subcontractor with such additional requirements, directions or instructions pursuant to the subcontract as the Contractor may consider necessary.

## **2.22. ADJUSTMENT OF PROVISIONAL SUMS**

- (a) When an adjustment is to be made to the Contract Sum for a provisional sum item, a variation order shall be issued:
  - (i) Reducing the Contract Sum by the amount of the provisional sum; and
  - (ii) Adjusting the Contract Sum by the amount directed by the Superintendent on behalf of the Principal to be expended by the Contractor against the provisional sum item.
- (b) Where the Contract Sum is adjusted in accordance with this clause, the actual amount (if any) included by the Contractor in the Contract Sum on account of profit and attendance for that provisional sum item shall be payable to the Contractor when the work to be done in relation to the provisional sum item is undertaken.
- (c) Where the Superintendent directs that work to which a provisional sum relates shall not be undertaken, the Contractor shall be paid fifty per centum of the profit and attendance of the priced amounts (if any) in respect of that provisional sum item as included by the Contractor in its Contract Sum. The Superintendent shall certify the value of the total amount payable under this clause when determining

the final Contract Sum.

## 2.23. BUILDING ACT 2011 (WA)

### 2.23.1. COMPLIANCE

Prior to the commencement of the *Building Act 2011* (WA) (**Building Act**), for buildings that were owned or occupied by, or under the management or control, of government agencies, the Crown was not required to obtain building licences or show evidence of compliance with the National Construction Code and standards referenced therein. The Building Act binds the Crown and requires the Government to demonstrate that its building projects are designed and constructed in accordance with relevant standards, including the National Construction Code and other standards referenced by the Act and subsidiary legislation. The legislation also requires that new buildings and incidental structures are:

- (a) demolished in accordance with demolition permits;
- (b) constructed in accordance with building permits; and
- (c) occupied in accordance with occupancy permits.

Under this new legislative regime, the Principal is required to apply to a permit authority for building permits, demolition permits, occupancy permits and/or building approval certificates for any building work and demolition work as defined by the Act. The Department of Finance (**Department**) acts as a delegated permit authority and can issue permits required under the Building Act for the buildings it procures and manages. The Principal or its agent will be responsible for submitting permit applications to the permit issuing authority.

Consistent with this new legislative regime, the Contractor must:

- (a) undertake to do all things and take all steps reasonably necessary to enable the Principal to obtain or vary building, demolition or occupancy permits (as the case may be) for the works under the Contract;
- (b) ensure that any building or demolition work is carried out pursuant to all requirements of the building or demolition permits (as the case may be) and any conditions that may be imposed on such permits;
- (c) ensure that any building or demolition work is undertaken in accordance with the design documentation or any variations directed under the Contract;
- (d) ensure that any building or demolition work carried out complies with any building orders issued by the permit authority;
- (e) ensure that where any variations affect compliance with any relevant code or standard, the Contractor assists the Principal and its agents to do all things necessary to facilitate the recertification of the work under the Contract;
- (f) ensure that all inspections and tests required under the building, demolition or occupancy permit, or otherwise required by the building certifier or building surveyor at any time when certifying the works, are carried out on Site during construction and provide documentation of results in a timely manner to the building certifier or building surveyor and the Principal so as to not prejudice or delay the issuance of a certificate of construction compliance;
- (g) assist the Principal and its agents to properly and duly obtain a certificate of construction compliance to permit the timely application for an occupancy permit or building approval certificate as the case may be from the permit authority to enable lawful occupancy of the building(s) or any part(s) thereof within the program timeframes required by the Principal and the Contract;

- (h) take into account the time periods and limits prescribed under the Act in its construction program;
- (i) provide such further information or materials that the permit authority may reasonably require to support an application or impose conditions on the permit or certificate;
- (j) otherwise comply with the following Acts and any subsidiary legislation made under them:
  - (i) *Building Act 2011* (WA);
  - (ii) *Building Services (Complaint Resolution and Administration) Act 2011* (WA);
  - (iii) *Building Services (Registration) Act 2011* (WA);
  - (iv) *Building Services Levy Act 2011* (WA); and
  - (v) *Building and Construction Industry Training Levy Act 2011* (WA),
 without limiting the Contractor's general obligations under the Contract.

### **2.23.2. PERMIT AUTHORITY**

The Department manages the Principal's role in the delivery of public works. The Principal's functions in this respect are specifically managed by the Department's BC Customer Teams (hereafter "Project Delivery Groups"), including:

- (i) Customer Team – Education and Training;
- (ii) Customer Team – General Agencies;
- (iii) Customer Team – Health;
- (iv) Customer Team – Law and Order; and
- (v) Major Projects.

The Minister for Commerce has delegated his powers under s 124(2)(a) and (b) of the Building Act to certain officers within the Department's BC Operations Group who may, pursuant to that delegation, perform the State's functions as a permit authority.

Where officers within the Department's BC Operations Group perform the functions of a permit authority in relation to any building work or demolition work forming the whole or any part of the work under the Contract, that function is specifically managed by the Department's BC Operations Group. This Group is a separate divisional structure from the Project Delivery Groups.

