



Government of **Western Australia**
Public Transport Authority

Request
No. PTA250023

DESIGN AND CONSTRUCTION OF ELECTRIC PASSENGER VESSELS FOR THE TRANSPERTH FERRY SERVICE

**CONDITIONS AND INFORMATION FOR
RESPONDING**

BOOK 1 OF 4

Request Closes:

11.00 am Western Australian Time on Wednesday 21 May 2025

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**PUBLIC TRANSPORT AUTHORITY
REQUEST NO. PTA250023
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1 INTRODUCTION

1.1 Definitions

Expressions used in this Request are defined in this section 1.1 and other terms used in this Request that are defined in the Proposed Contract have the meaning given to those terms in the Proposed Contract unless otherwise required by the context or the subject matter.

'Addendum' means any modifications or clarifications to this Request issued by the PTA pursuant to section 3.9 of this Book 1.

'Associate' means in respect of:

- a) the PTA – any officers, agents, advisers, consultants, contractors, licensees or employees of the PTA (to the extent they are involved in the Project);
- b) the Respondent and its Members - any officers, agents, advisers, consultants, contractors, licensees or employees of the Respondent or its Members, and any Related Body Corporate of the Respondent or its Members.

'Conditions of Responding' means the conditions of responding set out in section 0 of this Book 1 – Conditions of Responding.

'Contractor' means the Successful Respondent that is engaged by the PTA to undertake the Scope.

'Contract' means the final version of the Proposed Contract as executed by the PTA and the Contractor.

'Corporations Act' means the *Corporations Act 2001* (Cth).

'Debarment Regulations' means the Procurement (Debarment of Suppliers) Regulations 2021.

'Disclosed Information' means the following information (of whatever nature, including written, graphical, electronic, oral or in any other form) which is either directly or indirectly disclosed to, or otherwise obtained by or on behalf of, a Respondent or the Respondent's Associates, in respect of, or in connection with, the Project or the Procurement Process:

- a) this Request;
- b) any information disclosed during meetings or workshops conducted pursuant to this Request;
- c) all information disclosed in presentations or briefings by, or on behalf of, the PTA or its Associates in connection with the Project during the Procurement Process;
- d) all discussions and negotiations between the PTA and its Associates (on the one hand) and any one or more of the Respondents and the Respondent's Associates (on the other hand) relating to the Project or the Procurement Process;
- e) each Offer to the extent that it contains, or would reveal, any of the information referred to in this definition above; and
- f) any other information which the Respondent knows, or ought reasonably to know, is confidential to the PTA or its Associates or should be treated as such.

"Function and Performance Specification" means the requirement set out in SCHEDULE 7 of the Proposed Contract, as amended by the Public Transport Authority from time to time;

"Goods" means the goods described in the Book 4 Function and Performance Specification to be supplied by the Contractor in accordance with the terms of the Contract, or where the context permits, such of them as described in an Order.

'Information Document' means any document or amendment to a document which is issued by or on behalf of the PTA to the Respondent or the Respondent's Associates as part of the Procurement Process otherwise expressly stated to not be an 'Information Document'.

'Intellectual Property Rights' has the meaning given in the Proposed Contract.

'Member' means each of the separate legal entities comprising a Respondent (if any) and any legal entity on behalf of which the Respondent lodges an Offer (whether a member of a consortium, a joint venture or otherwise).

'Preferred Respondent' means the Respondent selected by the PTA following the evaluation process to enter into negotiations with the PTA in respect of the Contract.

'Probity Adviser' means the adviser referred to in section 2.4.

'Procurement Process' means the procurement process for the Project set out in this Request, from the release of the Request to the date of execution of the Contract.

'Project' means Design and Construction of Electric Passenger Vessels for the Transperth Ferry Service.

'Proposed Contract' means the PTA's preferred contract issued as Book 3 - Proposed Supply of Goods Contract of this Request for Design and Construction of Electric Passenger Vessels for the Transperth Ferry Service, including all annexures and schedules.

'PTA' means the Public Transport Authority of Western Australia, constituted under section 5 of the *Public Transport Authority Act 2003*.

'Related Bodies Corporate' has the meaning in the given in the *Corporations Act 2001* (Cth).

'Request' comprises the documents referred to in section **Error! Reference source not found.** below, as amended by any Addendum.

'Request Closing Time' means the nominated time on the Offer Closing Date by which the Offer must be submitted, as shown in section 2.12 or as that time is extended.

'Request Lodgement Time' means the time the Offer was lodged in accordance with the Request.

'Security' means the security referred to in the Proposed Contract.

'Site' has the meaning given in the Proposed Contract.

'Statement of Departure' means the statement of departures included in Book 2a of the Request.

'Subcontractor' has the meaning given in the Proposed Contract.

'Successful Respondent' means the Respondent selected by the PTA to execute the Contract.

'Offer' means the Offer submitted by a Respondent to the PTA in response to this Request.

'Offer Closing Date' means the nominated date for submission of the Offer, as shown in section 2.12 or as that date is extended.

'Request Form' means the Request form included in Book 2a of this Request.

'Respondent' means a legal entity or entities that lodge an Offer in response to this Request in its own right or for and on behalf of any other entity or entities, which has registered on the TendersWA website.

'Transport Portfolio' means the following group of State government agencies: the Department of Transport, the PTA and the Commissioner of Main Roads (trading as Main Roads WA).

'Value for Money' has the meaning given to it under section 2.15.3 of this Book 1.

"Vessel" means a vessel which is to be designed and constructed under and in accordance with the Proposed Contract. Vessel includes all items, finishes and requirements as specified in, and in accordance with, the Public Transport Authority's Function and Performance Specification, applicable Laws and includes the Vessel's engines, electrics and electronics.

'WAIPS' means the Western Australian Industry Participation Strategy.

1.2 Background

The PTA is focused on providing a better future for Western Australians through connected, resilient, safe, and sustainable public transport. The PTA delivers accessible, reliable, and safe public transport through the provision of metropolitan rail, bus and ferry services and regional services, country rail and coach services as well as regional school bus services.

Transperth is the brand name of Perth's public transport network and currently operates a passenger ferry service between Mend St Jetty (South Perth) and Elizabeth Quay Jetty (Perth) utilizing two low-wash aluminium ferries with conventional diesel engines. Transperth is expanding its ferry network to link Applecross and Matilda Bay, Nedlands with Elizabeth Quay, Perth (EQ) utilizing new low-wash battery electric ferries.

Transperth undertook an Expression of Interest in 2024 seeking feedback from the local vessel manufacturing industry on an appropriate design for the ferries and capability of the local industry to

delivery the requested features and performance requirements for the vessels, as well as the possible timeframes over which manufacturing and supply could be undertaken for varying numbers of vessels.

1.3 Function and Performance Specification

The PTA is seeking a suitably qualified vessel manufacturer to Design, Construct and Deliver at least five (5) electric vessels to be operated between Elizabeth Quay and Applecross, via Matilda Bay, with an option for an additional five (5) vessels to be exercised at the PTA's sole discretion.

Respondents are to refer to Function and Performance Specification which has been developed to advise Respondents of the operating requirements, including the service frequency which will inform battery requirements for the vessels.

Note to Respondents: PTA250023 (Book3) Proposed Form of Contract is currently being finalised and will be issued by way of addendum.

2 THE PROCUREMENT PROCESS

2.1 Procurement Timeline

The indicative timeline for the Procurement Process is set out in the table below. The PTA reserves the right to adjust this timeline in its absolute discretion.

Procurement Process Activity	Timing
Request Closing Date	Refer to Section 2.12
Briefing	14 April 2025
Request evaluation and recommendation	13 June 2025
Evaluation Report approval by Authorised Officer	01 July 2025
Contract negotiations	02 July 2025
Contract commencement date	01 October 2025

2.2 Briefing

A briefing session will be held for all potential Respondents at the Public Transport Centre, 116 West Parade, Perth on Monday 14 April 2025 at 2:00pm.

Respondents intending to attend the briefing session must contact the enquiries officer nominated on page 1 of the Request to register by no later than 5pm Friday 11 April 2025.

