

Section A

Conditions of Tendering – Services

DAMPIER CARGO WHARF PROJECT STAGE 3 – ECI FOR
DAMPIER CARGO WHARF REINSTATEMENT PROJECT

TENDER REFERENCE: T14/25

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1. Disclaimer

This Request for Tender (**RFT**) (including all Tender Documents) has been prepared by Pilbara Ports Authority (ABN 94 987 448 870) (**PPA**). The purpose of this RFT is to provide Tenderers with information relating to the **DCWP Stage 3 – ECI for DCW Reinstatement** and related RFT process. This RFT is provided subject to the conditions contained herein.

PPA, its directors, officers, employees and consultants (**Information Providers**) are not under any duty or obligation to amend, change, correct, revise or update this RFT, any information on PPA's website or any communications (verbal or written) at any time.

This RFT is provided to Tenderers for information purposes only. This RFT is not to be considered as a recommendation by any person (including the Information Providers) to submit a Tender, or that the **DCWP Stage 3 – ECI for DCW Reinstatement** presents a suitable opportunity for a Tenderer. Anyone considering whether or not, (and if so, the terms on which), to submit a Tender should conduct and rely upon their own analysis, enquiry and investigation, including of the information contained in this RFT, on PPA's website and otherwise provided by PPA, and should seek professional advice on all aspects of any opportunity outlined in this RFT, including financial, legal and regulatory and taxation consequences.

This RFT does not constitute accounting, financial, investment, legal, regulatory or tax advice.

No person (including the Information Providers) makes any representation or gives any warranty (express or implied) as to the accuracy, completeness, correctness, reasonableness or reliability of the contents of this RFT, any information on PPA's websites or otherwise provided by PPA. Each Information Provider expressly disclaims and excludes the application of any duty or obligation and any and all liability, and as a condition of the provision of this RFT is absolutely and irrevocably released from all actions, claims, demands or proceedings (whether arising from negligence or otherwise) for, or based on, arising from, in connection with, in relation to or in respect of information (including any estimates or forecasts) contained in this RFT, on PPA's website or otherwise provided by PPA, or for any errors in, or omissions from, this RFT or on PPA's website or for any communications (verbal or written) at any time, except in respect of any duty, obligation or any liability which cannot be disclaimed and excluded, or any action, claim, demand or proceeding released, as a matter of law or equity.

2 Definitions and interpretation

2.1 Definitions

In these Conditions of Tendering, unless the context indicates otherwise:

- a) **Addendum** means an addendum issued by PPA under clause 4.5;
- b) **Business Day** means any day other than a Saturday, Sunday or public holiday in Perth, Western Australia.
- c) **Closing Date and Time** means the date and time set out in the Tender Particulars, or such later date and time as PPA may notify in writing;
- d) **Contact Person** means PPA Representative set out in the Tender Particulars;
- e) **Contract** means the draft contract provided with the Tender Documents issued and amended as agreed between the Parties and signed pursuant to clause 13;
- f) **Industry Link Advisory Service or (ILAS)** means Industry Link Advisory Services of Level 6, 1 Adelaide Terrace, East Perth, Western Australia 6004;
- g) **Local** means Western Australia, another Australian State or Territory, or New Zealand;
- h) **Participation Plan** means a document by which a tenderer/contractor outlines their estimate of specific economic outcomes realised through supply.
- i) **Parties** means PPA and the Preferred Tenderer;
- j) **Pilbara** means the Pilbara region of Western Australia;
- k) **Place for Lodgement** means the place described in the Tender Particulars ;
- l) **PPA** means Pilbara Ports Authority ABN 94 987 448 870;
- m) **Preferred Tenderer** means the Tenderer deemed to be the highest ranked Tenderer at the conclusion of the evaluation process. Subject to finalisation of negotiations and execution of the Contract the preferred Tenderer will become the Contractor;
- n) **Region or Regional** means a circle centred on the contract point of delivery with a radius of 400km.;
- o) **Request for Information** has the meaning given to it by Clause 4.4;
- p) **Services** means the services which are to be the subject of the Contract as more particularly described in the Tender Documents;
- q) **Services Description** means the specifications which form part of the Tender Documents as set out in Section D;
- r) **Site** means those parts of the land or buildings provided by PPA for performing the Services under the Contract;
- s) **Specifications** means the specifications which form part of the Tender Documents as set out in Section D;
- t) **Tender** means any tender lodged in response to the Request for Tender and these Conditions of Tendering and includes any conforming, alternative or non-conforming tenders, or any consolidated tender of conforming, alternative and/or non-conforming tenders;
- u) **Tender Documents** means the documents listed in clause 4.1 and any other documents issued to the Tenderer by PPA after the date the Tender Documents are issued and expressly stated to be Tender Documents (including any Addenda issued under clause 4.5);
- v) **Tender Form** means the tender form referred to in clause 7.2 which forms part of the Tender Documents;
- w) **Tender Particulars** means the particulars referred to in Schedule 1 of this Section A;

- x) **Tender Schedules** means the tender schedules referred to in clause 7.3 which form part of the Tender Documents;
- y) **Tenderer** means the person invited to lodge a tender for the **DCWP Stage 3 – ECI for DCW Reinstatement**.