Even though the Department contains both the Operations Group and Project Delivery Groups, their reporting structures and roles as project proponent on the one hand and permit authority on the other hand are entirely separate and operate independently from the other. This divisional structure is necessary in order to give effect to the intention of the Building Act and to avoid any actual, potential or perceived conflicts of interest.

The Contractor unequivocally acknowledges and agrees that:

- (a) the Contractor must always act consistently with and in a way that protects and preserves the independence of the Principal's and permit authority's separate roles and the Act's purposes and intent and prevents any actual, potential or perceived conflicts of interest arising between the Principal and permit authority;
- (b) the Contractor must ensure the Principal does not, by virtue of any act or omission of the Contractor, act inconsistently with, be placed in breach of, or commit an offence under the Building Act or subsidiary legislation;
- (c) any delay, damage, loss, liability, claim, expense or cost caused directly or indirectly by the permit authority in performing or failing to perform its Building Act

functions is not a delay, damage, loss, liability, expense, or cost caused directly or indirectly by the Principal under any circumstances; and

- (d) the Contractor must do all things necessary to ensure that all of its subcontractors, subconsultants, employees, agents, authorisees and assignees (if any) treat all delays, damages, losses, liabilities, claims, expenses or costs associated with the Department's functions as a delegated permit issuing authority consistently with this clause.

For the avoidance of doubt, to the extent that the Contractor is delayed by any act or omission of the Department in its capacity as a permit issuing authority (as distinct from its capacity as project proponent), the Contractor is entitled to an extension of time under clause G.8 of the General Conditions, but such extension of time does not entitle the Contractor to costs. However, the Contractor is not otherwise precluded from seeking an extension of time under clause G.8 of the General Conditions or a variation under clause G.14 of the General Conditions on the basis that the extension of time or variation is required for a reason beyond the reasonable control of the Contractor.

### **2.23.3. INDEMNITY**

The Contractor irrevocably indemnifies and agrees to keep indemnified the Principal against any damage, loss, liability, claim, expense, cost, fees, penalty or fine, incurred by the Principal:

- (a) directly or indirectly arising from any failure by the Contractor to comply with this clause and holds the Principal harmless for the same; and
- (b) with respect to any delay in the issuance of an occupancy permit caused or occasioned by the Contractor in failing to observe any term of this Contract or requirement under the Building Act or subsidiary legislation.

The indemnities given by the Contractor pursuant to this clause are granted for the term of the Contract plus a period of 6 years from the date of the expiry of the Defects Liability Period and survive the earlier termination or expiration of the Contract.

## **2.24. ENVIRONMENTAL PROTECTION**

### **2.24.1. SITE CONTROL**

The Contractor shall comply with all statutes, regulations and by-laws relating to the protection of the environment.

The Contractor shall at all times comply with the regulations and restrictions imposed by the Superintendent relating to the storage of materials, the routing of construction traffic, the interruption of existing services and facilities and any other regulations in force on the site.

The Contractor shall obtain written approval from the Superintendent for the formation of any temporary roads, the erection of temporary structures or any site clearing not specifically documented.

Flammable or explosive products shall be stored in accordance with the relevant statutes and to the approval of the Superintendent.

### **2.24.2. REMOVAL OF MATERIALS**

The Contractor shall ensure that green waste, earth, fill, brick, mortar, concrete, and metal are recycled either for use onsite or by delivery to a recycling facility. The Contractor shall provide the Superintendent with off site disposal documentation detailing the recycling facility destinations that received the materials.

The Contractor shall not remove, damage or destroy, or cause to be removed, damaged or destroyed, any trees or shrubs at the Site without the written approval of

the Superintendent. No fire shall be lit at the Site without the written approval of the Superintendent.

#### **2.24.3. SOIL EROSION**

The Contractor shall take all proper precautions to prevent soil erosion from any land used or occupied by the Contractor in the execution of the work under the Contract.

#### **2.24.4. DUST, DIRT, WATER AND FUMES**

The Contractor shall prevent any nuisance occurring through the discharge of dust dirt, water, fumes and the like on to persons or property.

#### **2.24.5. VEHICLES**

All debris, spoil, rubbish or materials shall be suitably contained and covered in vehicles during transportation to or from the Site to prevent spillage or contamination of adjoining and other areas or property.

The Contractor shall maintain vehicles, wheels and tracks in a suitable clean condition to prevent transfer of mud onto adjacent streets or other areas.

#### **2.24.6. REFUSE DISPOSAL**

The Contractor shall handle and dispose of all site refuse (including foodstuffs) in accordance with the requirements of the waste materials recycling provisions detailed in the Site Control clause, relevant statutes and to the approval of the Superintendent.

The Contractor shall handle, transport and dispose of site refuse containing asbestos in accordance with the *Environmental Protection (Controlled Waste) Regulations 2004* (WA).

#### **2.24.7. SMOKING ON CONSTRUCTION SITES**

The Contractor shall at all times ensure that all workers and visitors on the construction site comply with the following policy on smoking (including e-cigarettes).

(a) In respect of construction sites, smoking is prohibited:

- (i) in site offices, lunch rooms or enclosed toilet facilities;
- (ii) inside existing premises that are designated as “no smoking” areas; and
- (iii) inside, around, above or below any buildings under construction, or any areas where activities related to construction are being carried out, or any areas where materials related to construction are being prepared or stored.