2.3 Respondent's Enquiries

All of the Respondent's enquiries must be directed to:

Lisa Tierney
Public Transport Authority
Public Transport Centre
116 West Parade
Perth WA 6000

Telephone No: +61 (08) 9326 2969
Email: Lisa.Tierney@pta.wa.gov.au

2.4 Probity Adviser

2.4.1 The PTA has appointed Bruce Donald of 2020 Global as the Probity Adviser for the Procurement Process.

2.4.2 The Probity Adviser's role includes ensuring that the procedures adopted in the Procurement Process are fair and equitable and adhered to throughout the Procurement Process.

2.4.3 The Probity Adviser's contact details are as follows:

Probity Adviser: Bruce Donald
Organisation: 2020 Global
Email: bruce@2020global.com.au

2.5 Preparation of Offer

- 2.5.1 All documentation must be in the English language and all Offered rates must be in Australian currency.
- 2.5.2 Measurements and quantities must be in units consistent with the *Weights and Measures (National Standards) Act 1960 -1966* or in the absence of any specification therein must be in accordance with the Australian Metric Tables and Australian Standard AS1000 - The International System of Units (SI) and its application.
- 2.5.3 All information required to be supplied must be typewritten or legibly hand-written in ink without alterations or erasures (including whiting or blanking out), unless each alteration or amendment is signed in ink.
- 2.5.4 The Respondent must sign and date the Offer Form and return it with its Offer.
- 2.5.5 The Offer must be for the whole of the Scope described in the Request unless the Request otherwise provides.
- 2.5.6 The Respondent must complete Book 2a – Information Requested from the Respondent and Book 2b – Schedule of Prices and return them with its Offer together with any other relevant information. The remainder of this Request is not to be returned with the Offer.

2.6 Registration of Respondent Details

- 2.6.1 If the Respondent has obtained a copy of this Request document from sources other than TendersWA (www.tenders.wa.gov.au), the Respondent must log in to TendersWA under its own 'Supplier Registration' login details and download the relevant documents for this Request. If the Respondent does not have a Supplier Registration login it should proceed to TendersWA, create a login and download the relevant documents for this Request.
- 2.6.2 By downloading via its Supplier Registration the Respondent will automatically be notified of any additional information relating to this Request. If the Respondent does not login to download this Request, the Respondent will not be automatically advised of any changes or Addenda to the Request.
- 2.6.3 It is the responsibility of the Respondent to register its interest in this Request through its TendersWA login.

2.7 Registration of Respondent Details on PTA ZSN Supplier Portal

- 2.7.1 As part of the Request process, the PTA recommends registration as a Potential Supplier in PTA's secure web-based PTA Zycus Supplier Network (ZSN) Supplier Portal.
- 2.7.2 Respondents can register on the PTA ZSN Supplier Portal to express their interest to participate in procurement and tendering processes with the PTA. Upon registration, their business becomes a Potential Supplier who is interested in working with the PTA.
- 2.7.3 Registration as a Potential Supplier does not mean that a contract has been entered into or that the Respondent is an approved PTA Supplier.
- 2.7.4 The successful Respondent will be required to be registered and approved as an Operational Supplier on the PTA ZSN Supplier Portal via the onboarding process.
- 2.7.5 Help and support is available on the PTA ZSN Supplier Portal, and by emailing any queries to CAPSSuppliers@pta.wa.gov.au.

2.8 Compliance with TendersWA Website Requirement

It is the responsibility of the Respondent to ensure that its details, including the correct email address of the nominated contact person are registered within TendersWA. The PTA will liaise with the Successful Respondent at time of awarding the Contract to obtain necessary information for posting the Contract details on the TendersWA website.

2.9 Responses to Request

The Respondent should pay particular attention to fully answering all the questions asked in this Request as responses to the sections will be critical in its chance of selection. While Offers will be assessed in a structured manner in a competitive environment, the PTA reserves the right to seek clarification of any parts of an Offer.

2.10 Statement of Departure

- 2.10.1 The Statement of Departure is in Book 2a - Information Requested from the Respondent of this Request.
- 2.10.2 The Respondent must state all their commercial and technical departures in the Statement of Departure. Respondents must also include any qualifications to the Scope of Requirement and Specification they have allowed or not allowed for within their completed Schedule of Prices in the Statement of Departure.
- 2.10.3 A Statement of Departure must be submitted with the Offer, as well as a marked- up version of the Proposed Contract which must mirror (exactly) the amendments set out in the Statement of Departure.

2.11 Lodgement of Offers

- 2.11.1 Electronic Offer submissions must be lodged via the TendersWA website (www.tenders.wa.gov.au) in accordance with the website's terms and conditions. No other method of electronically submitting an Offer response will be accepted. The Respondent is strongly advised to lodge electronic submissions early to avoid potential problems faced by congestion of the electronic tender box.
- 2.11.2 All information to be submitted in accordance with this Request, including the responses to Book 2a – Information Requested from the Respondent and Book 2b – Schedule of Prices, and any requested Schedules. Book 2b – Schedule of Prices must be uploaded as a separate file to the remainder of the Offer submission with all file names indicative of their contents. Pricing information shall only be included in Book 2b – Schedule of Prices.
- 2.11.3 The Respondent must ensure that the electronic files making up the Offer are in one of the following file formats: .doc(x); .xls(x); .pdf (Adobe); .txt; .rtf; ppt(x); or .zip
- 2.11.4 Where submitting the Offer through the TendersWA website the Respondent must print, sign and scan the 'Request Form' embedded in this Request and submit it as part of the Offer.
- 2.11.5 In the event that the Respondent encounters problems with uploading its Offer to the TendersWA website, the Respondent should contact the Department of Finance Procurement Systems Support (procurementsystems@finance.wa.gov.au or +61 (08) 6551 2020) for assistance.

2.12 Request Closing Date and Request Closing Time

**Offers must be uploaded to the TendersWA website by no later than
11.00 am Western Australian Time on Wednesday 21 May 2025 .
The forwarding of Offers by mail or email is not acceptable.**

2.13 Performance Assessment

A Respondent shall provide to the PTA (or its nominated agent) all such performance information as the PTA reasonably requires to satisfy itself that the Respondent has the capability to perform the obligations contemplated by the Request, including the following:

- 2.13.1 Disputes and claims history of the Respondent and its Related Bodies Corporate (if applicable) in the last 5 years.
- 2.13.2 Notices of default or non-conformances issued by any agency within the Transport Portfolio (including the PTA) to the Respondent or any of its Related Bodies Corporate (if applicable), or by the Respondent or any of its Related Bodies Corporate (if applicable) to any agency within the Transport Portfolio (including the PTA), under any contract between the parties in the last 5 years.

- 2.13.3 The Respondent's performance to timelines and budgets under any contract with any agency within the Transport Portfolio (including the PTA) in the last 5 years and the performance of each of its Related Bodies Corporate (if applicable).
- 2.13.4 Extent of supervision that has been required to be undertaken by any agency within the Transport Portfolio (including the PTA) under any contract with the Respondent or any of its Related Bodies Corporate (if applicable) in the last 5 years.

2.14 Opening of Offers

The opening of Offers is not public and neither the Respondent nor its Associates will be permitted to attend.

2.15 Offer Assessment

2.15.1 Evaluation of Offers

All valid Offers will be evaluated in accordance with the Western Australian Procurement Rules and Government Policies in section 4.8 of this Book 1 and in general accordance with the criteria set out in this section.

2.15.2 Financial

No Contract will be entered into unless the PTA has satisfied itself of the financial position of the Respondent(s). In this regard, the PTA may request an independent third party to perform a financial assessment of Respondent/s. This may not be required by the PTA, in its absolute discretion, where a Respondent has been assessed for its financial position in the past three months for a contract similar in price and risk level.

The Respondent and each Respondent Member (either in its own right or with reference to a Parent Company or other guarantor if applicable) will be assessed in relation to its financial strength and capacity to deliver the Project, under the proposed commercial arrangements.

2.15.3 Evaluation criteria

Overall, the evaluation of Offers will be undertaken on a value for money basis.

- a) The value for money principle (**Value for Money**) 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.
- b) As such, the Value for Money principle embraces the total cost of the product or service over the life of its requirement, fitness for purpose, timely delivery and local support. It also involves an assessment of the wider benefits it may contribute to Government objectives in areas such as business and industry development, environmental protection, energy conservation and related matters.
- c) Request Evaluation Criteria in respect of Value for Money procurement include:
 - (i) Benefits to the State from transactions occurring within the local area and employment created as a consequence; and
 - (ii) Greater benefit to the State from ongoing Government support given to local manufacturing, construction and service industries.