2.2 Interpretation

In these Conditions of Tendering, headings are for convenience only and do not affect interpretation, and

In these Conditions of Tendering, unless the context indicates a contrary intention:

- (a) If a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (b) Terms defined in the Conditions of Contract have the same meaning when used in these Conditions of Tendering unless otherwise defined in these Conditions of Tendering; and
- (c) A reference to:
 - i. A word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - ii. A person includes an individual, the estate of an individual, a corporation, a Government, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust; and
 - iii. A numbered clause is a reference to a clause in these Conditions of Tendering.

3 Invitation to tender

3.1 Invitation

PPA invites tenders for the Contract in accordance with the Tender Documents. Tenders must comply in all respects with the Conditions of Tendering. This document is not an offer by PPA to contract to any Tenderer. The Tenderer is further advised that PPA may be required to seek the Minister for Ports' approval and the WA Treasurer's concurrence before entering into a contract if the transaction exceeds the Ports prescribed amounts.

4 Tender Documents

4.1 Tender Documents

The Tender Documents comprise the following:

- (a) Section A – these Conditions of Tendering;
- (b) Section B – the Tender Form and Tender Schedules;
- (c) Section C – the draft ECI Agreement, including the Principal's Project Requirements;
- (d) Section D – Drawings and Reports; and
- (e) Any Addenda.

4.2 Ownership and confidentiality

- (a) The Tender Documents, and the intellectual property rights in them, are and remain the property of PPA.
- (b) The Tender Documents are strictly confidential and are provided to the Tenderer on a confidential basis. The Tender Documents must be used by the Tenderer solely for the purpose of tendering for the Services and for no other purpose. The Tenderer must not (and it agrees that it will not) copy, use or disclose the Tender Documents to others except for the purpose of preparing and submitting a Tender. If the Tenderer does

disclose any of the Tender Documents to others for that purpose, it must only do so on the same basis as is set out in this clause 4.2 and it must obtain an undertaking from each such other person in the same terms as this clause.

- (c) Nothing in clause 4.2 limits the operation of any separate confidentiality agreement that may exist between PPA and the Tenderer regarding the Tender Documents.

4.3 Checking tender documents

The Tenderer must check the Tender Documents (including any Addenda issued under clause 4.5) and if any parts or pages are missing, the Tenderer must request copies of the missing parts or pages from PPA in the manner stated in clause 4.5.

4.4 Communications

- (a) Prior to the Closing Date and Time, all communications regarding the Tender Documents, including Requests for Information (RFIs), must be lodged electronically by uploading to the Tenders WA website at www.tenders.wa.gov.au.

All RFIs must be lodged at least 5 Business Days prior to the Closing Date and Time to allow time for PPA to respond.

- (b) After the Closing Date and Time, all communications regarding the Tender Documents must be directed to the Contact Person by email and addressed as specified in the Tender Particulars.
- (c) Under no circumstances may Tenderers contact any of PPA's consultants, employees (other than the Contact Person) or contractors to discuss any aspect of this Tender or any of the information contained within the Tender Documents.

4.5 Clarification and amendment of Tender Documents

- (a) If the Tenderer is in doubt as to the meaning, intention, completeness or accuracy of any of the Tender Documents (including any Addenda issued under clause 4.5), the Tenderer must immediately submit a written request for clarification, in the form of an RFI, to PPA in the manner stated in clause 4.4.
- (b) At any time prior to the formation of a Contract for the **DCWP Stage 3 – ECI for DCW Reinstatement** in the manner stated in clause 13, PPA may, for any reason (but without being obliged to do so), clarify, add to, modify or otherwise amend the Tender Documents by issuing an Addendum.
- (c) Each Addendum will be issued to all Tenderers via the Tenders WA website, save that:
 - i. Where, after the Closing Date and Time, some but not all of the Tenderers are short listed, further Addenda might only be sent to the shortlisted Tenderers; and
 - ii. Where, after the Closing Date and Time, a Preferred Tenderer is identified, further Addenda might only be sent to the Preferred Tenderer.
- (d) Addenda may include the text of the RFI or other question or matter which led to the notice but will not identify the Tenderer who sought the clarification or raised the question.
- (e) The Tenderer must, in the manner stated in clause 4.4, acknowledge receipt of all Addenda issued to it.

4.6 PPA not bound by oral information

Without limiting clauses 1 or 14, to the extent permitted by law, PPA is not bound by, and has no responsibility or liability for, any oral advice, representation or information given or furnished by or on behalf of with respect to the Tender Documents, the Specifications, the tender process, any Tender or any contract, whether given or furnished before or after the date the Tender Documents were issued.

4.7 Return or destruction of Tender Documents

If its Tender is unsuccessful, then within 14 days of being so advised, the Tenderer must demonstrate to the complete satisfaction of PPA that all hard and electronic copies of the Tender Documents have either been returned to PPA or destroyed (including all electronic copies being permanently erased from all computers and other means of storage).

