

RWWA CONDITIONS OF PURCHASE

1. Cost of Submitting an Offer

RWWA will not be liable for any payment to a Respondent:

- (a) For any costs, losses or expenses incurred by a Respondent in preparing their Offer; or
- (b) In respect of any discussions, enquiries or requests for details or information made by or on behalf of RWWA after the Offer of Quotations/Proposals.

2. Access to Information

- (1) By lodging an Offer for this purchase, the Respondent authorises RWWA to make available, to the extent permitted by law, and in accordance with RWWA's FOI Statement and Privacy Policy information dealing with the Respondent's performance during any subsequent contract.
- (2) As part of the evaluation of Offers, RWWA may take into account any information about the Respondent that RWWA receives from any source.

3. Late Offers

Offers received after the closing time and date may not be accepted for evaluation subject to the following conditions:

Mishandling by RWWA

A late Offer shall be deemed to have been mishandled by RWWA if it was received and endorsed prior to the Offer closing time at front counter reception but not transferred to the Tender Box by closing time stipulated on the Purchase Document. (A receipt may be issued upon request).

Mishandling by Official Postal or Courier Service

A late Offer shall be deemed to have been mishandled by an official postal / courier service if it was accepted by the service by the times specified below for delivery or transmission to the nominated Tender Box but not delivered to the Tender Box by the closing time and date:

- (1) Postal deliveries from Australia: At least 24 hours (1 days) prior to the deadline for lodgement of offers;
- (2) Postal deliveries from overseas countries including New Zealand: At least 72 hours (3 days) prior to the deadline for lodgement of offers.

Evidence

In determining a late Offer case, RWWA shall rely on the following evidence:

- (1) Mishandling by RWWA: The date/time imprint impressed on the Offer documents by RWWA or the personal endorsement of the officer taking receipt of the Offer;

- (2) Mishandling by Official Postal Service: In the first instance, the official stamps or marks affixed to or impressed on the Offer or the envelope or container enclosing the Offer. Should this be inconclusive, the Respondent will be requested to provide supporting evidence in the form of receipts or certifications issued by the official postal service. No other marks or documents will be accepted as evidence.

4. Purchase Validity Period

All offers shall remain valid and open for acceptance for a minimum period of three (3) months from the closing date of the Offer.

5. Financial Checks

RWWA reserves the right to research and examine the financial capacity of Respondents.

6. Disclosure of Criminal Convictions or Charges

Respondents with prior criminal convictions, charges against them, or charges pending for offences involving dishonest or fraudulent conduct, or who have knowledge of or been informed of such charges or convictions against their Directors, employee/s or subcontractors, could be disqualified from consideration for this contract.

7. Acceptance of Offers

Unless otherwise stated offers may be for all or part of the requirement and may be accepted by RWWA either wholly or in part. RWWA is not bound to accept the lowest price and may reject any or all offers submitted.

8. Conditions of Purchase

Offers shall be deemed to have been made on the basis of and to incorporate, where appropriate, the RWWA Conditions of Purchase. Unless otherwise agreed between the parties the basis of a contract will be the RWWA's Purchase Document, the Respondent's Offer and any other written agreements signed between the parties. A specific contract may be negotiated between the parties and endorsed by legal representatives.

9. Precedence of Documents

Where there is a conflict between this document and any other document the provisions of this document shall prevail unless otherwise agreed between the parties.

10. Alternative Offers

- (1) Offers submitted as Alternative Offers shall in all cases arising be clearly marked "ALTERNATIVE OFFER" and may be accompanied by a Conforming Offer.
- (2) RWWA may in its absolute discretion reject any such offer as invalid.

11. Respondents to Inform Themselves

Respondents shall be deemed to have:

- (1) Examined the Purchase Document and any other information available in writing to Respondents for the purpose of submitting a Quotation/Proposal;
- (2) Examined all further information relevant to the risks, contingencies, and other circumstances having an effect on their Offer which is obtainable by the making of reasonable enquiries; and
- (3) Satisfied themselves as to the correctness and sufficiency of their offer including prices, which shall be deemed to cover the cost of complying with all the conditions of the Contract and of all matters and things necessary for the due and proper performance and completion of the work described therein.

12. Quality Assurance

RWWA will give strong consideration to the awarding of a contract for the supply of goods and services to a supplier meeting the following quality requirements:

- (1) Internationally recognised quality system and standards relevant to the proposed purchase;
- (2) Industry developed systems/standards for assuring quality;
- (3) Quality plans (e.g. documents setting out the specific quality practices, sequence of activities and resources relevant to the contract); or
- (4) Assurance based on buyer/RWWA inspection (i.e. inspection of goods against the order description/specification on receipt or inspection of services on completion).