State Agencies achieve the best possible outcome, for every dollar spent, by assessing the costs and benefits of, and the risks inherent in, each Offer, rather than simply selecting the lowest submitted price.

The primary Offer assessment criteria are:

- d) Application of the relevant Western Australian Procurement Rules and Government policies and priorities, including those referenced in the Western Australian Social Procurement Framework, to the assessment of each Offer.
- e) Compliance, meaning the assessment of each Offer to the mandatory evaluation criteria and the compliance with Content Requirements, as noted in the table below, and assessment of items raised in the Statement of Departure.
- f) Capability, meaning a comparison of the relative merits of each Offer in relation to capability will be made based on the information provided by each Respondent. The weightings for the evaluation of capability are noted in the table below;
- g) Western Australian Industry Participation, meaning a comparison of the Respondent's commitment to support local businesses (including Western Australian businesses)

- through its business activities including its subcontracting and material supplier arrangements will be made based on the information provided by each Respondent;
- h) Timeliness of completion, meaning a comparison of the evidence provided by each Respondent to show that the Scope will be completed on time;
 - i) Risk, meaning a comparison of the risk of poor performance of a Respondent as a potential Contractor based on the information provided by each Respondent; and
 - j) Cost, meaning a comparison of the relative merits of each Offer in relation to cost will be made based on the information provided by each Respondent in the Schedule of Prices.

Reference	Content Requirement	Weighting
Book 2a	Compliance and Disclosure Requirements	Pass/Fail

The PTA reserves the right to reject any Offer that does not properly address any of the Pre-Qualification Requirements / Compliance and Disclosure Requirements.

Qualitative Requirements			
Reference	Evaluation Criterion No.	Evaluation Criterion Name	Weighting
Book 2a	Evaluation Criterion 1	Demonstrated Company Experience to provide Vessels to specification	30%
Book 2a	Evaluation Criterion 2	Demonstrated Physical Resource Capacity	10%
Book 2a	Evaluation Criterion 3	Proposed Method of Construction	10%
Book 2a	Evaluation Criterion 4	Timelines of Delivery	15%
Book 2a	Evaluation Criterion 5	Demonstrated Experience – Key Personnel and Subcontractors	15%
Book 2a	Evaluation Criterion 6	Safety	5%
Book 2a	Evaluation Criterion 7	Quality Assurance	5%
Book 2a	Evaluation Criterion 8	Western Australian Industry Participation Plan	10%
TOTAL			100%

2.16 Negotiation Period

- 2.16.1 During the evaluation process, the PTA may seek clarifications from Respondents and engage in negotiations in writing and/or meetings as required. Compliance with PTA's Proposed Contract will be considered in the Value for Money Assessment.
- 2.16.2 Alternatively, following the evaluation process outlined in section 2.15 of this Book 1, the PTA may, in its absolute discretion, decide to enter into contract negotiations with a Preferred Respondent. The selection of a Preferred Respondent does not constitute acceptance of the Offer submitted by the Respondent or otherwise confer any rights on a Preferred Respondent and is without prejudice to the right of the PTA to decline to enter into the Contract with the Preferred Respondent, or to enter into the Contract with another Respondent.
- 2.16.3 The PTA may suspend any negotiations with the Preferred Respondent and commence negotiations with another Respondent or appoint another Respondent as the Preferred Respondent, if in the opinion of the PTA:

- a) timely completion of negotiations of the Proposed Contract on terms acceptable to the PTA is unlikely to be achieved with the Preferred Respondent;
- b) the Preferred Respondent has breached a term or condition of the Procurement Process;
- c) there has been a change to the information on which the PTA has relied in appointing the Respondent as the Preferred Respondent; or
- d) for any other reason.

2.17 Execution of Contract

Should the PTA decide to appoint a Respondent as the Successful Respondent for this Request, the Successful Respondent must execute the Contract in accordance with the relevant signing block contained in the Formal Instrument of Agreement, incorporated in the Proposed Contract. Please refer to section 4 Instructions on Signing the Contract in this Book.

3 CONDITIONS OF RESPONDING

3.1 Request

This Request consists of:

- 3.1.1 Book 1 – Conditions and Information for Responding, including:
 - a) Introduction;
 - b) Procurement Process;
 - c) Conditions of Responding;
 - d) Information for the Respondent; and
 - e) Instructions on signing the Contract.
- 3.1.2 Book 2a – Information requested from the Respondent, including:
 - a) Request Form;
 - b) Evaluation Schedules;
 - c) Performance Assessment;
 - d) Schedule of Delivery;
 - e) Schedule of Warranties;
 - f) Statement of Departure Technical;
 - g) Statement of Departure Commercial; and
 - h) Acknowledgement of Addenda.
- 3.1.3 Book 2b – Schedule of Prices, including;
- 3.1.4 Book 3 – Proposed Supply of Goods Contract, including:
 - a) Imported Content Questionnaire;
 - b) Formal Instrument of Agreement;
 - c) PTA Supply of Goods General Conditions of Contract;
 - d) Annexure to the General Conditions of Contract; and
- 3.1.5 Book 4 – Function and Performance Specification, together with any Addenda issued by the PTA.
- 3.1.6 The Successful Respondent (who will become the Contractor) will be required to enter into a contract with the PTA in the form of the Proposed Contract, which is the PTA's preferred form of contract for the Project. The PTA reserves the right, in its absolute discretion and at any time, to alter or add to the provisions of the Proposed Contract including during negotiations with the Preferred Respondent.
- 3.1.7 In this Request, a reference to Respondent is a reference to a Respondent or, if applicable, a person to whom or organisation to which this Request has been issued.

3.2 Application and Interpretation

- 3.2.1 The terms and conditions in this section 0 apply to the Procurement Process.
- 3.2.2 The PTA reserves the right to impose additional or amended terms and conditions to the Procurement Process.
- 3.2.3 These terms and conditions are to be interpreted in favour of the PTA in the event of any ambiguity or inconsistency.
- 3.2.4 Unless the context indicates a contrary intention, in section 0:
 - a) 'includes' in any form is not a word of limitation; and
 - b) the meaning of 'or' will be that of the inclusive 'or', meaning one, some or all of a number of possibilities.

3.3 Respondent Agrees to Terms and Conditions

- 3.3.1 Each Respondent:
 - a) will be deemed to accept all of the Conditions of Responding;

- b) must comply with the terms and conditions set out in this section 0 for the duration of the Procurement Process;
 - c) accepts and is bound by the Procurement Process;
 - d) must procure that each of its Members complies with the terms and conditions set out in this section 0 for the duration of the Procurement Process.
- 3.3.2 Each Respondent and each Member comprising the Respondent must complete and sign the Request Form, and return it with its Offer. If the Respondent is a corporation or company it must comply with the relevant provisions of the *Corporations Act 2001* (Cth) in executing the Request Form.
- 3.3.3 Each Respondent agrees that it is, and will be, liable to the PTA and the PTA's Associates for any costs, losses, expenses or damages incurred by the PTA or the PTA's Associates as a result of a breach by a Member of section 3.3 as if the Respondent breached section 3.3.
- 3.3.4 If this section 0 refers expressly to the Respondent's Associate, each Respondent:
- a) must procure that each of the Respondent's Associates comply with the relevant obligation or requirement; and
 - b) acknowledges and agrees that it will be liable to the PTA and the PTA's Associates for any costs, losses, expenses or damages incurred by the PTA or the PTA's Associates as a result of a failure by the Respondent's Associate to comply with the relevant obligation or requirement.

