



## REQUEST FOR TENDER

<b>Request for Tender (RFT)</b>	<b>SUPPLY AND DELIVERY OF GRAVEL BASECOURSE MATERIAL</b>
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<b>Deadline:</b>	<b>2.00pm (AWST) Tuesday 4 August 2022</b>
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<b>Address for Delivery:</b>	THE TENDER BOX Shire of Waroona 52 Hesse Street WAROONA WA 6215
<b>Postal Address:</b>	Or Chief Executive Officer Shire of Waroona PO Box 20 WAROONA WA 6215

<b>RFT Number:</b>	T2022009
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# 1. PRINCIPAL'S REQUEST

## 1.1 CONTRACT REQUIREMENTS IN BRIEF

This document is an invitation to tender for the supply of base course material consisting of durable pebble in soil mortar to the Shire of Waroona, on an as required basis. Supply will be based on 'supply and supply and delivery'.

The Principal expects to require in the order of 7000 cubic metres of this material in the duration of the contract however this is subject to increase or decrease at the sole discretion of the Principal.

The contract will commence as soon as practical as advised in the letter of acceptance issued to the successful Tenderer and will run for the period until the contract concludes 30<sup>th</sup> June 2023.

The Contractor will:

Provide all Occupation Safety and Health documentation

Complete pre-qualification WH&S induction

Complete site induction with principal representative

A full statement of the goods and/or services required under the proposed contract appears in the Specification.

The successful Tenderer will be required to enter into a Contract with the Principal.

## 1.2 TENDER DOCUMENTS

This Request for Tender is comprised of the following parts:

- (a) Part 1 – Principal's Request (read and keep this part);
- (b) Part 2 – Specification and/or plans/drawings (read and keep this part);
- (c) Part 3 – Tenderer's Offer (complete and return this part);
- (d) Part 4 – Appendix A – Special Conditions of Contract (read and keep this part); and
- (e) Part 5 – Appendix B – Site Inspection Report (read and keep this part); and
- (f) Part 6 – Appendix C – General Conditions of Contract (read and keep this part).

## 1.3 DEFINITIONS

Below is a summary of some of the important defined terms used in this Request:

<b>Attachments:</b>	The documents you attach as part of your Tender;
<b>Contractor:</b>	Means the person or persons, corporation or corporations whose Tender is accepted by the Principal, and includes the executors or administrators, successors and assigns of such person or persons, corporation or corporations;
<b>Deadline:</b>	The deadline for lodgement of your Tender;
<b>General Conditions of Contract:</b>	Means the General Conditions of Contract nominated in Part 5;
<b>Offer:</b>	Your offer to be selected to supply the Requirements;
<b>Principal:</b>	Shire of Waroona;
<b>Request:</b>	This document;
<b>Requirements:</b>	The goods and/or services requested by the Principal;

<b>Selection Criteria:</b>	The criteria used by the Principal in evaluating your Tender;
<b>Special Conditions:</b>	The additional contractual terms nominated in Part 4;
<b>Specification:</b>	The statement of Requirements that the Principal requests you to provide if selected;
<b>Tender:</b>	Completed Offer form, response to the Selection Criteria and Attachments;
<b>Tenderer:</b>	Someone who has or intends to submit an Offer to the Principal.

## 1.4 HOW TO PREPARE YOUR TENDER

- (a) Carefully read all parts of this document.
- (b) Ensure you understand the Requirements.
- (c) Complete and return the Offer (Part 3) in all respects and include all Attachments.
- (d) Make sure you have signed the Offer Form and responded to all of the Selection Criteria.
- (e) Lodge your Tender before the Deadline.

## 1.5 CONTACT PERSONS

Tenderers should not rely on any information provided by any person(s) other than those listed below:

### CONTRACTUAL & SPECIFICATION ENQUIRIES

**Brad Oborn**

Email: [mwws@waroona.wa.gov.au](mailto:mwws@waroona.wa.gov.au)

0428 103 720

### GENERAL ENQUIRIES

Email: [depot@waroona.wa.gov.au](mailto:depot@waroona.wa.gov.au)

9733 7817

## 1.6 PRE QUALIFICATION REQUIREMENTS

Not applicable.

## 1.7 TENDER BRIEFING/SITE INSPECTION

Not applicable.

## 1.8 EVALUATION PROCESS

This is a Request for Tender (RFT).

Your Tender will be evaluated using information provided in your Tender.

The following evaluation methodology will be used in respect of this Request:

- (a) Tenders are checked for completeness and compliance. Tenders that do not contain all information requested (e.g., completed Offer form and Attachments) may be excluded from evaluation.
- (b) Tenders are assessed against the Selection Criteria. Contract costs are evaluated (e.g. tendered prices and other relevant whole of life costs are considered).
- (c) The most suitable Tenderers may be short listed and may also be required to clarify their Tender, make a presentation, demonstrate the product/solution offered and/or open premises for inspection. Referees may also be contacted prior to the selection of the successful Tenderer.