Any such assessment will be undertaken in addition to value for money considerations.

13. The Respondent

The Respondent shall be a person or organisation named as the Respondent in the INFORMATION TO BE SUPPLIED BY RESPONDENT and whose execution appears on the OFFER BY RESPONDENT.

Upon acceptance of the offer, the Respondent shall become the Contractor.

14. Ownership Of Offer Responses

All documents, materials, articles and information submitted by the Respondent as part of, or in support of an offer shall become the property of RWWA and will not be returned to the Respondent at the conclusion of the purchase process PROVIDED that the Respondent shall be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided in the Contract or agreed between the parties.

15. Disclosure of Contract Information and Documents

- (1) Documents and other information relevant to the contract may be disclosed when required by law under the *Freedom of Information Act 1992*, tabling of documents in Parliament or under a Court order.

- (2) Disclosure of personal information shall be done in accordance with RWWA's FOI Statement and Privacy Policy.

16. Access by the Auditor General

The Respondent acknowledges that, notwithstanding any provisions of this Contract to the contrary, the powers and responsibilities of the Auditor General for the State of Western Australia under the *Financial Administration and Audit Act 1985 (WA)* are not limited or affected by the terms of the Contract.

17. Bids from Tertiary Institutions and Government Bodies

- (1) Bids from Tertiary Institutions and Government Bodies (Local, State or Commonwealth) shall not be accepted unless they have been calculated on a full commercial basis and without any form of subsidy.
- (2) Confirmation shall be in the form of a letter from the relevant CEO advising that the offer has been calculated on a full commercial basis.

18. Offers of Employment / Gifts / Hospitality

- (1) Respondents shall not approach any RWWA employee associated with this purchase, during the purchase period in order to:
 - (a) Make an offer of employment with the Respondent or any related entity; or
 - (b) Suggest that employment may be available with the Respondent or any related entity; or
 - (c) Offer any gift or hospitality to any employee during the Offer period.
- (2) A Respondent already dealing with an employee on an offer of employment at the time of the purchase, or who is approached by an employee seeking employment during the purchase process shall promptly declare to RWWA that a potential conflict of interest has arisen.
- (3) If evidence suggests that a Respondent has acted contrary to the above, during the purchase process they may not be allowed to continue in the process unless the Respondent can demonstrate it has *bona fide* reasons for dealing with an employee during the purchase process. Written approval from the RWWA CEO shall be obtained written before proceeding or continuing with any approach or negotiation.

Goods and Services Tax

- (1) Receipt and payment of invoices and any financial transactions shall be undertaken in accordance with A New Tax System (Goods and Services Tax) Act 1999 and (where the context permits) includes the Regulations and Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made there under and any other written law dealing with GST applying for the first time being in the State of Western Australia.
- (2) The Contract Price shall be inclusive of all applicable GST at the rate in force for the time being.

19. Period of Contract and Termination

The Contract shall be in force for a period agreed by the parties however not exceeding a period of three years. However, in the event of the Contractor failing in any manner to carry out the Contract to RWWA's satisfaction, RWWA may forthwith terminate the Contract with one month written notice to the Contractor.

20. Performance of Services

- (1) The Contractor shall perform and carry out the Services at all times in a conscientious, expeditious and professional manner. Where the Contractor is required to provide or use equipment, such equipment shall be suitable for the work undertaken and shall be maintained by the Contractor in good and proper working conditions.
- (2) The Contractor warrants that its employees and agents are competent and have all necessary skills, training and qualifications to carry out the Services in accordance with these conditions.

21. Confidentiality

- (1) The nature of this service is such that the Contractor and all the personnel working on projects encompassed under this Contract shall be required to treat all aspects of projects, including oral as well as written material made available during the project as confidential.
- (2) A breach of confidentiality shall be considered a breach of the Contract and shall be grounds for termination of the Contract.

22. Public Disclosure

The Contractor shall not use this Contract or RWWA's name for promotional purposes, without the prior written consent of RWWA.

23. Orders and Payment

RWWA will request services and pay accounts directly to the Contractor. A Tax Invoice shall be issued by the 15th of each month with payment being made at the end of the month.

24. Security

The Contractor shall, when attending RWWA's premises or facilities, comply with all reasonable directions and procedures relating to occupational health (including RWWA's smoke free work place policy) and safety and security in effect for those premises or in regard to those facilities, as notified by RWWA.

25. Access to Contractors Premises

The Contractor shall at all reasonable times allow RWWA's personnel access to the premises occupied by the Contractor where the services are being undertaken and shall permit those persons to inspect the performance of the Contractor and any Contract Material or other material relevant to this Contract.