3.4 PTA's Rights

- 3.4.1 Without limiting its other rights under these Conditions of Responding, the PTA reserves the right in its absolute discretion and at any time to:
- a) change the Project or the procurement method for the Project including the nature, terms and scope of the contracting arrangements;
 - b) cancel, suspend or change, any aspect of the Procurement Process or take such other action as the PTA considers, in its absolute discretion, appropriate in relation to the Procurement Process or the Project;
 - c) require any Respondent to submit additional information (including written responses to clarification questions or other information), in which case the Respondent must provide such information in a reasonable time;
 - d) request one or more Respondents to attend an interview, meeting or workshop;
 - e) conduct meetings or workshops or discussions with, or seek information from, one or more Respondents at any time during the Procurement Process without notifying the other Respondents or seeking equivalent information from the other Respondents;
 - f) refuse to consider or evaluate an Offer (for any reason), or disqualify a Respondent from the Procurement Process for breach of any of its obligations set out in the Conditions of Responding or a failure to satisfy or otherwise comply with any requirement of this Request;
 - g) perform any security, probity, police or financial checks and procedures in relation to the Respondent or the Respondent's Associates;
 - h) in selecting the Preferred Respondent and the Successful Respondent have regard to:
 - (i) the PTA and the PTA Associates' knowledge and previous experience and dealings with the Respondent or the Respondent's Associates; or
 - (ii) information concerning the Respondent or the Respondent's Associates which is in the public domain or which is obtained by PTA through investigations;
 - i) remove or change the Preferred Respondent;
 - j) waive any requirement or obligation under this Request;
 - k) change the identity of the entity or person executing the Contract on behalf of the PTA;
 - l) publish the names of the Respondents, the Selected Respondent, or the Preferred Respondent;
 - m) allow a Respondent to amend, alter, add to or otherwise change its Offer after the Offer Closing Date in consultation with the Probity Adviser.
 - n) not disclose the nature of negotiations, amendments, alterations, additions or other

changes it has agreed with a Respondent nor offer or accept the same or equivalent amendments, alterations or other changes to those that it may offer to or accept from another Respondent; and

- o) record and transcribe the proceedings of any individual or industry briefing session with one or more Respondents and circulate that material as it sees fit.

3.4.2 To the extent that the PTA elects to exercise any of its rights under section 3.4.1 or under these Conditions of Responding, it is not required to give reasons to the Respondents as to why it has exercised such rights.

3.5 No Claim

3.5.1 To the extent permitted by law, the Respondent and the Respondent's Associates will have no claim against the PTA or any of the PTA's Associates arising from, or in connection with, the PTA's exercise or failure to exercise any rights, obligations or duties under this Request or otherwise in connection with the Procurement Process.

3.5.2 The Respondent is not entitled, in any jurisdiction, to challenge any decision by the PTA relating to this Request or the evaluation and selection process outlined in this Request, including any decisions concerning:

- a) the evaluation of the Offers;
- b) the selection of the Preferred Respondent;
- c) the selection of the Successful Respondent;
- d) any amendment of this Request (including any change to the procedures or any aspect of the selection and evaluation process set out in this Request at any time);
- e) the procurement strategy for the Project;
- f) the cancellation of the Project; or
- g) whether or not PTA elects to execute the Contract.

3.5.3 The Respondent releases the PTA from any such claims that the Respondent or the Respondent's Associates may have had but for this provision.

3.6 Information from the PTA

3.6.1 The PTA and the PTA's Associates do not warrant, guarantee or make any representation (express or implied), or assume any duty of care, or (to the extent permitted by law) accept any liability, with respect to the completeness, accuracy, adequacy or correctness of:

- a) any information provided in connection with the Procurement Process, including this Request;
- b) the Information Documents; or
- c) any other documents referred to in this Request.

3.6.2 This Request is issued for information purposes only. This Request is not to be considered as a recommendation to submit an Offer, or that the Project is a suitable opportunity for Respondents. Respondents should conduct and rely upon their own investigation and analysis of the Project and the information contained in this Request, on the PTA's website and otherwise provided by the PTA or the PTA's Associates, and Respondents are advised to seek their own professional advice on the legal, technical, financial, taxation and other consequences of the Project and the Procurement Process.

3.6.3 Without limiting section 2.7.1 above, to the extent permitted by law, the PTA 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 the PTA or the PTA's Associates, with respect to the Project, Procurement Process or any Information Documents.

3.6.4 The PTA is not required, and does not intend, to release any details regarding the evaluation process for the Request other than as contained in this Request.

3.7 Information Supplied with Offer

The Offer a Respondent submits must include full documentation and information at the time of responding. The Respondent must provide all such documentation and information to the PTA free of charge. The Offer and other documents and information the Successful Respondent submits become the

PTA's property and will not be returned to the Successful Respondent at the conclusion of the Procurement Process or otherwise. The PTA will also retain one copy of each Offer submitted by unsuccessful Respondents.

3.8 Enquiries, Notifications and Clarifications

- 3.8.1 If the Respondent or any of its Associates:
- a) is in doubt as to the true meaning of any part of this Request;
 - b) has any enquiries or clarification questions regarding this Request; or
 - c) is of the opinion that there is any discrepancy, error, omission or inconsistency in this Request,
- it must, as soon as reasonably practicable, give written notice to the PTA officer nominated in section 2.3 and request clarification.
- 3.8.2 The Respondent must not directly contact the PTA to discuss any aspect of the Request other than in accordance with section 3.8.1 above.
- 3.8.3 If the PTA receives a written notice under section 3.8.1 above, it will endeavour to provide clarification to the Respondent by issuing an Addendum in accordance with section 3.9, however the decision on whether to respond to any written request for clarification and the content of any response is at the absolute discretion of the PTA.
- 3.8.4 No responses will be provided to Respondents for enquiries received on or after the date that is four (4) business days before the Request Closing Date. Any further clarifications required after this time are to be addressed by stating what has been allowed for in Book 2a Statement of Departure.
- 3.8.5 Subject to section 3.8.3 and 3.8.4, the PTA will circulate clarification questions of a general nature together with the PTA response to such clarification question to all Respondents in the form of an Addendum issued under section 3.9 below.
- 3.8.6 If the Respondent is of the view that a clarification question is not of a general nature but relates to proprietary aspects of the Respondent's Offer, the Respondent must identify that question as such when asking the clarification question. If, in the opinion of the PTA:
- a) the question is not proprietary, the PTA officer will advise the relevant Respondent, who has the option to withdraw the question, but if the Respondent continues to request a response to that question, the PTA response will be circulated to all Respondents in accordance with section 3.9 below; or
 - b) the question does relate to proprietary aspects of the Respondent's Offer, the PTA's response to the question will be provided to the Respondent only (and will not be circulated to all other Respondents).

3.9 Addenda

- 3.9.1 At any time during the Procurement Process, the PTA may, for any reason but without being obliged to, amend or update this Request by issuing an Addendum. Each Addendum issued will be distributed to each Respondent.
- 3.9.2 All Addenda when issued will become part of this Request and where Addenda are issued, the Respondent must complete the Acknowledgement of Addenda (Book 2a) and return it as part of its Offer.
- 3.9.3 Respondents must prepare their Offer to take into account and reflect the content of any Addendum, and Offers will be assumed to have taken into account any such amendments or updates to the Request made pursuant to Addenda.
- 3.9.4 Neither the PTA nor any of its Associates will have any authority to make any representation or explanation to the Respondent as to the meaning of any of the Request documents, or as to anything to be done or not to be done by the Successful Respondent, or as to any other matter or thing so as to bind the PTA in the exercise of its powers and duties under this Request unless such information is issued by Addenda. No statement or representation made by the PTA or any of its Associates modifies or supplements this Request unless such statement or representation is confirmed by the issue of an Addendum.
- 3.9.5 The PTA and its Associates will not be liable for any costs, losses, expenses or damages

incurred by the Respondent or its Associates as a consequence of any such Addendum.

3.10 Respondent to Inform Itself

The Respondent represents and warrants that, on its own behalf and on behalf of its Members, it has:

- a) examined the Request documentation and any Addenda provided to the Respondent;
- b) examined all further information and documents which are relevant to the Scope/Project and the risks, contingencies and other circumstances having an effect on its Offer which is obtainable by the making of reasonable enquiries;
- c) not placed any reliance upon the completeness, accuracy, adequacy or correctness of any of the documents, information or other things referred to in any information provided in connection with the Procurement Process, including this Request or any other documents referred to in this Request;
- d) prepared its Offer and any subsequent information submitted to the PTA pursuant to this Request based on its own independent assessment and investigations, interpretations, deductions, information and determinations; and
- e) satisfied itself as to the correctness and sufficiency of its Offer including Offered rates or lump sums which will be deemed to cover the cost of complying with all obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the Scope or Requirement as described in Book 4 – Function and Performance Specification (in each case, subject to the Statement of Departure).