4.8 Privacy

The Tenderer must give a copy of the following statement to each person nominated in its Tender as part of the Tenderer's team.

As part of the Invitation to Tender process PPA has asked, through the Tenderer, that you provide various personal information to PPA. PPA respects your privacy and will only use your information to evaluate the Tender.

5 Tenderer to fully inform itself

5.1 Tenderer's investigations

Without in any way limiting what the Tenderer does, before submitting its Tender, the Tenderer must do all of the following:

- (a) Examine and carefully check and acquire actual knowledge of the contents of all of the Tender Documents;
- (b) Inform itself completely as to:
 - i. The risks, contingencies and other circumstances which might have an effect on the **DCWP Stage 3 – ECI for DCW Reinstatement** or the cost of executing the Contract;
 - ii. The nature of the plant, equipment, materials, staffing and other items necessary for the **DCWP Stage 3 – ECI for DCW Reinstatement** and the means of access to and facilities and services at the Site and the means of transport, transport routes and facilities to undertake and complete the Services;
 - iii. The availability and cost of labour, plant, equipment, materials, accommodation and other items required (including all relevant industrial conditions);
 - iv. All applicable law, standards, policies and requirements (including in relation to marine safety);
 - v. All applicable taxes, statutory fees and charges, and insurance premiums (including compulsory insurance premiums);
 - vi. Any accreditation requirements under the Federal Safety Commission Work Health and Safety Scheme
 - vii. All authority requirements relating to the Contract; and
 - viii. All measures necessary to protect the environment from any adverse effect or damage arising from the execution of the Contract or the operation of the Contract;
- (c) Satisfy itself as to the correctness and sufficiency of its offered Contract price and that the Contract price covers the cost of complying with all of its obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of its obligations under the Contract; and
- (d) Obtain all appropriate professional and technical advice with respect to the matters referred to in clauses 5.1(a) to (d),

Any failure by the Tenderer to do any of these things will not relieve the Tenderer of its obligation to the **DCWP Stage 3 – ECI for DCW Reinstatement** in accordance with the Contract should the Contract be awarded to it. The Tenderer will not be entitled to any claim

for Variations under the Contract (should the Contract be awarded to it) resulting from the Tenderer's failure to properly observe and comply with this clause 5.1.

5.2 No representation concerning Services Description

- (a) No representation has been or is made to the Tenderer by PPA or any of its employees, agents, contractors or consultants that the services description represents a complete description of the Specifications.
- (b) PPA has not assumed, nor does it assume, a duty of care to the Tenderer concerning the Specifications.

5.3 Tender Briefing / Site visit

- (a) A **mandatory** site visit, including tender briefing, will be organised on **14 May 2025** commencing at **10:00am WST**. All costs incurred for site visits are to be borne by the Tenderer. Tenderers are required to register for the site visit by close of business **9 May 2025** at Yorik.Hardy@pilbaraports.com.au with a copy to john.charles@pilbaraports.com.au.
- (b) Tenderers are informed that any discussions held during a site visit may be recorded and issued as Addenda.
- (c) The Tenderer must ensure that when visiting the Site its personnel do so in accordance with PPA's safety and other requirements. The Tenderer is required to wear full Personal Protective Clothing and Equipment (PPE) during the site visit. Full PPE consists of safety footwear; safety helmet (hard hat); safety glasses with side shields to AS/NZS 1337 standard; high visibility clothing; long sleeve shirt and trousers; protective clothing as necessary and hearing protection as necessary.

6 Lodgement of Tender

6.1 Requirement to lodge

The complete Tender must be uploaded and receipted by no later than the Closing Date and Time.

6.2 Electronic Lodgement

- (a) The Tenderer must lodge the complete Tender electronically by uploading to the Tenders WA website at www.tenders.wa.gov.au.
- (b) The Tenders WA website can accept the uploading of files (singularly or in aggregate) to a maximum limit of 100MB per upload request. More than one upload request can be submitted for the Tender.
- (c) The Tenderer must ensure that adequate time has been allowed to complete the upload of the Tender before the Closing Date and Time as upload transactions will not be accepted after the Closing Date and Time. Files that have been partially uploaded at the Closing Date and Time will be excluded from the Tenderer's upload.
- (d) No Tender uploads to the Tenders WA website will be possible after the Closing Date and Time.

6.3 Tenderer not present at opening

Tenderers will not be present at the opening of Tenders.

6.4 Acknowledgement of receipt of Tender

An acknowledgement by or on behalf of PPA of receipt of the Tender does not mean or imply that the Tender has been or will be treated as a conforming Tender.

6.5 Acceptance of Conditions of Tendering

By lodging a Tender, the Tenderer will be taken to have agreed to be bound by these Conditions of Tendering.