26. Negation of Employment, Partnership or Agency

- (1) The Contractor shall not represent itself, and shall ensure that its employees do not represent themselves as being employees, partners or agents of RWWA.
- (2) The Contractor shall not by virtue of this Contract be or for any purpose be deemed to be an employee, partner or agent of RWWA.

27. Contractor Personnel

- (1) RWWA and the Contractor may agree on the names and roles of the personnel who will perform all or some of the services under the Contract and the Contractor shall not replace any such personnel without the prior written agreement of RWWA.
- (2) RWWA may give notice requiring the Contractor to remove personnel from work in respect of the Contract. The Contractor shall promptly arrange for removal of such personnel and their replacement with personnel acceptable to RWWA.

28. Conflict of Interest

- (1) The Contractor warrants that, at the date of signing this Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract. If, during the term of this Contract, a conflict or risk of conflict of interest arises, the Contractor undertakes to notify RWWA immediately in writing of that conflict or risk.
- (2) The existence of, or failure to declare such conflict of interest will entitle RWWA to terminate the Contract.

29. Intellectual Property Rights

- (1) For the purposes of this clause "Intellectual Property" means all intellectual property rights, including, without limitation Patents, copyright, rights in circuit layouts, plant breeders' rights, registered designs, trade marks, and the right to have confidential information kept confidential and any application or right to apply for registration of any of those rights.
- (2) Unless the parties provide otherwise in writing, the title, copyright and all other rights to the intellectual property in and to all documents, photographs, drawings, pictures, designs, films, slides, video tapes, audio tapes, objects, displays and other materials of whatsoever kind produced, created, designed, devised or made by, or on behalf of the Contractor for the purposes of this Contract shall forthwith vest in RWWA upon payment to the Contractor of the price payable in accordance with the Contract.
- (3) Nothing in this clause will affect the ownership of any pre existing intellectual property.
- (4) These conditions do not affect the intellectual property rights in items that existed prior to the date of the engagement of the Contractor (the pre-existing intellectual property), but the Contractor hereby grants and must ensure that relevant third parties grant to RWWA, a non-exclusive, non-transferable, irrevocable licence:
 - (a) To use and reproduce the pre-existing intellectual property for its own purposes; and

- (b) To perform any other act with respect to the pre-existing intellectual property and to manufacture, sell, hire or otherwise exploit a product or process, or to provide a service, or to license any third party to do any of those things in respect of the pre-existing intellectual property, but only as part of the intellectual property developed under the Contract.
- (4) The Contractor warrants that it:
- (a) Has the right to grant the licences granted by it; and
 - (b) Services it supplies or the intellectual property items it provides to RWWA pursuant to the Contract will not infringe the intellectual property rights of a third party.
- (5) The Contractor agrees at all times to indemnify RWWA and its respective officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability incurred or suffered by any of those indemnified where such loss of liability was caused by the services supplied by the Contractor or the intellectual property items provided by the Contractor to RWWA infringing the intellectual property rights of any third person.
- (6) The Contractor at its own cost must do all things reasonably requested by RWWA including executing documents, to enable RWWA to further assure the rights assigned under this clause.

30. Sub-Contracting

- (1) Work in respect of this Contract shall not be sub-contracted, in whole or in part, without the prior written approval of RWWA.
- (2) Any approval to engage a sub-Contractor to provide any part of the services required under this Contract shall not relieve the Contractor from any of the liabilities or obligations under this Contract. The Contractor shall be responsible for the work of the sub-Contractor or any employee or agent of the sub-Contractor and guarantee that all goods or services provided by the sub-Contractor and furnished under the Contract shall be free from deficiencies in design, performance, materials and workmanship.

31. Awards and Workplace Agreements

- (1) With respect to all work done in Western Australia under the Contract, the Contractor shall observe, perform and comply in all material respects with all relevant Industrial Awards, Registered Workplace Agreements, Industrial Agreements and orders of Competent Courts or Industrial Tribunals applicable to the work to be done under the Contract.
- (2) Failure by the Contractor to comply with this requirement shall entitle RWWA by notice in writing to the Contractor to forthwith terminate the Contract, but without prejudice to any other rights or remedies of RWWA.

32. Indemnity and Insurance

- (1) Where required and where applicable the Contractor shall arrange and maintain insurance policies to the satisfaction of RWWA to cover its liabilities to RWWA as follows:

Public Liability: Covers liability for bodily injury and property damage to third parties arising from the Contractor's activities and caused by an accident or occurrence.