(b) use of e-cigarettes is prohibited in site offices, lunchrooms and amenity areas.

#### **2.24.8. WASTE MANAGEMENT COMPLIANCE REPORTING**

The Contractor must promptly notify the Superintendent in writing if any issues arise which may impact the ability it fails to comply with its waste management obligations under the Contract, in order to identify an approved project strategy and in accordance with applicable legislative and policy requirements.

### **2.25. CONTRACTOR'S REPRESENTATIVE**

The Contractor's representative shall have sufficient command of the English language and of Australian construction and technical terminology, to be able to read, converse and receive instructions in English.

### **2.26. RESTRICTIONS ON ACCESS**

Access to the site under this contract is controlled as described hereunder.

## **SCREENING FOR ACCESS**

All persons working on the Site shall be screened for previous convictions. The Contractor shall screen all employees, subcontractors, suppliers and other persons entering the building site for previous criminal convictions by ensuring that they are the holder of a National Police Certificate that is no more than 2 years old obtained via WA Police and not through a third party or commercial provider. Only persons thereupon approved by the client agency and Principal may access the Site.

The Contractor shall maintain a register of employees, subcontractors, suppliers and other persons accessing the Contractor's site. The Contractor must provide to the Principal a copy of all National Police Certificates for those persons. On a weekly basis the Contractor shall provide to the Principal lists of persons who have entered the Site. The Contractor must store safely, and where relevant require its subcontractors or suppliers to store safely, all original National Police Certificates required by this clause of any persons entering the building site and make them available for inspection as soon as practicable upon request by the Principal to this Contract.

Any person having accessed or being present on or in the Site in breach of these clauses regarding screening for access shall be deemed a person guilty of misconduct and the Principal may direct for their removal from the Site and the Contractor must comply with that direction immediately.

Once the Contractor ceases to maintain a controlled building site due to reasons beyond the reasonable control of the Contractor, or where the nature of the work makes a controlled site impractical, all access to the site shall be through the police reception of the premises.

The Contractor shall cooperate with the officer in charge of the premises to maintain effective control of access to Premises and Site throughout the Term of the Contract.

## **2.27. SECURITY OF PREMISES**

The Contractor shall carry out the work under the Contract in such a manner that maximum security of the premises is maintained at all times.

If, in the opinion of the Superintendent at any period of the contract and during all non working hours maximum security cannot be maintained, the Contractor shall employ an approved static guard security service on the site.

## **2.28. MATERIALS AND WORK**

### **2.28.1. WORKPLACE SAFETY AND HEALTH COMPLIANCE**

The Principal is committed to ensuring, so far as is practicable, a working environment for all workers and members of the public that is safe and without risk to health



The Contractor must at all times discharge its responsibilities under all statutory requirements relating to work health and safety, including the *Work Health and Safety Act 2020* (WA) (the "WHS Act") and the *Work Health and Safety (General) Regulations 2022* (WA) (the "WHS Regulations") (as amended from time to time), and mandatory codes of practice or guidelines, ("WHS Law") that are applicable to the work under the Contract including identifying and exercising all necessary precautions for the safety and health of all persons including—

- (a) the Contractor's employees;
- (b) any subcontractor and their employees;
- (c) the Principal's employees, agents, contractors and subcontractors; and
- (d) any other person,

who may be affected directly or indirectly by or as a result of any work under the Contract.

In this clause **Error! Reference source not found.**, "construction project", "construction work", "principal contractor", "worker" and "workplace" have the same meanings assigned to those terms in the WHS Act and WHS Regs.

For the purpose of the WHS Law — and to the extent the work under the Contract involves construction work or is a construction project:

- (a) the Principal engages the Contractor as the principal contractor and the Contractor accepts its appointment and engagement as the principal contractor and must comply with all obligations and duties of a principal contractor;
- (b) the Principal authorises the Contractor to have management and control of each workplace (including the means of entering and exiting the workplace) at which the works under the Contract are carried out and to discharge the duties of a principal contractor, while the Contractor is performing the work under the Contract; and
- (c) the Contractor acknowledges and agrees that in the event that the appointment and engagement of the Contractor as principal contractor is not valid under the WHS Law, the Contractor must nevertheless perform the function of a principal contractor in accordance with the requirements of the WHS Law.

## **2.28.2. WORK HEALTH AND SAFETY ACT AND WORK HEALTH AND SAFETY REGULATIONS**

The Contractor shall comply with its obligations under Part 3 of the WHS Act concerning notification of incidents. The Contractor shall also report all such matters promptly to the Superintendent. The Contractor shall provide the Principal with any assistance it requires in relation to any incident or event that triggers a need to notify pursuant to the WHS Act.

The Contractor shall pay all fees payable under the WHS Law and regulations which are payable in connection with the execution of the Works.

## **2.28.3. PRINCIPAL IDENTIFIED HAZARDS**

If applicable, a design safety report, as required by regulation 295 of the WHS Regulations will be provided to the Contractor prior to the Contractor commencing work on Site.