6.6 Late Tenders

Pursuant to clause 6 of these Conditions of Tendering, no electronic Tender is able to be submitted via Tenders WA after the Closing Date and Time. In the event that a Tenderer requests, and PPA accepts, a Tender lodged after the Closing Date and Time, this Tender is accepted only as a Late Tender.

Late Tenders will be excluded from consideration unless the Tenderer provides detailed substantiation demonstrating, to PPA's satisfaction, that circumstances, outside of the Tenderer's control, prevented the lodgement of the Tender by the Closing Date and Time.

7 Tender requirements

7.1 Format

- (a) The Tender must be electronically submitted through Tenders WA as:
 - i. Completed Tender Form;
 - ii. Completed Tender Schedules.
- (b) Clauses 7.2 to 7.5 set out in more detail, the information to be provided with the Tender.
- (c) The Tender must be in the English language and all measurements and quantities must be in metric units and in accordance with the International System of Units (SI units).
- (d) The Tenders WA website will accept most electronic files except for the following formats:
 - i. Batch files (.bat), Dynamic Link Library (.dll), Executable File (.exe), Initialisation File (.ini), Microsoft Software Installation (.msi), Shell Script (.sh) Structured Query Language (.sql) Visio Drawing (.vsd); and
 - ii. JAVA Files (.jar, .js, .jsp).
- (e) The onus is on the Tenderer to ensure that its Tender submission is compatible, and accepted by, the Tender WA website.

7.2 Completed Tender Form

- (a) The Tenderer must duly complete and submit the Tender Form.
- (b) The completed Tender Form must be signed by a duly authorised agent of the Tenderer. Any alterations to the Tender Form must also be initialled by the Tenderer's authorised agent.
- (c) Where the Tenderer comprises two or more persons (whether a joint venture, consortium, partnership or any other unincorporated grouping of two or more persons):
 - i. The Tenderer must include in the Tender:
 - A. For each of the persons who comprise the Tenderer:
 - 1. The corporate details specified in the Tender Form; and
 - 2. All other details about the Tenderer which are required by the Tender Documents; and
 - B. A copy of the agreement governing the arrangements between those persons (whether a joint venture agreement, consortium agreement, partnership agreement or otherwise); and
 - ii. Each of those persons is jointly and severally bound by the Tender and these Conditions of Tendering.

7.3 Completed Tender Schedules

- (a) The Tenderer must also duly complete and submit all of the Tender Schedules and provide all other information required by the Tender Schedules.
- (b) Each completed Tender Schedule must be signed by a duly authorised agent of the Tenderer. Any alterations to the Tender Schedules must also be initialled by the Tenderer's authorised agent.
- (c) Financial capacity

The Tenderer must provide the following details (and where the Tenderer is more than one person, audited financial statements for each person comprising the Tenderer must be provided).

- i. Annual financial statements (audited, where available) of the Tenderer, Guarantor and the parent entity (where relevant) for the last two financial years.
- ii. Details of any information or events subsequent to the last balance date which may have an impact on the financial standing of the entity.
- iii. A list of contingent liabilities of the Tenderer, Guarantor and the parent entity/ies and comment whether or not these may affect the Tenderer's and Guarantor's future operating performance.
- iv. Details of any direct or indirect exposure to foreign markets (including foreign currency exposure), including details of any risk management strategies in place to manage those risks.
- v. List any charges held by third parties over the assets of the Tenderer and Guarantor, or the parent entities (where relevant).

Prior to awarding any contract, PPA may undertake further financial viability checks of the Tenderer and the Guarantor to fulfil the obligations of any resultant contract. Such consideration may require the Tenderer to provide appropriate financial information on request. After such consideration, PPA may elect not to further consider the tender.

- (d) Proposed guarantor

If the Tenderer proposes to nominate a guarantor who will give a parent company deed of guarantee and indemnity as required by the Contract it must provide:

- i. Relevant details of the guarantor (including the name, address and major shareholders);
- ii. Detailed audited financial statements of the proposed guarantor for the last three financial years; and
- iii. Confirmation that the guarantor is willing to give the guarantee in favour of PPA as required by the Contract.

- (e) Personnel, Plant & Equipment

The Tenderer shall attach to their Tender a statement of all personnel and principal items of plant and equipment that will be made available at the Site for the satisfactory completion of the Contract.

- (f) Management Capability

The Tenderer shall attach to their Tender a statement giving details of their management capability.

- (g) Program

Each Tenderer shall forward with their Tender a detailed program for the provision of Services in bar chart form, and supply details of the organisation of the Services during the period of the Contract. This shall include details of plant and equipment, staff, intended working hours and other resources available for the work. The Program shall indicate the items of plant required to be hired by the Contractor and also indicate the portions of the work the Tenderer proposes to seek PPA's approval to do by Sub-contract.

(h) Conflict of Interest

- i. The Tenderer must, prior to any acceptance of its Tender by PPA, disclose to PPA any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to the Tender or performance of the Contract (if awarded) by the Tenderer;
- ii. The Tenderer must declare any relevant information under clause 7.3(h)(i) immediately upon identifying or becoming aware of that information; and
- iii. PPA may, in its absolute discretion, reject the Tender if PPA considers that the Tenderer has, or could reasonably be considered to have, an actual, potential or perceived conflict of interest in relation to the Tender or the Contract (if awarded).