A contract may then be awarded to the Tenderer whose Tender is considered the most advantageous Tender to the Principal.

## 1.9 SELECTION CRITERIA

The Contract may be awarded to a sole Tenderer who best demonstrates the ability to provide quality products and/or services at a competitive price. The tendered prices will be assessed together with qualitative and compliance criteria to determine the most advantageous outcome to the Principal.

The Principal has adopted a best value for money approach to this Request.

This means that, although price is considered, the Tender containing the lowest price will not necessarily be accepted, nor will the Tender ranked the highest on the qualitative criteria.

A scoring system will be used as part of the assessment of the qualitative criteria. Unless otherwise stated, a Tender that provides all the information requested will be assessed as satisfactory. The extent to which a Tender demonstrates greater satisfaction of each of these criteria will result in a greater score. The aggregate score of each Tender will be used as one of the factors in the final assessment of the qualitative criteria and in the overall assessment of value for money.

### 1.9.1 COMPLIANCE CRITERIA

These criteria are detailed within Part 3 of this document and will not be point scored. Each Tender will be assessed on a "Yes"/"No" basis as to whether the criterion is satisfactorily met. An assessment of "No" against any criterion may eliminate the Tender from consideration.

### 1.9.2 QUALITATIVE CRITERIA

In determining the most advantageous Tender, the Evaluation Panel will score each Tenderer against the qualitative criteria as detailed within Part 3 of this document. Each criterion will be weighted to indicate the relative degree of importance that the Principal places on the technical aspects of the goods or services being purchased.

**NOTE: It is essential that Tenderers address each qualitative criterion.** Information that you provide addressing each qualitative criterion will be point scored by the Evaluation Panel.

Failure to provide the specified information may result in elimination from the Tender evaluation process or a low score.

### 1.9.3 PRICE CONSIDERATIONS

#### CLAUSE A: WEIGHTED COST CRITERIA

The weighted price method is used where price is considered to be crucial to the outcome of the contract. The price is then assessed with quality.

Criteria	Weighting
Tendered price	50%

#### CLAUSE B: NON WEIGHTED COST CRITERIA

Not applicable.

### 1.10 PRICE BASIS

#### OPTION A: FIXED PRICES

Prices will be fixed for the duration of the contract. (12 months)

#### OPTION B: VARIABLE PRICES

Not used.

### 1.11 THE PRINCIPAL'S POLICIES THAT MAY AFFECT SELECTION

The following policies may affect this Tender:

- Policy FP001 – Purchasing and Procurement Policy
- Policy FP002 – Regional Price Preference Policy
- Policy CGP014 – Work Health and Safety Statement.
- Policy CGP015 – Contractors Risk and Insurance

### 1.12 CONDITIONS OF TENDERING

#### 1.12.1 LODGEMENT OF TENDERS AND DELIVERY METHOD

The Tender must be lodged by the Deadline. The Deadline for this Request is **2:00 p.m. Tuesday 4 August 2022** in Australian Western Standard Time.

The Tender is to be:

- placed in a sealed envelope clearly endorsed with the Tender number and title as shown on the front cover of this Request; and
- delivered by hand and placed in the Tender Box at the Shire of Waroona Administration Office, 52 Hesse Street, Waroona (by the Tenderer or the Tenderer's private agent) or sent through the mail to

Chief Executive Officer  
Shire of Waroona  
PO Box 20  
WAROONA WA 6280

**Electronic mail Tenders and Tenders submitted by facsimile will not be accepted.**

Tenderers must ensure that they have provided **Two (2)** signed copies of their Tender (one to be marked "ORIGINAL", the other(s) to be marked "COPY"). Any brochures or pamphlets must be attached to both the original and the copies.

Where a hard copy is requested, all copies must be bound, and the original must be unbound and clipped (not stapled). All pages must be numbered consecutively and the Response must include an index.

### 1.12.2 REJECTION OF TENDERS

A Tender will be rejected without consideration of its merits in the event that:

- (a) it is not submitted before the Deadline; or
- (b) it is not submitted at the place specified in the Request; or
- (c) if it fails to comply with any other requirements of the Request.

### 1.12.3 LATE TENDERS

Tenders received:

- (a) after the Deadline; or
  - (b) in a place other than that stipulated in this Request
- will not be accepted for evaluation.

### 1.12.4 ACCEPTANCE OF TENDERS

Unless otherwise stated in this Request, Tenders may be for all or part of the Requirements and may be accepted by the Principal either wholly or in part. The Principal is not bound to accept the lowest Tender and may reject any or all Tenders submitted.

### 1.12.5 DISCLOSURE OF CONTRACT INFORMATION

Documents and other information relevant to the contract may be disclosed when required by law under the *Freedom of Information Act 1992* or under a Court order.