Without limiting the Contractor's obligations under the WHS Act or WHS Regulations, the Principal has identified the following hazards that the Contractor shall incorporate into its Safety Management Plan:

- (a) The Site is part of an occupied premise or facility. The Contractor is to liaise with the occupier regarding Safety and Health requirements.
  - (i) The Superintendent will arrange a safety co-ordination meeting between the occupiers and the Contractor. The occupiers will provide to the Contractor their occupation requirements on and/or adjacent to the Site to assist the Contractor in the development of a Site specific Safety Management Plan addressing the Contractor's and occupier's operational interface requirements.
  - (ii) The Safety Management Plan shall incorporate the Contractor's own operations and the interface with the occupiers' operations.
  - (iii) The Contractor shall be responsible for coordinating the implementation of the Safety and Health standards on the occupied Site for the duration of the Contract and shall co-ordinate and integrate the Works in order that the occupier is able to safely continue normal activities for the duration of the Contract.
  - (iv) The Contractor shall obtain a copy of the Evacuation Plan for the occupied Site and ensure that all persons admitted onto the Site are familiarised with the Evacuation Plan and comply with its requirements.

#### **2.28.4. SAFETY DATA SHEETS**

Without limiting the Contractor's obligations under the WHS Act or WHS Regulations, the Contractor shall ensure that a copy of all manufacturer/supplier Safety Data Sheets are available on a register on site for each hazardous substance used in connection with the work under the Contract. Safety Data Sheets shall be consistent with the format of the National Code of Practice for the Preparation of Material Safety Data Sheets [NOHSC: 2011 (2003)].

#### **2.28.5. WORK HEALTH AND SAFETY INFORMATION**

Without limiting the Contractor's obligations under the WHS Act or WHS Regulations, prior to the commencement of work on Site, or at any other time the Superintendent's Representative directs, the Contractor shall consult with the Principal and the Superintendent's Representative for the purposes of ensuring that, as far as practicable, the construction work can be done without risk to the health and safety of either those doing the work, or anyone else who may be at or near the construction site.

The Contractor shall ensure that the following information is recorded, reviewed and updated regularly, and kept until the Works are completed:

- (a) The identification of hazards to which a person at the construction site is likely to be exposed;
- (b) An assessment of the risk of injury or harm to a person resulting from those hazards; and
- (c) The risk control measures through which the risk of injury or harm may be eliminated or otherwise controlled.

If the Contractor becomes aware that a change in the design of the Works could better eliminate or control a risk of injury or harm to those doing the construction work, or anyone else who may be at or near the Site, the Contractor shall ensure that this information is passed on to the Principal and the Superintendent's Representative.

The Contractor shall ensure that any work health and safety information it receives from the Principal or the Superintendent's Representative is incorporated into its hazard identification, risk assessment and risk control measures.

The Contractor agrees to consult, co-operate and co-ordinate activities with the

Principal and every other person having a work health and safety duty under the WHS Law in relation to the works under the Contract.

#### **2.28.6. SAFETY MANAGEMENT PLAN**

Without limiting the Contractor's obligations under the WHS Act or WHS Regulations, prior to the commencement of the work on Site, the Contractor shall prepare and implement a Safety Management Plan relevant to the work under the Contract that, as a minimum requirement, demonstrates compliance with the WHS Law. The Safety Management Plan shall be maintained, and where necessary updated, throughout the Contract. The Safety Management Plan shall be appropriate to the risks associated with the work under the Contract and shall contain provision for, but not be limited to, the following elements:

- (a) Work health and safety induction for new employees;
- (b) listing of competencies required for specialist work (e.g. rigger, scaffolder);
- (c) the arrangements for managing work health and safety incidents on the site, including accident/incident reporting and investigation;
- (d) the safety rules at the Site and description of the arrangements for ensuring that all persons working at or visiting the Site are informed of the rules;
- (e) hazard identification, risk assessment and risk control including routine inspection processes;
- (f) plant/equipment inspection processes;
- (g) pre-job planning, procedural issues and Safe Work Method Statements. Within the Safety Management Plan, particular attention is to be given to identifying hazardous activities including, but not limited to, work in confined spaces, asbestos removal, demolition work, excavation work, working near power lines and live conductors and working at heights;
- (h) emergency response and evacuation procedures;
- (i) methods of communicating and consulting with employees and transmitting new work procedures to employees;
- (j) hazardous substances exposure management;
- (k) ~~COVID-19 management~~;
- (l) Site security;
- (m) purchasing/hiring controls (to avoid unknowingly bringing hazards onto the Site);
- (n) quantitative performance measures (application to be determined by contract size and duration); and
- (o) any other matters that the Superintendent may direct from time to time.

Each element of the Safety Management Plan shall specifically address:

- (a) the person on the Site who shall take responsibility for the successful implementation of each element;
- (b) the hierarchical structure by which the responsibility is performed; and
- (c) the specific manner by which the element is performed.

The Contractor shall prepare the Safety Management Plan in conjunction with a competent person suitably experienced and qualified in safety matters. The Principal may direct that the Contractor prepare the Safety Management Plan in conjunction with the design consultant or any other employee or contractor of the Principal.