3.11 Compliance and Departures

- 3.11.1 The Proposed Contract represents the PTA's considered and preferred position, which the PTA has a strong desire to preserve.
- 3.11.2 Despite section 3.11.1, an Offer which does not fully comply with all the terms and conditions of the Proposed Contract will not necessarily be disqualified for non-compliance. However, the level of compliance of a Offer with the stated requirements of the clauses, sub-clauses and associated annexures and schedules of the Proposed Contract will be assessed and a Respondent who lodges an Offer demonstrating a higher level of compliance will improve the chance of its Offer being successful.
- 3.11.3 A Statement of Departure must be submitted with the Offer, as well as a marked- up version of the Proposed Contract which must mirror (exactly) the amendments set out in the Statement of Departures.
- 3.11.4 Without limiting section 3.4.1, the PTA reserves, in its absolute discretion, the right:
 - a) not to consider a Offer if a completed Statement of Departure and marked- up version of the Proposed Contract (including the Scope of Requirement and Specification) is not submitted; and
 - b) to reject or not consider any departures to the Proposed Contract included in a Statement of Departure.

3.12 Alternative Offers

- 3.12.1 If the Respondent wishes to make proposals which it considers will result in cost reduction or other advantages to the PTA but which include a material departure from the PTA's requirements as stated in Book 4 – Function and Performance Specification, it may submit alternative Offers embodying those proposals. Alternative Offers may only be submitted if a complying Offer is also submitted. For an alternative Offer to be considered, the Offer must:
 - a) fully address the assessment criteria and be fully costed;
 - b) be marked "ALTERNATIVE OFFER"; and
 - c) be accompanied by a Statement of Departure describing clearly and in full detail the proposed departures from the Request documents provided by the PTA, as well as a marked-up version of the Proposed Contract which must mirror (exactly) the amendments set out in the Statement of Departure.
- 3.12.2 Alternative Offers will be evaluated on a value for money basis and on criteria as nearly consistent as possible with the assessment criteria used for complying Offers. The PTA will have the sole discretion to accept or reject alternative Offers.

3.13 PTA to Have Sole Discretion

- 3.13.1 Without limiting section 3.4.1, the PTA will retain sole discretion in the final outcome from the evaluation of Offers, whether those Offers are compliant Offers, alternative Offers or otherwise.
- 3.13.2 The determination of the PTA in respect of each Offer will be final and binding.

3.14 Late or Invalid Offers

- 3.14.1 Offers must be lodged in accordance with section 2.11 by the Request Closing Time on the Request Closing Date stated in section 2.12.
- 3.14.2 Any Offer not lodged in the nominated electronic Offer box by the Request Closing Time on the Request Closing Date is a late Offer.
- 3.14.3 Any Offer received by a method other than that nominated in section **Error! Reference source not found.** is an invalid Offer.
- 3.14.4 Without limiting section 3.4.1:
- a) the PTA will have sole discretion as to whether an Offer is a late or invalid Offer;
 - b) the PTA may, at its sole discretion, consider a late or invalid Offer or reject or elect not to consider a late or invalid Offer.

3.15 Validity Period

The entire Offer must remain valid for a minimum period of 160 calendar days from the Request Closing Date and will remain binding and be capable of acceptance by the PTA at any time before the expiration of that period.

3.16 Unconditional

- 3.16.1 Offers must not be conditional upon the receipt of any internal or external financing, investment or management approvals.
- 3.16.2 Each Respondent must also nominate the authorised person who can make decisions on behalf of that Respondent and bind that Respondent, including in relation to amendments to an Offer.

3.17 Changes to the Offer

- 3.17.1 Each Respondent must notify the PTA promptly in writing of any material change to:
- a) any of the information contained in its Offer;
 - b) any additional information submitted to the PTA pursuant to this Request;
 - c) any information submitted to the PTA in any meeting or workshop conducted pursuant to this Request;
 - d) any event which may affect or have an impact on the financial position or capacity of the Respondent; or
 - e) circumstances which may affect the truth, completeness or accuracy of any of the information provided in, or in connection with, the Offer.
- 3.17.2 Upon receipt of any written notification pursuant to section 3.17.1 above, the PTA reserves the right to terminate the Respondent's further participation in the Procurement Process or to invite the Respondent to amend its Offer accordingly.
- 3.17.3 A Respondent may only amend its Offer in accordance with an invitation or request by the PTA to do so.
- 3.17.4 If the Respondent purports to amend its Offer (except in accordance with an invitation or request by the PTA to do so), the PTA may elect to treat any such amendment as ineffective.
- 3.17.5 If a Respondent amends its Offer in accordance with an invitation or request by the PTA, the PTA reserves the right to continue to evaluate the amended Offer (or to update any completed evaluation of the Offer) accordingly.

3.18 Changes to Respondent

- 3.18.1 If, after lodgement of its Offer, a Respondent or a Member:
- a) changes its corporate structure or there is otherwise a Change in Control of the

- Respondent or Member; or
- b) replaces, adds or removes a Member,
- the Respondent must promptly notify the PTA and provide the PTA with sufficient details of the change.
- 3.18.2 Upon receipt of such notification, the PTA reserves the right to assess any change and terminate the Respondent's further participation in the Procurement Process.
- 3.18.3 For the purposes of this section 3.18:
- a) **'Change in Control'** in relation to the Respondent or Member means:
 - (i) an entity that Controls the Respondent or Member ceases to Control the Respondent or Member; or
 - (ii) an entity that does not Control the Respondent or Member comes to Control the Respondent or Member;
 - b) No Change in Control occurs if:
 - (i) the entity that ceases to Control the Respondent or Member under section 3.18.3a(i) was, immediately beforehand, directly or indirectly Controlled by a body corporate that, immediately afterward, directly or indirectly Controls that body; or
 - (ii) the entity that comes to Control the Respondent or Member under section 3.18.3a(ii) is a wholly-owned subsidiary of a body corporate that previously directly or indirectly Controlled, and continues to directly or indirectly Control, the Respondent or Member,
 - c) The terms 'body corporate', 'listed' and 'wholly-owned subsidiary', each have the meanings given in section 9 of the *Corporations Act 2001* (Cth) and 'entity' has the meaning given in section 64A of the *Corporations Act 2001* (Cth).
 - d) **'Control'** has the meaning given in section 50AA of the *Corporations Act 2001* (Cth) except that in addition an entity controls a second entity if:
 - (i) the first entity would be taken to control the second entity but for subsection 50AA (4); or
 - (ii) the first entity has voting power (as defined in section 610 of the *Corporations Act 2001* (Cth)) of at least 50%.

3.19 Confidentiality and Disclosure of Information

- 3.19.1 The Respondent and the Respondent's Associates agree to:
- a) the disclosure by any person to the PTA or its Associates of information concerning a Offer, a Respondent or the Respondent's Associates for the purpose of the PTA exercising its rights set out in this Request or at law;
 - b) the PTA disclosing any aspect of the Offer or any other information provided by the Respondent or the Respondent's Associates to the PTA or its Associates during the Procurement Process in order for the PTA to satisfy any public disclosure obligations the PTA may have under any legislation, policy or otherwise; and
 - c) the PTA or its Associates publicly publishing or disclosing (on the internet or otherwise) information in relation to the Procurement Process, the Project or the details of any Respondent, including the terms and conditions of any final contractual documents.
- 3.19.2 The Respondent acknowledges that the *Freedom of Information Act 1992* (WA) (**FOI Act**) applies to the information provided by the Respondent in its Offer and otherwise submitted by the Respondent to the PTA pursuant to this Request.
- 3.19.3 Without limiting section 3.19.2 above, the Respondent acknowledges that:
- a) the FOI Act allows members of the public rights of access to the PTA's documents and the PTA's Associates' documents;
 - b) all or part of the information provided by the Respondent may be disclosed to third parties if there is a requirement to do so under the provisions of the FOI Act;
 - c) any information that the Respondent considers is commercially sensitive or confidential must be marked 'commercial and confidential' (this special notation must not be used unless the information is genuinely confidential, marking information as 'commercial and

confidential' will not necessarily prevent disclosure of the information in accordance with the FOI Act and any decision to release information will be determined by the requirements of the FOI Act); and

- d) the Respondent and the Respondent's Associates must not commence any action or make any claim for the release of any information by the PTA's or its Associates in connection with any information submitted by other Respondents to the PTA pursuant to this Request.