(i) Other information required by Tender Documents

The Tenderer must also provide all other information and documents which the Tender Documents require Tenderers to submit (whether technical, commercial or otherwise).

The Tenderer may also provide such other information as it considers necessary to support its Tender.

7.4 Evidence of agent's authority

When submitting the Tender, the Tenderer must produce evidence of the authority of the agent who has signed any part of the Tender Documents on behalf of the Tenderer.

7.5 Prices

All prices submitted by Tenderers must be:

- (a) In Australian currency; and
- (b) Exclusive of any GST.

The contract for which a Tender in accordance with these conditions is made is a Lump Sum Contract. The contract is not subject to Rise and Fall.

Tenderers are to note that, to the extent that a Building and Construction Industry Training Fund (BCITF) Levy is payable to the Constructing Training Fund (CTF) for Services performed pursuant to this Tender, PPA will pay the BCITF Levy directly to the CTF.

7.6 Guidelines, Conditions and Policies

Tenderers are advised that PPA assesses Tenders with consideration to buy local, regional content, and Aboriginal business ownership and Aboriginal participation, in the context of an overall 'value-for-money' assessment and an assessment of the Tenderer's demonstrated contribution to the social and economic development in Western Australia and particularly the Region. The Tenderer should actively seek to enhance its Tender by maximising Local, Regional and Aboriginal content, participation and employment outcomes.

(a) Regional Price Preferences

- i. Two Regional price preferences are available however an eligible Tenderer may only claim the application of one – either A or B (below) but not both. The discount for price evaluation for both A and B options is 10% up to a maximum of \$250,000.:
 - A. **Regional Business Preference** - Supports regional businesses by providing Regional businesses with a price preference that is applied to the total cost of the bid. To be eligible to claim the Regional business preference, a Regional business must:

- (i) Maintain a permanent operational office within the Region that is resourced by at least one person who resides in the Region.
- (ii) Have had its office established and its business conducted from the office for at least six (6) months prior to bids being sought, and
- (iii) Proposes to manage and deliver the majority of the contract outcomes from the Regional office.

B. Regional Content Preference – Provides a price preference, under certain circumstances, to all Western Australian businesses that purchase services or materials for use in Regional contracts, from Regional businesses. The Regional content preference is only applied to the cost of goods, materials or services that will be purchased, and used in the delivery of the contract outcomes, from businesses that are located within the Region (excluding costs associated with sending people into the Region from outside it to deliver the contract). This cost is referred to as Regional content.

- ii. The Western Australian Government is signatory to the Australian and New Zealand Government Procurement Agreement. When a tender is received from a business in another Australian State, Territory or New Zealand (ANZ) AND the offer is being considered in the final analysis, then the regional price preferences will not be applied. However, if an ANZ offer is received but it is not being considered in the final analysis then the regional price preferences will be applied..

(b) Aboriginal Procurement Policy

The Tenderer is required to submit information relating to the Tenderer's Aboriginal participation and content, including details necessary to establish if the Tenderer's business is a registered Aboriginal business for the purpose of the Western Australian Government's Aboriginal Procurement Policy.

(c) Participation Plan

- i. The Tenderer must submit to PPA a Participation Plan as part of its Tender (refer to Section B – Tender Form and Tender Schedules - Schedule 12 – Template Participation Plan).
- ii. Under the Western Australian Industry Participation Strategy (WAIPS) PPA will assess a Tenderer's Participation Plan submitted as part of PPA's tender evaluation. In doing so PPA will be assessing the Tenderer's commitments to creation of economic benefits such as job creation and retention, training and apprenticeships outcomes and preparedness to look at increasing Local industry capability, competitiveness and capacity.
- iii. Prior to submitting a tender, Tenderers are required to submit the Participation Plan information via the online WAIPS Portal using the link specified in tender document Section B – Tender Form and Tender Schedules - Schedule 12 – Tenderer's Participation Plan.
- iv. Following Tenderers submitting the Participation Plan information via the WAIPS Portal, the Portal will provide Tenderers with a Participation Plan which Tenderers must submit as part of their tender.
- v. Advice on completing a Participation Plan may be sought from the Industry Link Advisory Service, Department of Jobs, Tourism, Science and Innovation.
- vi. The Tenderer must address the matters outlined in the Participation Plan Template required for this tender.

- vii. The Participation Plan will be weighted at 10 per cent of the qualitative evaluation for the Tender.