Prior to the commencement of the Works, the Contractor shall certify to the Superintendent that its Safety Management Plan:

- (a) has been prepared;
- (b) has been provided to each person doing construction work at the Site (where this is practical) or is otherwise available for inspection on the Site; and
- (c) has been implemented on Site.

The Contractor must ensure that its employees, subcontractors and all other persons employed or engaged on work under the Contract comply with the Safety Management Plan.

(d)

#### **2.28.7. WORK HEALTH AND SAFETY INDUCTION TRAINING**

Without limiting the Contractor's obligations under the WHS Act or WHS Regulations, the Contractor shall not permit its employees, the employees of other parties or other persons to commence work on the Site until they have been inducted. Such induction shall include but not necessarily be limited to:

- (a) familiarisation with the Safety Management Plan;
- (b) reporting of accidents and incidents - which shall include the type of events to be reported, how an event is reported and to whom the event is reported;
- (c) emergency procedures - which shall cover the procedure for a medical emergency and for evacuation of the Site in the event of a life threatening situation arising;
- (d) personal protective equipment (PPE) - the standard requirements for the Site;
- (e) lifting and manual handling skills;
- (f) sun protection;
- (g) avoidance of noise induced hearing loss;
- (h) location of and access to First Aid on the Site;
- (i) legislative framework;
- (j) procedure for the resolution of safety issues at the workplace (in accordance with sections 80 to 82A of the WHS Act);
- (k) Site security; and
- (l) Any site specific induction procedure required at occupied school premises (as described in Clause 2.29) by a school principal.

The Contractor shall induct its employees, the employees of any subcontractor or other persons working on the Site with regard to Safe Work Method Statements and shall prepare Training Session Attendance sheets signed by each attendee verifying that such induction has occurred.

Upon commencement of work on the Site, the Contractor shall further induct each employee, the employees of any subcontractor or other persons working on the Site with regard to all significant hazards associated with their particular activity and area of work on the Site and where relevant shall include the use of powered plant, tools and equipment.

#### **2.28.8. SITE AND PUBLIC SECURITY**

Notwithstanding the Contractor's obligations to Site and public security under the WHS Act and WHS Regulations and as stated elsewhere in this Contract, the Contractor shall monitor and control, wherever practicable, the access of all persons to the Site. The Contractor shall use all types and methods of protection (such as temporary safety fencing and warning signage) that are reasonably practicable and necessary to protect the public from hazards associated with the work under the Contract.

The Contractor shall ensure that no persons, unrelated to the Contract, enter the Site without the express permission of the Contractor.

PPE standards shall apply at all times and a person shall only enter the Site after that person has received a safety briefing regarding hazards relevant to the Site.

#### **2.28.9. SAFE WORK METHOD STATEMENTS**

Without limiting the Contractor's obligations under the WHS Act or WHS Regulations, where construction work on the Site is high risk construction work (within the meaning of the WHS Regulations), the Contractor shall ensure that a written Safe Work Method Statement ("Statement") before the high risk construction work commences. The Contractor shall ensure that the Statement is kept up to date and that high risk construction work is carried out in accordance with the Statement.

#### **2.28.10.CONFIRMATION OF COMPLIANCE WITH SITE STANDARDS AND PREDEFINED PROCEDURES**

Without limiting the Contractor's obligations under the WHS Act or WHS Regulations, on a monthly basis, or more regularly as may be requested by the Superintendent, the Contractor shall audit its systems and procedures as defined by the Safety Management Plan and Safe Work Method Statements to ensure that specific activities are being undertaken as intended.

Audits shall be carried out by a competent person appointed by the Contractor who is not directly involved in the work under the Contract and is suitably experienced and qualified to carry out such audits. WorkSafe WA and the Master Builders Association of WA can assist by identifying suitably qualified persons.

Audits shall identify non-conformances with the Safety Management Plan and Safe Work Method Statements. The Contractor shall take immediate action to implement actions to correct non-conformances identified by an Audit.

Audit results, non-conformances and corrective actions are to be standing agenda items for Site meetings.

#### **2.28.11.TRADE NAMES**

The Contractor must not substitute a material or equipment item specified with a trade name, brand or catalogue number unless approved in writing by the Principal beforehand. If the Contractor wishes to substitute material or equipment, it must demonstrate to the Principal's satisfaction that the alternative is fit for purpose and the appearance, durability, and performance are not less than the specified item. Substitution requests must detail all impacts on construction, the timeframe and savings to the Principal. The Contractor shall bear the costs of:

- (a) satisfying the Principal that the substituted material or equipment:
  - (i) meets any applicable Australian Standard, the National Construction Code and any applicable building legislative requirement (including planning requirement or development approval); and
  - (ii) is fit for purpose and meets or exceeds the performance requirements of the specified material and equipment, including in respect of the commissioning, durability and maintainability of the substitute material or equipment;
  - (iii) is not incompatible with and will not compromise any other building material or equipment used in the Works; and
  - (iv) is not subject to any special conditions for use; and

- (b) providing to the Principal any sample, product technical statement, technical data, independent test results and assessments, product appraisals or product certification.