3.19.4 Each Respondent must:

- a) keep Disclosed Information confidential, save to the extent it is proven to be necessary to comply with any applicable law or where the information is already in the public domain, other than due to a breach of its obligations under this Request;
- b) not use, copy, reproduce or distribute any Disclosed Information except as required for the purpose of preparing and lodging an Offer, and then only to the extent reasonably necessary;
- c) ensure that each recipient of Disclosed Information (including its Associates) complies with the obligations under sections 3.19.4a) and 3.19.4b) above;
- d) immediately notify the PTA if it becomes aware of a suspected or actual unauthorised disclosure, copying or use of Disclosed Information;
- e) immediately take all reasonable steps to prevent or stop any such suspected or actual unauthorised disclosure, copying or use of Disclosed Information (including complying with directions of the PTA in this regard);
- f) take all reasonable steps to recover any unauthorised Disclosed Information that has been disclosed, used or copied;
- g) not make and must ensure that its Associates do not make a media release or other public announcement or statement in relation to the Project without the prior written consent of the PTA including in respect to:
 - (i) the content of its Offer;
 - (ii) whether or not the Respondent has been appointed as a Successful Respondent;
 - (iii) whether or not the Respondent has ceased to participate in, or has been excluded from the selection process set out in this Request; and
 - (iv) any decision of the PTA or any other communication between the Respondent and the PTA relating to the selection process set out in this Request.

3.19.5 The Respondent indemnifies the PTA and its Associates from and against any costs, losses, expenses or damages arising out of, or relating to, any failure by a recipient of Disclosed Information to comply with sections 3.19.4a) or 3.19.4b) above.

3.19.6 The Respondent may only copy, use or disclose this Request to others for the purpose of preparing and lodging an Offer and otherwise participating in the Procurement Process in accordance with this Request.

3.19.7 In relation to personal information, the Respondent must comply with the *Privacy Act 1988* (Cth).

3.20 Acceptance of Offer

3.20.1 Without limiting section 3.4.1, the PTA reserves the right, in its absolute discretion, and at any time and for any reason, to:

- a) reject any or all Offers;
- b) not accept the lowest priced Offer, the highest scoring Offer, or any Offer.

This condition prevails over any contrary implication.

3.20.2 Any condition of sale, quotation, offer or proposal of any nature appearing on any documents submitted with the Offer which constitutes any variation of or omission from or addition to the Conditions of Responding or Proposed Contract will be deemed to be excluded from the acceptance of any Offer to which such condition relates unless the same has been specifically noted and described in a Statement of Departure and unless the same has been expressly referred to and accepted by the PTA in correspondence between the PTA and the Successful Respondent.

- 3.20.3 The Respondent acknowledges and agrees that:
- a) this Request does not constitute an offer or an invitation to treat; and
 - b) an Offer will not be deemed to have been accepted, and no legal relationship or contract exists or will arise between the PTA and the Successful Respondent unless and until the Contract has been executed by the PTA and the Successful Respondent.
- 3.20.4 Without limiting section 3.20.3 above, any obligations or liabilities of the PTA to the Respondent in respect of or in connection with the Request:
- a) are limited to those obligations and liabilities expressly set out in this Request;
 - b) exclude, to the extent permitted by law, any obligations or liabilities which may otherwise be implied or imposed on the PTA under contract, equity, by statute or otherwise, and the Respondent shall have no, nor make any, action, suit, claim, demand, or proceedings at law or in equity against the PTA for any loss, injury, damage, compensation, costs or expenses or otherwise whatsoever in respect of or in consequence thereof.

3.21 Security

Where the Contractor requires the PTA to make advance payments. The value of each Security will equal the face value of each of the advance payments.

Within 10 Business Days of Contract Award, the Successful Respondent must lodge Security for the performance of the Contractor's obligations under the Contract. The Security must be in the form provided in the Proposed Contract.

3.22 Joint Offers

- 3.22.1 The PTA will not consider a joint Offer, except to the extent that such an Offer is submitted by a formally constituted joint venture specifically formed to bid for this Request.
- 3.22.2 Where the Offer is made jointly by two or more parties, the PTA intends to enter into a single contract with all legal entities that will be responsible for performing the Scope.
- 3.22.3 To the extent that a Respondent proposes to form a joint venture for the purposes of the Project:
- a) the Respondent must disclose the nature of any joint venture arrangements in its Offer; and
 - b) the PTA will require the Respondent to disclose the terms of any joint venture agreement prior to the execution of any such agreement, and may request changes to the terms of such joint venture agreement.
- 3.22.4 The PTA will only communicate with one point of contact nominated on the Request Form after the Request Lodgement Time.

3.23 Multiple Parties

If a Respondent is made up of more than one person, or a term is used in this Request to refer to more than one party, then unless otherwise specified in this Request:

- 3.23.1 an obligation of those persons is joint and several;
- 3.23.2 a right of those persons is held by each of them severally; and
- 3.23.3 any other reference to that party or that term is a reference to each of those persons separately, so that a representation, warranty or undertaking relates to each of them separately.

3.24 No Fettering

The Respondent acknowledges and agrees that nothing contained or implied in this Request or the Contract will be construed or interpreted as unlawfully restricting, or otherwise unlawfully affecting, the absolute discretion of the PTA to exercise any of its executive or statutory powers or functions under any law.

3.25 Agency Arrangements

An Offer, where it is intended to have an agent interposed between the PTA and the Respondent, will not be considered. The PTA will only deal directly with the Respondent.

3.26 No Obligation to Proceed

- 3.26.1 Without limiting section 3.26.2 below, by issuing this Request, the PTA will not be obliged to proceed to execute the Contract nor to contract out any part of the Scope.
- 3.26.2 The PTA reserves the right in its absolute discretion and at any time to:
- a) cancel or suspend the Scope/Project;
 - b) elect to execute the Contract; and
 - c) elect not to execute the Contract.

3.27 Respondent Acknowledgements

The Respondent acknowledges:

- 3.27.1 That the Procurement Process is being conducted solely for the benefit of the PTA;
- 3.27.2 That it must comply with the rules, policies and procedures set out in section 4.8 to the extent they apply to the Procurement Process;
- 3.27.3 The PTA's rights pursuant to section 3.4 and any other section of these Conditions of Responding;
- 3.27.4 The PTA will rely upon the warranties given by Respondents pursuant to section 3.10 above, section 3.28 below and the warranties provided in their completed Offer in evaluating any Offer;
- 3.27.5 It will not rely on any oral advice, representation or information given or furnished by or on behalf of the PTA or the PTA's Associates with respect to the Project or the Procurement Process;
- 3.27.6 In no circumstances will the PTA or the PTA's Associates be liable to the Respondent whether in contract, tort (including negligence, misrepresentation or breach of warranty), under statute (to the extent permitted by law) or otherwise for any costs, losses, expenses or damages incurred by the Respondent as a result of or arising from:
- a) any incompleteness or inadequacy of, or any inaccuracy or error in, or omission from; or
 - b) any use of, or reliance by, the Respondent upon,
- any information provided in connection with the Procurement Process, including this Request or any other documents referred to in this Request;
- 3.27.7 It is bound by the content of its Offer including any schedules, annexures, attachments and appendices which form part of its Offer;
- 3.27.8 This Request and any Offer will not form any part of Contract except to the extent expressly incorporated into the terms of the executed versions of the Contract;
- 3.27.9 The Respondent and the Respondent's Associates participate in the Procurement Process at their own cost and risk; and
- 3.27.10 No payment will be made by the PTA or the PTA's Associates to the Respondent and the Respondent's Associates for any costs, losses, expenses or damages incurred by the Respondent and the Respondent's Associates:
- a) in preparing and submitting an Offer;
 - b) in preparing for and attending any other meetings or workshops pursuant to this Request;
 - c) in otherwise participating in the Procurement Process in accordance with the terms of this Request; and
 - d) as a consequence of the exercise by the PTA of one or more of its rights under section 3.4 or another section of these Conditions of Responding.

3.28 Effect of Submitting Offer– Respondent Warranties

The Respondent represents and warrants to the PTA that, on its own behalf and on behalf of its Members:

- a) it has the necessary resources, experience, expertise and capacity to carry out the Scope; and
- b) the statements, representations, claims and assertions made in the Offer or made to the PTA or its Associates, are true and correct.

3.29 Code of Tendering

The Respondent must comply with the Australian Standard Code of Tendering AS 4120 1994. The Public Transport Authority may require the Respondent to make the attestation prescribed in AS 4120 1994 section 7.5 which deals with malpractice.