(d) Priority Start Policy

- i. This condition 7.6(d) applies to tenders where the total value of the tender (including any extension options and provisional sums) is in excess of \$5m (including GST) and the duration of the works or services will be for 12 months or longer.
- ii. The Tenderer must submit information relating to the Tenderer's, combined with any sub-contractor(s), employment of Western Australian construction apprentices and trainees as a percentage against the Tenderer's Western Australian construction workforce, to establish if the Tenderer meets the 'target training rates' set out in the Western Australian Government's Priority Start Policy.
- iii. The Tenderer acknowledges that if they are awarded the Contract, they will be required to report to PPA on the achievement of the training rate commitments made in the Tender.
- iv. The Tenderer acknowledges that the Tenderer's information will also be supplied to the Department of Training and Workforce Development.
- v. PPA will monitor the Contractor's efforts in achieving the training rate targets and record the performance of the Contractor against the Priority Start Policy, with an explanation of any positive or negative variation to the Department of Training and Workforce Development.
- vi. The Contractor will be required to assist PPA with the provision of all information necessary to ensure that PPA can undertake reporting for all applicable contracts where the Priority Start Policy applies.

(e) Value for Money Policy

- i. PPA has endorsed a value for money approach to procurement which is concerned with achieving the best possible return from expenditure on goods and services, recognising that this may not necessarily amount to purchasing at the lowest price to specification.
- ii. As such the 'value for money' principle considers the total cost of the purchase or contract over the life of its requirement, fitness for purpose, timely delivery and supplier capability. It also involves an assessment of wider benefits it may contribute to Government objectives in areas such as Local or Pilbara business and industry development, environmental protection, energy conservation, and Local or Pilbara job creation potential.
- iii. Tender evaluation criteria in respect of value for money procurement includes:
 - A. The purchase or contract whole-of-life costs.
 - B. More reliable service / supplier capability.
 - C. Other advantages of dealing with Local or Pilbara business, such as more convenient communications for contract administration.
 - D. Compliance with specification and better knowledge of Australian design manufacturing and quality standards.
 - E. Benefits to the State of companies that have a good record of industrial relations.
 - F. Benefit to the State from the transactions occurring within the Local or Pilbara area and the employment created as a consequence.
 - G. Greater benefit to the State from on-going government support given to local or Pilbara businesses or industries.

(f) Bids from Tertiary Institutions and Government Bodies

- i. Bids from tertiary institutions and government bodies (Local, State, Territory, Commonwealth) shall not be accepted unless they have been calculated on a full commercial basis and without any form of subsidy.
- ii. Confirmation shall be in the form of a letter from the relevant CEO advising that the offer is calculated on a full commercial cost basis. If this confirmation is not received PPA shall decline the offer on the grounds of equity.

8 Tender validity period

- (a) By submitting a Tender and in consideration of PPA receiving and considering that Tender (possibly along with other tenders), the Tenderer:
 - i. Agrees that its Tender will remain valid and irrevocable until the date the Tenderer gives written notice that the Tender has been withdrawn;
 - ii. Agrees that it will not give a notice withdrawing its Tender any earlier than the date specified in the Tender Particulars; and
 - iii. Agrees that any notice withdrawing or purporting to withdraw its Tender, which is given earlier than the date mentioned in clause 8(a)(ii) will be ineffective for the purposes of clause 8(a)(i).
- (b) Nothing in clause 8 limits the operation of clause 12 in any way.

9 Tender evaluation

9.1 Information requests

- (a) After the Tender has been lodged, PPA may require the Tenderer to submit further information. The Tenderer must respond promptly to all such requests.
- (b) Additional information will usually be requested via a Tender Request for Clarification (RFC) form. The form will have separate sections for PPA's request, the Tenderer's response, and a record of any subsequent discussion at a tender interview (if applicable), any final resolution and the signature of the Tenderer.
- (c) Completed and resolved RFC forms will be taken to form part of the Tender. However, any provision in a RFC form which is not in full conformance with the Tender Documents will have no force or effect unless the particular provision is specifically noted therein as a departure from the Tender Documents.

9.2 Interview

- (a) PPA may interview the Tenderer. All costs incurred for participation in interview/s are to be borne by the Tenderer.
- (b) If the Tenderer is called to such an interview, the Tenderer must be represented at the interview by a responsible member (or members) of its staff who is conversant with all technical, financial and contractual details of the Tender.

9.3 Evaluation criteria

Without in any way limiting the operation of clause 12, PPA may take into account in any evaluation of tenders any factors which it considers relevant to the assessment of the Tender, including, without limitation, and not necessarily in order of priority:

- (a) The Contract Price offered by the Tenderer and Value for Money;
- (b) Methodology;
- (c) Experience in similar type of work within a port environment;
- (d) Company capability,
- (e) Aboriginal content and participation;

- (f) Pilbara content;
- (g) Degree of material changes and/or acceptance of the Contract terms and conditions;
- (h) Participation Plan and compliance with WA Government's Buy Local Policy
- (i) Compliance with WA Government's Priority Start Policy (where applicable); and
- (j) Risk to PPA.