The Contractor must satisfy the Principal that the substituted material or equipment:

- (A) is available in the market and will not result in a delay to the critical path of the Works; and
- (B) will not result in additional cost and, where possible, shall specify a net saving due to the Principal by reason of the substitution.

All evidence provided under this clause must be in the English language.

Approval to substitute material or equipment shall not be anticipated because of a similar approval having been given in a previous contract.

#### **2.28.12.BRANDS OF MATERIAL SCHEDULE**

The Contractor shall, within 28 days from the Date of Acceptance of tender, notify the Superintendent of the brand or make of materials it intends to use for which the Contractor has a choice of brand or make and which can affect the colour selections such as paints, fabrics, vinyl sheet and tiles, ceramic tiles, laminated plastics and suchlike materials.

The Contractor shall not depart from the brands or makes nominated in its advice to the Superintendent unless it has been authorised by the Superintendent to do so.

If the Contractor fails to notify the Superintendent within the specified time of the brand or make of materials which it intends to use, the Superintendent may, in such cases, nominate the brand or make of materials to be used and the Contractor shall then use that brand or make nominated by the Superintendent and shall add no claim for any extra costs incurred.

#### **2.28.13.FIRE PROTECTION SYSTEM SHUTDOWN, IMPAIRMENT OR ISOLATION INFORMATION REQUIRED FOR NOTIFICATION TO RISKCOVER**

The Contractor acknowledges that the client agency is obliged to inform its insurers through Riskcover of any shutdown, impairment or isolation of fire protection systems affecting its buildings and property. In addition to any other obligations arising under this Contract and any warranties in respect of fire protection systems, the Contractor must also during the term of this Contract (including the Defects Liability Period):

- (a) attend to and rectify any shutdown, impairment or isolation of any fire protection systems the subject of any work under the Contract;
- (b) mitigate the risks created by any shutdown, impairment or isolation of fire protection systems the subject of or affected by any work under the Contract by taking any reasonable precautions in the circumstances to protect people and property;
- (c) immediately inform the Principal, the Superintendent's Representative, the client agency's representatives and facility manager of the affected building or property, of any current or planned shutdown, impairment or isolation of any fire protection systems the subject of or affected by the work under the Contract (including but not limited to sprinkler systems, fire detection systems, gaseous agent fire suppression systems etc.) that has continued or will be likely to continue for more than 12 consecutive hours. In respect of which, the Contractor must inform:
  - (i) what systems have been shutdown, impaired or isolated (e.g. alarm connections, alarm panels, fire pumps, hydrants, sprinklers, smoke detectors, thermal detectors, water supply or other) and give a description of

- the location and nature of the affected system;
- (ii) a description of the shutdown, impairment or isolation;
- (iii) the reason for the shutdown, impairment or isolation;
- (iv) the date and time the shutdown, impairment or isolation started;
- (v) the date and time the shutdown, impairment or isolation ended or is expected to end;
- (vi) if any of the following precautions have been taken:
  - (A) the fire brigade has been notified;
  - (B) managers and/or supervisors in the area have been notified;
  - (C) the shutdown, impaired or isolated area is monitored by heat/smoke detection systems;
  - (D) additional fire extinguishers have been made available in the shutdown, impaired or isolated area;
  - (E) the hydrant/hose reel system in the shutdown, impaired or isolated area is operational;
  - (F) additional security patrols or a fire watch has been put in place;
  - (G) hazardous operations such as hot work has been discontinued;
  - (H) the fire protection systems are being reinstated at the end of each day; and
  - (I) any other additional precautions the Contractor has taken in relation to the shutdown, impairment or isolation;and
- (vii) a description of all the precautions taken by the Contractor above;
- (d) not do or plan to do anything that may shutdown, impair or isolate any fire protection systems the subject of or affected by the work under the Contract without first giving the Principal, Superintendent's Representative, the client agency's representatives and facility manager of the affected building or property at least 48 hours' notice before the shutdown, impairment or isolation is expected to occur; and
- (e) restore to proper safe working condition and as soon as possible any fire protection services the subject of work under the Contract that has been shutdown, impaired or isolated.

## **2.29. SCHEDULE OF WARRANTIES**

Obtain and ensure that the Principal will have the benefit of all warranties including the following items of work, materials or equipment:

Electrical equipment

Mechanical equipment

## **2.30. CERTIFICATE OF PRACTICAL COMPLETION**

Further to Clause G.15 of the General Conditions, notwithstanding any provision of the Contract to the contrary, a Certificate of Practical Completion certifying that the Works have been fully completed will not be granted to the Contractor prior to the provision of the following items to the Superintendent:

- (a) satisfactory evidence of tests and inspections required under the Contract having been conducted and passed;