Products Liability: Covers liability for bodily injury and property damage to third parties arising out of or in connection with any products or goods manufactured, constructed, erected, installed, repaired, serviced, sold or supplied by the Contractor.

Professional Liability: Covers liability to third parties claims for bodily injury, property damage and financial losses resulting from any act, error or omission in the conduct of the business which breaches the professional duty of care.

(Definition of a Professional: Any person or organisation that engages in an activity which involves giving advice or provides services of a skilful nature or character is expected by law to show a higher than average amount of competence associated with the discharge of those duties. If they fail to maintain this level of performance then they may be considered negligent and potentially liable for compensation or damages caused by their negligence. A good barometer for a professional exposure is to determine whether or not a financial loss, bodily injury or property damage could be suffered by the Public Authority as a result of advice given or services provided by the person or organisation. If a loss, injury or damage could occur, and then a professional liability exposure exists.)

Construction Insurance: Covers physical loss of or damage to property forming part of the construction works from any cause or event not otherwise excluded. The Policy can also extend to include the legal liability of the Contractor to pay compensation for bodily injury and property damage to third parties arising out of the construction works.

Medical Treatment Liability: Covers the legal liability of physicians, dentists and health care providers to pay compensation for personal injury or death of a person arising from the rendering of or failure to render medical, health or dental services.

Motor Vehicle Third Party: Motor vehicle third party liability insurance (in addition to any statutory third party insurance requirements) covering legal liability to pay compensation for property damage or bodily injury, which arises out of the use of any motor vehicle used in connection with the Services.

- (2) The successful Respondent will be required to provide copies of insurance coverage within 14 days of signing the contract.

33. Police Clearances

Where required and where applicable the successful Respondent will be required to provide a Police Clearance within 14 days of signing the contract for all personnel working on the project.

34. Dispute Resolution

- (1) In the event that any dispute arises between the parties ('Dispute'), a party must not take any action legal or otherwise in respect of the Dispute (except legal action for urgent interlocutory relief) until it has complied with this clause.

- (2) The party claiming a Dispute has arisen must give written notice to the other party specifying the nature of the Dispute ('Dispute Notice').
- (3) Within 14 days from the date of receipt of the Dispute Notice, the Managing Director or Chief Executive Officer of each party shall negotiate in good faith in an endeavour to resolve the Dispute.
- (4) If the Dispute is not settled, then the parties will endeavour, within 21 days of receiving the Dispute Notice, to settle the Dispute by mediation to be conducted by a mediator independent of the parties or, failing agreement, by a person appointed by the Chair of LEADR or his or her nominee.
- (5) If the Dispute is not settled, then any party involved in the Dispute may, within 28 days of the Dispute Notice, give notice ('Arbitration Notice') to the other party requiring that the Dispute be dealt with.
- (6) If the Dispute is not resolved, such Dispute, matter or difference will be referred to a single arbitrator if the parties agree upon one, or otherwise, to two arbitrators to be appointed by the parties hereto respectively in accordance with the provisions of the Commercial Arbitration Act 1985 (WA) or any statute for the time being replacing, extending or modifying the same.

35. Force Majeure

- (1) A party will be released from its respective obligations under this Agreement if it fails to observe or perform those obligations as a result of an event of national emergency, war, prohibitive government regulations or any other cause beyond the reasonable control of that party.
- (2) The parties are to use their reasonable endeavours to remedy the event of circumstances giving rise to that force majeure event. If the parties have used such reasonable endeavours and the event of force majeure is still continuing all monies due under this Agreement for the period immediately prior to the force majeure event will be payable immediately.

36. Notice

Any notices to be given hereunder will be in writing and will be signed for or on behalf of the party giving such notice and will be given to the party at the address set alongside that party's name at the commencement of this Agreement (or such other address as the party may hereafter nominate by notice in writing to the other parties) or at such facsimile number as a party may hereafter nominate by notice in writing to the other parties and will be deemed to be given or served:

- (a) Where sent by post: seven days after the date of posting;
- (b) Where sent by facsimile: on the same day as despatched, provided that a confirmation copy is posted;
- (c) Where delivered personally; on the date of actual delivery.

37. Severability

If any provision of this Agreement becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions will not be affected or impaired and the remaining provisions of this Agreement will continue in full force and effect as if the offending provision had been deleted from this Agreement.

38. Governing Law

This Agreement will be read and construed according to the laws of Western Australia and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia.

39. Relationship of Parties

Nothing in this Agreement is to be construed as establishing a relationship of employer, employee, joint venture, partnership or otherwise.

40. Whole Agreement

This Agreement supersedes all previous agreements and contracts between the parties in respect of the matters dealt with in this Agreement.