9.4 Disclosure of Tender information

- (a) PPA is at liberty to disclose the Tender and any other tendered information, to such persons as it considers necessary for the purpose of evaluating the Tender or obtaining advice, finance and/or approvals.
- (b) Where any information or document is provided by the Tenderer on a confidential basis or relates to the Tenderer's trade secrets or confidential financial affairs, the Tenderer should endorse the information or document accordingly and PPA will take that into account when deciding if and to what extent or on what conditions the information might be disclosed to others.
- (c) The Tenderer is advised that information relating to contract award may be published on the Western Australian Government's Tenders WA web site after the Contract is executed.
- (d) Without limitation to any other provisions contained in these Conditions of Tendering, the Tenderer acknowledges and agrees that PPA may disclose or publish Contract award details, including for the purposes of reporting to the Western Australian Government or any legitimate purpose of or relating to government or the business of government.

10 Late, non-conforming and alternative tenders

10.1 Rejection of late and non-conforming Tenders

- (a) A Tender:
 - i. Which is not lodged at the Place for Lodgement by the Closing Time as required by clause 6.1;
 - ii. Which does not comply in every respect with the requirements of the Tender Documents (including these Conditions of Tendering and the Services Description); or
 - iii. Which seeks to include the Tenderer's own conditions of tendering or conditions of contract or sale,may be treated as non-conforming and rejected and/or not considered regardless of the reason for the late lodgement or the non-conformance.
- (b) Notwithstanding clause 10.1(a), PPA reserves the right in its absolute discretion to consider and accept any Tender (even one which is lodged late or one which might, pursuant to that clause, be liable to be treated as non-conforming and rejected and/or not considered).

10.2 Alternative Tenders

- (a) The Tenderer may submit:
 - i. One or more conforming Tenders;
 - ii. One or more alternative Tenders, provided it has also submitted a conforming Tender; and/or
 - iii. A consolidated tender of conforming and/or alternative tenders,

But PPA reserves the right in its absolute discretion to consider and accept any tender even if it is a non-conforming tender and even if it is not accompanied by a conforming tender.

- (b) Each alternative Tender must be marked as such (e.g. "Conforming Tender 1" or "Alternative 1") and must be submitted as a separate Tender, on a separate Tender Form and with separate completed Tender Schedules. All departures from the Tender Documents and any claimed benefits to PPA must be clearly identified.

10.3 Specified proprietary products

- (a) Where trade names or brands or proprietary products or equipment are referred to in the Tender Documents and the Tenderer wishes to offer different products or equipment, it must clearly and fully describe any proposed departures from the Tender Documents, the reason for the departure and the effect on the offered Contract price, performance guarantees and completion dates.
- (b) The Tenderer must not offer any items on the basis that it will supply a particular item "or similar" or "or equivalent" (or words to like effect).

11 Costs of tendering

11.1 Tenderer bears costs

All costs of tendering are to be borne by the Tenderer.

11.2 PPA not liable

Without limiting clause 11.1, in no circumstances will PPA or any of its employees, agents, contractors or consultants be liable to the Tenderer (whether the Tenderer is successful or unsuccessful) for any costs, losses, expenses or damages incurred or suffered by the Tenderer:

- (a) In preparing any Tender;
- (b) In participating in or responding to any discussions, negotiations, interviews, enquiries or requests for details or information made by or on behalf of PPA whether before or after the Closing Date and Time; or
- (c) Arising out of or as a result of:
 - i. The withdrawal of any invitation to tender;
 - ii. Any suspension or termination of the tender process;
 - iii. Any extension of the Closing Date and Time;
 - iv. Any change to the Place for Lodgement;
 - v. The issuing of any Addenda;
 - vi. The manner in which PPA considers or evaluates the Tender or decides whether or not to accept a tender or enter a contract;
 - vii. The rejection of any Tender from the Tenderer;
 - viii. The failure to consider any Tender from the Tenderer;
 - ix. The calling of competitive tenders from other tenderers for the performance of the Services if PPA does not enter into a contract with the Tenderer for that work; or
 - x. The awarding to another party of a contract for the performance of the Services.

12 No obligation to consider or accept any Tender

12.1 No obligation

- (a) Without limiting the Tenderer's obligations under clause 8, PPA has no contractual or other legal obligation to the Tenderer arising out of the invitation to the Tenderer to submit a tender with respect to the consideration, the evaluation, the acceptance or the rejection of any Tender, or the failure to consider, evaluate or accept any Tender from the Tenderer.
- (b) In particular, PPA:
 - i. Is under no obligation:
 - A. To receive, consider or evaluate any tender;
 - B. To receive, consider or evaluate any tender in any particular way or within any particular time; or
 - C. To accept the lowest tender or any tender,
whether the tender is from the Tenderer or from any other tenderer; and
 - ii. Is under no obligation to give notice of or any reasons for any decision they make.