- (b) as constructed drawings which:
- (i) comply with the Department of Finance CADD Manual Requirements and, if the Principal specifies another form or format in which those as constructed drawings should be provided, then as constructed drawings must be provided in that form or format;
  - (ii) Provide a dimensioned feature survey drawing in .dwg format, that shows the location of all new and any discovered or altered existing manholes and service pits (for civil, electrical, telecommunication, mechanical and hydraulic services) in the area of new works for this contract, dimensioned from 2 points on an adjacent building/s and which is to be prepared and certified by a surveyor licensed pursuant to the Licensed Surveyors Act 1909 (WA);
  - (iii) Show and detail the depth, (and the invert level of all hydraulic drainage and sewerage services), of each new or altered in-ground service, relative to finished ground level; and
  - (iv) For all contracts (new works or additions), all in-ground services are required to be surveyed prior to being covered up, for the purposes of preparing accurate as-constructed survey drawings of the new building services. The surveyor should accurately locate dimensionally all services pipes at:
    - a. any pits, manholes or other opening access points;
    - b. any connection points to new and/or existing building services including at boundaries and new/existing buildings;
    - c. any change of direction (vertical/horizontal) and/or change of size or other dimensions;
    - d. at nominally 5.0m centres for long (>10.0m length) runs in single direction pipework (single dimension from adjacent building); and
    - e. at nominally 2.5m centres for shorter runs (<5.0m length) runs in single direction (single dimension from adjacent building).
  - (v) use separate layout tabs in the dwg file to show dimensions and levels/pipe information .
- (c) operating manuals required for the use, operation and maintenance of the Works or any part thereof;
- (d) warranties, guarantees and certificates required to be provided pursuant to clause 2.32 – Schedule of Warranties and as otherwise required by the detailed Specifications;
- (e) evidence as to the payment of further Building and Construction Industry Training Fund Levy in accordance with clause 2.10 – Building and Construction Industry Training Fund Levy - if required;
- (f) a certificate of construction compliance, if required; and
- (g) anything which is within or ought to be within the power, possession, custody or control of the Contractor to provide to the Principal, which the Principal is prescribed by the *Building Act 2011* (WA) or regulations to provide to a permit authority to obtain either an occupancy permit or building approval certificate.

The Superintendent has an absolute discretion, which is to be exercised solely for the benefit of the Principal, to grant Practical Completion to the Contractor notwithstanding that the Contractor has not complied with the requirements of this clause. In the event that a Certificate of Practical Completion is issued in circumstances where the



Contractor has not met the requirements of this clause, the Principal shall be under no obligation under the Contract to reduce security until the requirements of this clause are met, notwithstanding any provision of the contract to the contrary.

Where there is a delay in the provision of a certificate of construction compliance which is beyond the reasonable control of the Contractor, the Contractor shall be entitled to an extension of time in accordance with clause G.8 of the Minor Works Conditions of Contract.

## 2.31. CONCLUSIVE EVIDENCE

Any certificates, assessment or direction issued by the Principal, Superintendent or the Superintendent's Representative on behalf of the Superintendent shall be considered as prima facie and conclusive evidence of:

- (a) the amounts due and owing between the parties or any other matter contained in the certificate, assessment or direction as determined by the Principal or Superintendent; and
- (b) that those amounts or matters were properly determined and made by the Principal or Superintendent;

save for manifest errors of arithmetic only.

## 2.32. LIQUIDATED DAMAGES

The Contractor acknowledges and agrees that the amount specified as liquidated damages (if any) is the best genuine pre-estimate of the detriment that the Principal will incur if the Date for Practical Completion is not achieved, and the Contractor further agrees to exclude and waive any right, or the benefit of the application of any legal rule or principle, including in accordance with statute equity and common law, relating to the enforceability of this clause or the characterisation of it or any amount specified as liquidated damages, as a penalty.

## 2.33. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

- (a) For the purposes of this clause:
  - (i) **“Law”** means all applicable present and future laws of the Commonwealth or the State or Territory in which the Works or any part of the Works is carried out including:
    - (A) all acts, ordinances, regulations, by-laws, orders, awards and proclamations;
    - (B) authorisation by any national, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body;
    - (C) principles of law or equity;
    - (D) standards, codes, policies and guidelines;
    - (E) the ASX listing rules; and
    - (F) fees, rates, taxes, levies and charges payable in respect of those things referred to in paragraphs A, B, C and D of this definition;whether or not existing at the Date of Acceptance of Tender.
  - (ii) **“PPSA”** means the *Personal Property Securities Act 2009* (Cth);
  - (iii) **“the State's Personal Property”** means all personal property the subject of a security interest granted to the Principal under this Contract; and

- (iv) words and phrases used in this clause that have defined meanings in the PPSA Law have the same meaning as in the PPSA Law unless the context otherwise indicates.
- (b) If the Principal determines that this Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA Law, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Principal asks and considers necessary for the purposes of:
  - (i) ensuring that the security interest is enforceable perfected and otherwise effective;
  - (ii) enabling the Principal to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; or
  - (iii) enabling the Principal to exercise rights in connection with the security interest.
- (c) The Principal need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given and cannot be excluded.
- (d) The Contractor must notify the Principal as soon as the Contractor becomes aware of any of the following:
  - (i) if any personal property which does not form part of the State's Personal Property becomes an accession to the State's Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession; and
  - (ii) if any of the State's Personal Property is located or situated outside Australia or, upon request by the Principal, of the present location or situation of any of the State's Personal Property.
- (e) The Contractor must not:
  - (i) create any security interest or lien over any of the State's Personal Property whatsoever (other than security interests granted in favour of the Principal);
  - (ii) sell, lease or dispose of its interest in the State's Personal Property;
  - (iii) give possession of the State's Personal Property to another person except where the Principal expressly authorises it to do so;
  - (iv) permit any of the State's Personal Property to become an accession to or commingled with any asset that is not part of the Works; or
  - (v) change its name without first giving the Principal 21 days notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.
- (f) Everything the Contractor is required to do under this clause is at the Contractor's expense.
- (g) Neither the Principal nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA in response to a request under section 275(1).
- (h) The Contractor will not authorise, and will ensure that no other party authorises, the disclosure of information of the kind mentioned in section 275(1) of the PPSA.