3.30 Probity

- 3.30.1 The Respondent and the Respondent's Associates must not offer any incentive to, or otherwise attempt to influence, any of the persons who are either directly or indirectly involved in the Procurement Process, or in the awarding of any subsequent contract.
- 3.30.2 Without limiting section 3.30.1 above, the Respondent and the Respondent's Associates must not, without the prior written consent of the PTA, directly or indirectly approach or communicate with any officer or employee of the PTA in connection with this Request, with respect to:
 - a) an offer of employment; or
 - b) availability of employment with the Respondent or any Related Entity.
- 3.30.3 Without limiting the PTA rights pursuant to section 3.4 or other rights under these Conditions of Responding, the Respondent consents to the PTA undertaking probity checks which may include:
 - a) investigations into commercial structure, business and credit history;
 - b) prior contract compliance in respect of other projects;
 - c) police checks or any checks for any criminal records or pending charges; and
 - d) research into any relevant activity that is, or might reasonably be expected to be, the subject of regulatory investigation.
- 3.30.4 The Respondent and the Respondent's Associates must participate in any interview, meetings or workshops outlined by the terms of this Request in accordance with any probity requirements, procedures or protocols provided by the PTA to the Respondent.
- 3.30.5 The PTA reserves the right to take into account any matters revealed as a result of its probity and security investigations, or any financial establishment or other audit, in evaluating Offers. The PTA will be under no obligation to provide a Respondent with details of the results of probity and security checks.
- 3.30.6 The PTA reserves the right to defer or cancel the acceptance of a particular Offer or take other action as it considers appropriate in light of the information which it receives as a result of conducting probity/security checks.
- 3.30.7 Respondents may contact the Probity Adviser in circumstances where they have concerns as to probity or the conduct of the Procurement Process.
- 3.30.8 Any contact or communication with the Probity Adviser may be disclosed to the PTA and the PTA reserves its rights to deal with the information in accordance with the Conditions of Offer.

3.31 Conflict of Interest

- 3.31.1 The Respondent must:

- a) disclose in its Offer any circumstances, arrangements or understandings which constitute, or may reasonably be considered to constitute, an actual or potential conflict of interest with the Respondent's obligations under this Request (including in respect to the Contract);
- b) provide details of its proposed strategy for managing any actual or potential conflict of interests disclosed in its Offer pursuant to section 3.31.1a) above;
- c) not place itself in a position (and procure that its Associates use their best endeavours not to place themselves in a position) which may, or will, give rise to a conflict of interest, or a potential conflict of interest during the Procurement Process; and
- d) otherwise notify the PTA promptly in writing upon becoming aware of any actual or perceived circumstances, arrangements or understandings which constitute, or may reasonably be considered to constitute, an actual or potential conflict of interest with the Respondent's obligations under this Request (including in respect to the Contract).

3.31.2 To the extent that the PTA directs the Respondent to take particular action in respect to a conflict of interest, the Respondent must comply with such a direction. If the Respondent is unable or unwilling to comply with any such direction, the PTA may exclude the Respondent from further participation in the Procurement Process.

3.32 Collusion and Related Party Participants

3.32.1 The Respondent and the Respondent's Associates must not engage in any collusive tendering, anti-competitive conduct or any other similar conduct with any other prospective Respondent or other person in relation to the preparation of an Offer or otherwise during the Procurement Process.

3.32.2 The Respondent must identify in its Offer and otherwise immediately upon becoming aware that it or any of its Associates is also:

- a) an Associate or Member of another Respondent; or
- b) a Related Body to another Respondent or another Respondent's Members,

(Related Party Participants).

3.32.3 If the PTA becomes aware of any Related Party Participants, the PTA may require such Related Party Participants to:

- a) execute process and confidentiality acknowledgments;
- b) implement internal governance arrangements and procedures as reasonably required by the PTA to address the probity and competitiveness concerns of the PTA; and
- c) provide verification that all the above required procedures are being complied with as a condition to the Respondent continuing to participate in the Procurement Process.

3.32.4 The PTA reserves its right to:

- a) appoint a Preferred Respondent or Successful Respondent regardless of whether the Respondent or an Associate of the Respondent is also a Related Party Participant;
- b) appoint or shortlist only the highest ranking Related Party Participant to be a Preferred Respondent, and exclude its Related Party Participants by reason of their relationship; or
- c) disqualify the Respondent for breach of any process or confidentiality obligations at any time during the Procurement Process.

3.33 Policies and Procedures

To the extent that the policies and procedures set out in section 4 may apply to the Procurement Process, each Respondent must perform its obligations pursuant to this Request in accordance with, and so as to comply with, the policies, procedures and other requirements set out in section 4.

3.34 References to Financial Amounts in Offers

3.34.1 All financial amounts contained in each Offer are to be expressed in Australian dollars as at the date of Offer lodgement.

3.34.2 All financial amounts contained in each Offer will be GST exclusive, with the GST amount payable to be shown separately.

4 INFORMATION FOR THE RESPONDENT

To obtain copies of the PTA policies that are not otherwise available in the Request the Respondent should refer to the enquiries number on page 1 of the Request.

4.1 Environmental

It is the PTA's policy to provide an effective passenger transport service which is consistent with environmental protection. The PTA's objective is to reduce pollution, conserve energy, minimise waste and utilise processes and technologies that will protect the environment.

4.2 Security and Emergency Management Procedures

The Respondent's attention is to the Proposed Contract describing the Security and Emergency Management Procedure requirements.

4.3 Standards, Specifications and Procedures

Offers must use the latest edition of PTA documents available at the time of the issue of the Request, unless otherwise notified by this Offer. The Respondent must register on the PTA's "Vendor Communications Portal" to access PTA documentation and receive document update notifications (<https://www.pta.wa.gov.au/vendor/>).

4.4 PTA's Alcohol and Other Drugs Policy

4.4.1 The PTA is committed to providing a safe and, as far as is practicable, hazard free environment for all employees, consultants, contractors, customers and the public. The inappropriate use of alcohol and drugs can lead to the impairment of an individual's health and work performance and can cause accidents and injuries.

4.4.2 The PTA's Alcohol and Other Drugs Policy includes provisions for testing of any person working on rail safety work as defined in the *Rail Safety National Law (WA) Act 2015*.

4.4.3 The Contractor must have procedures in place to ensure that alcohol and drugs testing will be conducted:

- a) following a serious accident/incident;
- b) on a random basis; and/or
- c) where alcohol or drug use is suspected.

4.4.4 Copies of the PTA's Alcohol and Other Drugs Policy may be obtained from the PTA's Internet website at www.pta.wa.gov.au.

4.5 Bank Direct Payment System

The PTA will make payments due and payable to the Contractor by direct credit to the Contractor's nominated bank account. The PTA will not split invoice payments across multiple bank accounts.

4.6 Work Health and Safety Policies and Responsibilities

The Respondent's attention is drawn to the Proposed Contract, describing Work Health and Safety requirements.

4.7 Western Australian Industry Participation Strategy

4.7.1 The *Western Australian Jobs Act 2017* (WA) and the Western Australian Industry Participation Strategy (**WAIPS**) made under it contain obligations for agencies to require from prospective Respondents, and to assess, Participation Plans in connection with the supply of goods, services or works to or for agencies or the State.

4.7.2 The objectives of the WAIPS are:

- a) The WA State government is interested in proposals that support manufacturing of the vessels locally in WA;
- b) promoting the diversification and growth of the Western Australian economy by targeting supply opportunities for local industry;
- c) providing suppliers of goods, services and works with increased access to, and raised awareness of, local industry capability;

- d) encouraging local industry to adopt, where appropriate, world's best practice in workplace innovation and the use of new technologies and materials;
- e) promoting increased apprenticeship, training and job opportunities in Western Australia; and
- f) promoting increased opportunities for local industry to develop import replacement capacity by giving local industry, in particular small or medium enterprises, full, fair and reasonable opportunity to compete against foreign suppliers of goods, services or works.