12.2 Discretion

Without limiting any other right of PPA, PPA may, in its absolute discretion and for any reason it thinks fit, do any one or more of the following:

- (a) Withdraw any invitation to tender;
- (b) Suspend or terminate the tender process;
- (c) Extend the Closing Date and Time;
- (d) Change the Place for Lodgement;
- (e) Decline to consider or evaluate any Tender or all Tenders;
- (f) Decline to accept the lowest Tender or any Tender;
- (g) At any time, alter any process or procedure regarding the consideration or the evaluation of any Tender or Tenders;
- (h) Negotiate on any aspect of a Tender before identifying whether they accept or reject any Tender;
- (i) Invite best and final offers from any one or more Tenderers;
- (j) Invite further or other Tenderers to tender for the provision of the Services;
- (k) Not proceed with the Services;
- (l) Proceed with the Services on the basis of a scope of services of a different nature or extent or on terms different from those set out in the Tender Documents;
- (m) Negotiate with and enter into a contract with any other party for the performance of the Services and/or any other work; or
- (n) Enter into post-Tender negotiations.

13 Formal contract required

- (a) No contract for the performance of the Services or any part thereof will come into existence unless and until PPA and the successful Tenderer execute the Contract for the performance of the Services.
- (b) The formal Contract will be a conformed contract document and will take into account any changes to the Contract and the outcome of post-tender negotiations.
- (c) The Tenderer is further advised that PPA may be required to seek further approvals or endorsements before entering into a contract.

14 Tenderer's warranty and acknowledgement

14.1 Tenderer's warranty

By submitting a Tender:

- (a) The Tenderer represents and warrants that:
 - i. It has done all of the things mentioned in clause 5.1;
 - ii. It has prepared its Tender based on its own investigations, interpretations, deductions, information and determinations;
 - iii. It did not place any reliance upon the completeness, accuracy, adequacy or correctness of any of the documents, information or other things mentioned in clause 4; and
 - iv. Its Tender is accurate and complies in all respects with the Tender Documents and the requirements of all applicable laws; and
- (b) The Tenderer accepts and agrees (to the extent permitted by law) that neither PPA nor any of its employees or agents has any liability to the Tenderer (whether in contract, in tort, under statute or on any other basis) with respect to or as a result of or arising from:
 - i. Any incompleteness or inadequacy of, or any inaccuracy or error in, or omission from;
 - ii. The nature of the information included in; or
 - iii. Any use of or reliance by the Tenderer upon,any of the documents, information or other things mentioned in clause 4.

14.2 Tenderer's acknowledgement

The Tenderer acknowledges that:

- (a) In considering the Tender; and
- (b) In entering into any contract with the Tenderer (should that happen),

PPA will be relying upon the warranties given by the Tenderer in the Tender Form and in these Conditions of Tendering.

15 Miscellaneous

15.1 No solicitation

If the Tenderer or any person on its behalf makes any attempt to canvass, solicit or approach PPA, or its employees, agents, contractors or consultants, in any matter relating to or arising out of its Tender, the Tender may be rejected.

15.2 Address for notices to Tenderer

Notices given to the Tenderer after the Closing Date and Time may be posted or transmitted by facsimile or email to the Tenderer's address for notices given in the Tender Form, and such posting or transmission will be taken to be good service of such notices.

15.3 Governing law and jurisdiction

- (a) These Conditions of Tendering and the Tenderer's agreement to be bound by them are governed by and must be construed according to the laws applying in Western Australia.
- (b) The Tenderer and PPA each irrevocably:

- i. Submit to the exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to these Conditions of Tendering and/or the Tenderer's agreement to be bound by them; and
- ii. Waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 15.3(a).

15.4 Grievance Mechanism

- (a) Any Tenderer who is dissatisfied with the tender process used by PPA may lodge a complaint in writing no later than seven (7) days after notification of the award of the contract to:

**Chief Executive Officer
Pilbara Ports Authority
Locked Bag 4
Cloisters Square PO
Perth WA 6850**

- (b) The Chief Executive Officer, or its delegate, will arrange for a review of the complaint and the tender process applied.
- (c) If a complaint cannot be dealt with within 2 Business Days the complainant will be informed in writing that the matter is being dealt with and the date by which a decision will be communicated.
- (d) The Chief Executive Officer, or its delegate, will advise the complainant of the decision reached and that decision will be final.

Schedule 1

Tender Particulars

Contact Person	Yorik Hardy Senior Procurement Specialist Phone: (08) 9187 2922 Email: Yorik.Hardy@pilbaraports.com.au
Closing Date and Time (clause 2.1(c))	10:00am WST on Monday 16 June 2025
Contract (clause 2.1(e))	DCWP Stage 3 – ECI for DCW Reinstatement
Place for Lodgement (clause 2.1(k))	Tenders WA website at www.tenders.wa.gov.au
Lodgement of RFC and RFI (clause 4.4)	Tenders WA website at www.tenders.wa.gov.au
Date and time for Mandatory Tender Briefing / Site Visit (clause 5.3(a))	10:00am WST, 14 May 2025 1 Mof Road, Burrup, WA 6713
Email address for registration for Mandatory Tender Briefing / Site Visit (clause 5.3(a))	Email: Yorik.Hardy@pilbaraports.com.au Copy: John.Charles@pilbaraports.com.au
Earliest date for withdrawal of Tender: (clause 8(a)(iii))	120 days after the Closing Date and Time