## 2.34. DEFECTS REPORTING

From the date of issue of a Certificate of Practical Completion until fourteen days after the expiration of the Defects Liability Period, the Contractor shall provide at the end of each month, or as directed by the Superintendent's Representative a defects status report detailing all defects, the planned dates for rectification work, and the completion dates of the rectified work.

The Contractor shall certify the rectified defects works have been inspected by the Contractor ready for the final inspection by the Superintendent's Representative and Consultants.

### **2.35. DIRECT PAYMENT TO SUBCONTRACTORS**

- (a) Without limiting the Principal's rights under the Minor Works General Conditions of Contract clause G.19, where the Contractor informs the Principal, or the Principal becomes aware, that the Contractor has failed to pay an amount that is due and payable to a Subcontractor, the Principal may make that payment directly to the Subcontractor. Any amounts paid to a Subcontractor under this subclause or otherwise becomes a debt due to the Principal by the Contractor.
- (b) Where the Principal makes payment directly to a Subcontractor, the Principal will be relieved of its obligation to pay the Contractor in respect of the work performed by the Subcontractor the subject of the payment made by the Principal, including any margin or profit in respect of that work.
- (c) The parties acknowledge that the Principal is not obliged to exercise the Principal's discretion under this clause for the benefit of either the Contractor, or any Subcontractor or at all.

### **2.36. WORKFORCE REPORTING**

Each month with every payment claim, or otherwise as directed by the Superintendent's Representative or the Principal, the Contractor must provide a written report (in a format agreed with the Principal) a count of:

- (a) peak on-site workforce during the last month on the Site; and
- (b) total on-site workforce during the last month on the Site,

including all directly employed persons and persons engaged in any way by any subcontractors or their subcontractors.

Upon practical completion of the Works the Contractor must also provide a written report (in a format agreed with the Principal) a count of the total on-site workforce for the duration of the construction period of the Contract.

### **2.37. AUDIT OF EMPLOYMENT CONTRACT AND INDUSTRIAL RELATIONS PRACTICES**

An agent or representative of the Principal may commission an audit of the Contractor's or any Subcontractor's employment or industrial relations practices (including terms of employment) in connection with this Contract and Goods or Services performed or provided under or in connection with this Contract, and, upon such commissioning, the following provisions shall apply.

The Contractor shall, and shall ensure that its Subcontractors, fully cooperate with the agent or representative of the Principal and any auditor appointed by them in any audit including to:

- i) allow an agent or representative of the Principal access to all employment related Information in the Contractor's or Sub-Contractor's (as the case may be) ownership, possession or control, and allow an agent or representative of the Principal to conduct audits of all employment and payroll records in the Contractor's or Subcontractor's (as the case may be) ownership, possession or control;
- ii) allow auditors appointed by the agent or representative of the Principal to communicate directly with employees of the Contractor or Subcontractors (as the case may be), and to have access to sites and premises in the ownership, possession or control of the Contractor or relevant Subcontractor (as the case may be) for the purpose/s of the audit;
- iii) ensure that all employment related Information (including access to such Information), in the Contractor's or relevant Subcontractor's ownership, possession or control, is promptly provided to the auditor on request;
- iv) allow the agent or representative of the Principal to communicate with (including providing Information to) the employees of the Contractor and relevant Subcontractors; and
- v) promptly rectify any problem or wrong identified by the auditor and notified to the Contractor or relevant Subcontractors (as the case may be).

The Contractor acknowledges and agrees, and shall ensure that each of its Subcontractors acknowledge and agree, that the agent or representative of the Principal may refer any problem or wrong identified by the auditor to any State or Commonwealth body or authority having an oversight role in respect to employment or industrial relations matters.

For the purposes of this clause:

**Employment related Information** means Information pertaining to employees or the terms and conditions of their employment, or payroll;

**Information** includes information, facts, data, records and documentation; and

**Subcontractors** means subcontractors (at any tier) of the Contractor.

## 2.38. GENDER EQUALITY IN PROCUREMENT

The *Workplace Gender Equality Act 2012* (Cth) requires non-public sector employers with 100 or more employees to submit a report annually to the Workplace Gender Equality Agency. Non-public sector employers can find further information about reporting requirements at [Preparing to report | WGEA](#).

The Contractor must comply with the reporting requirements of the *Workplace Gender Equality Act 2012* (Cth) if has 100 or more employees.

The Western Australian Government is committed to advancing gender equality in Western Australia as demonstrated by [Stronger Together: WA's Plan for Gender Equality](#). Further information on how to advance gender equality is available [here](#).