- 4.7.3 The Respondents are to complete the WAIPS Participation Plan template from the WAIPS Portal. The completed WAIPS Participation Plan must be submitted by the Respondents with its Offer in Book 2a - Information Requested.
- 4.7.4 The Successful Respondent will be required to report to the PTA against the achievement of the commitments it has made. The WAIPS Participation Plan Reporting Template will be available for the Successful Respondent to download from the WAIPS Portal at waips.industrylink.wa.gov.au.
- 4.7.5 Western Australian Industry Participation Plan carries a qualitative criteria weighting as shown in the table at clause 2.15.3 of this Book.
- 4.7.6 Where the Respondent states it is not willing to enter into and comply with the Western Australian Industry Participation requirements, including provision of a Participation Plan, its Offer will not be considered.
- 4.7.7 Respondents should refer to the [How to complete a WAIPS Participation Plan](#) guide when completing the Participation Plan.
- 4.7.8 Additional assistance may also be sought from the Industry Link Advisory Service, Department of Jobs, Tourism, Science and Innovation no later than five (5) business days before to the Request Closing Date.
- 4.7.9 Local Manufacturing
- 4.7.9.1 To support the WAIPS Strategy, it is the WA State Governments preference is that the Vessels are manufactured locally in WA.
- 4.7.9.2 The Respondent is required in Book 2a to detail how it will support the State in its preference for local manufacturing as well as the State's other key objectives with respect to WAIPS Project including supporting industry and jobs growth.

4.8 **Western Australian Procurement Rules, Procurement Act 2020 (WA), WA Social Procurement Framework, Government and PTA Policies**

The Western Australian Procurement rules, the Western Australian Industry Participation Strategy (see section 4.7 of this Book) and the Government policies identified in this section 4.8 apply to this procurement process.

The Western Australian Procurement Rules can be viewed and downloaded at wa.gov.au.

4.8.1 Imported content

The Western Australian Government's Buy Local Policy provides for government agencies to apply a 20% price impost, for evaluation purposes only, to the portion of the bid that comprises goods, services or items that have been imported into Australia from another country, excluding New Zealand and for covered procurement from Free Trade Agreement (FTA) countries. A list of agreements with FTA countries is available at <https://www.wa.gov.au/organisation/departments-of-finance>

The cost of goods, services, works or items that have been sourced from overseas is referred to as 'imported content'.

The imported content is calculated in dollar terms and is defined as the estimated duty paid cost of the portion of the bid sourced from overseas.

Estimated duty paid cost includes:

- a) the cost of any services, works related to importing the goods, services or items (for example overseas freight and insurance, software, consultancy or engineering effort); and
- b) any charges of overseas origin together with customs clearing charges.

The imported content impost is not applied in the case of services purchased separately or in isolation.

The imported content impost can be applied regardless of the location of the contract delivery point, but only in instances where the Respondent is using the goods, services, and/or works that it has imported directly from overseas for use in the delivery of the Contract. Goods, services, and/or works of foreign origin that have been purchased through a supplier based in Australia, New Zealand or for a covered procurement, from FTA countries, will not be considered 'imported' for the purposes of the price impost.

The Respondent must complete the Imported Content Questionnaire in Book 2b – Schedule of Prices.

4.8.2 Supplier debarment regime

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* (WA) and the *Procurement Regulations 2020*. Further information about the regulatory scheme is available from wa.gov.au and TendersWA.

Unless operation of the debarment regime has been excluded, the PTA must exclude from consideration any Offer received from a Respondent who is suspended or debarred, and any Offer which proposes to include a subcontracting arrangement with a suspended or debarred subcontractor (including any proposed subcontractor, subcontractor key personnel / consultants).

4.8.3 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) are not acceptable.

If any goods subject to a contract are determined under Customs legislation to constitute dumped goods, the State Agency must:

- a) give notice to the Contractor to terminate the contract. Any extra costs incurred will constitute a debt recoverable from the Contractor; or
- b) require the Contractor to pay any dumping duty imposed under the Customs Tariff (Anti-Dumping) Act, subject to the Public Transport Authority agreeing that the goods can be accepted.

For more information on the issue of dumped goods contact the Department of Commerce at www.commerce.wa.gov.au

4.8.4 Gender Equality in Procurement

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 in your business/organisation can be viewed and downloaded at wa.gov.au.

For further information about this disclosure clause, refer to the [Gender Equality in Procurement Guideline](#).

For the purposes of this section 4.8.4, '**relevant employer**' has the meaning given in the *Workplace Gender Equality Act 2012* (Cth) and includes a:

- a) standalone organisation that employs 100 or more people;
- b) corporate structure with 100 or more employees across all entities; and
- c) global organisation with 100 or more domestic Australian employees across Australia.

In order to comply with the Gender Equality in Procurement requirements, the Respondent must provide the required information as part of its Offer in Book 2a - Information Requested from the

Respondent. If a Respondent is made up of members of an unincorporated joint venture, each member of that joint venture must provide the required information.

4.9 Quality Assurance

The minimum quality requirement for this Request is:

- A quality system/s or standard/s developed by recognised professional or industry groups, organizations or associations (including government) as complying with the requirements of AS/NZS ISO 9001:2016 that provide evidence of system implementation and which conduct ongoing system reviews.

Respondents may also provide information, as part of their response to the selection criteria, in relation to existing organisational quality requirements such as:

- a) internationally recognised quality system standards (AS/NZS ISO 9001:2016);
- b) industry developed systems/standards for assuring quality; or
- c) quality plans (e.g. documents setting out the specific quality practices, sequence of activities and resources relevant to the Contract).

5 INSTRUCTIONS ON SIGNING THE CONTRACT

5.1 Sole Traders

If you are signing the Contract as a sole trader who does not use a company structure but who may or may not use a registered business name, please sign the Contract in the presence of an independent adult witness, and have the witness sign in the space indicated for the witness. The witness must also print their name and address in full in the spaces provided.

5.2 Partnerships

If you and one or more other persons are the owners of the business (which may or may not operate under a business name), then you and the other persons are the Contractor for the purposes of the Contract and each member of the partnership must sign the Contract in their personal capacity. The signing procedure set out in section 5.1 above applies with the signature of each member of the partnership to be witnessed.

5.3 Companies

If the contractor is a company, then the appropriate method of signing the Contract depends on various facts:

- a) if the company has two or more directors, and the company's constitution requires the company to execute documents using a common seal, then the company must execute the document by having the directors pass a resolution to permit the Contract to be signed, and then having two directors, or one director and the company secretary, present when the common seal of the company is affixed or stamped on the last page of the Contract, where indicated against the company's name. The two directors (or one director and one secretary) must then sign where indicated on the last page of the Contract and print their name in full underneath their signature. No further witness is required.
- b) if the company has two or more directors, and the company's constitution does not require the company to execute documents using a common seal, then the company may execute the document by having the directors pass a resolution to permit the Contract to be signed, and then having two directors, or one director and the company secretary sign where indicated on the last page of the Contract and print their name in full underneath their signature. No further witness is required.
- c) if the company has only one person acting as sole director and sole company secretary, and the company's constitution requires the company to execute documents using a common seal, then the company must execute the document by having the sole director sign a note of a decision to permit the Contract to be signed, and then that sole director/secretary must be present when the common seal of the company is affixed or stamped on the last page of the Contract, where indicated against the company's name. The sole director/secretary is then required to sign where indicated on the last page of the Contract and print their name in full underneath their signature. No further witness is required.
- d) if the company has only one person acting as sole director and sole company secretary, and the company's constitution does not require the company to execute documents using a common seal, then the company may execute the document by having the sole director/secretary sign a note of a decision to permit the Contract to be signed, and then that sole director/secretary must sign where indicated on the last page of the Contract and print their name in full underneath their signature. No further witness is required.

5.4 Trustees of Family Trusts

If you are signing as trustee of your family trust, then:

- a) if you are a natural person(s) acting as trustee of the family trust, then follow the method for signing set out for sole traders at section 5.1 above;
- b) if a company is acting as trustee of the family trust, then have the company execute the Contract as set out in section 5.3 above, depending on whether the company has one or more directors and whether the company's constitution requires the company to execute documents using a common seal.

5.5 Incorporated Associations

If the Contractor is an incorporated association incorporated under the *Associations Incorporation Act 2015* (WA), being essentially an organisation where any profits are not distributable to members, then please sign the Contract as required by your Association's rules. The rules would normally require the Association to execute Contracts under common seal. Please provide the PTA with a copy of your rules.

5.6 Co-operative Companies

If the contractor is a co-operative company, then please execute the contract as required by your rules. Please provide the PTA with a copy of your rules.