All Tenderers will be given particulars of the successful Tenderer(s) or advising that no Tender was accepted. The principal will not provide details of tendered offers.

### 1.12.6 ALTERNATIVE TENDERS

**All Alternative Tenders MUST be accompanied by a conforming Tender.**

Tenders submitted as Alternative Tenders or made subject to conditions other than the General and Special Conditions of Contract must in all cases arising be clearly marked "ALTERNATIVE TENDER".

The Principal may in its absolute discretion reject any Alternative Tender as invalid.

Any printed "General Conditions of Contract" shown on the reverse of a Tenderer's letter or form will not be binding on the Principal in the event of a Contract being awarded unless the Tender is marked as an Alternative Tender.

### 1.12.7 TENDER VALIDITY PERIOD

All Tenders will remain valid and open for acceptance for a minimum period of ninety (90) days from the Deadline or forty-five (45) days from the Council's resolution for determining the Tender, whichever is the later unless extended on mutual agreement between the Principal and the Tenderer in writing.



### **1.12.8 GENERAL CONDITIONS OF CONTRACT**

Tenders will be deemed to have been made on the basis of and to incorporate the General Conditions of Contract for the Supply of Goods and Provision of General Services - refer to Part 5.

### **1.12.9 PRECEDENCE OF DOCUMENTS**

In the event of there being any conflict or inconsistency between the terms and conditions in this Request and those in the General Conditions of Contract, the terms and conditions appearing in this Request will have precedence.

### **1.12.10 TENDERERS TO INFORM THEMSELVES**

Tenderers will be deemed to have:

- (a) examined the Request and any other information available in writing to Tenderers for the purpose of tendering;
- (b) examined all further information relevant to the risks, contingencies, and other circumstances having an effect on their Tender which is obtainable by the making of reasonable enquires;
- (c) satisfied themselves as to the correctness and sufficiency of their Tenders including tendered prices which will be deemed to cover the cost of complying with all the Conditions of Tendering and of all matters and things necessary for the due and proper performance and completion of the work described therein;
- (d) acknowledged that the Principal may enter into negotiations with a chosen Tenderer and that negotiations are to be carried out in good faith; and
- (e) satisfied themselves they have a full set of the Request documents and all relevant attachments.

### **1.12.11 ALTERATIONS**

The Tenderer must not alter or add to the Request documents unless required by these Conditions of Tendering.

The Principal will issue an addendum to all registered Tenderers where matters of significance make it necessary to amend or supplement the issued Request documents before the Deadline.

### **1.12.12 RISK ASSESSMENT**

The Principal may have access to and give consideration to:

- (a) any risk assessment undertaken by Dunn and Bradstreet or any other credit rating agency; and
- (b) any information produced by the Bank, financial institution, or accountant of a Tenderer

so as to assess that Tender and may consider such materials as tools in the Tender assessment process.

### **1.12.13 OWNERSHIP OF TENDERS**

All documents, materials, articles and information submitted by the Tenderer as part of or in support of a Tender will become, upon submission, the absolute property of the Principal and will not be returned to the Tenderer at the conclusion of the Tender process PROVIDED

that the Tenderer shall be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

#### **1.12.14 CANVASSING OF OFFICIALS**

If a Tenderer, whether personally or by an agent, canvasses any of the Principal's Commissioners; Councillors (as the case may be) or Officers with a view to influencing the acceptance of any Tender made by it or any other Tenderer then, regardless of such canvassing having any influence on the acceptance of such Tender, the Principal may at its absolute discretion omit the Tenderer from consideration.

#### **1.12.15 IDENTITY OF THE TENDERER**

The identity of the Tenderer and the Contractor is fundamental to the Principal. The Tenderer will be the person, persons, corporation or corporations named as the Tenderer in Part 3 and whose execution appears on the Offer Form in Part 3 of this Request. Upon acceptance of the Tender, the Tenderer will become the Contractor.

#### **1.12.16 TENDER OPENING**

Tenders will be opened in the Principal's offices, following the advertised Deadline. All Tenderers and members of the public may attend or be represented at the opening of Tenders.

The names of the persons who submitted a Tender by the due Deadline will be read out at the Tender opening. No discussions will be entered into between Tenderers and the Principal's officers present or otherwise, concerning the Tenders submitted.

The Tender opening will be held at **2.00pm Tuesday 4th August 2022 (AWST)** or as soon as practicable thereafter at the Shire of Waroona Administration Offices, 52 Hesse Street, Waroona.

#### **1.12.17 IN-HOUSE TENDERS**

Prospective Tenderers are advised that the Shire will not be submitting a Tender in this instance.

## **2. SPECIFICATION**

### **2.1 INTRODUCTION**

This Specification shall be read in conjunction with the General Condition of Tender and the General Conditions of Contract for the Supply of Goods and the Provision of General Services.

The contract will commence as soon as practical as advised in the letter of acceptance issued to the successful Tenderer and will run for the period until the contract concludes 30th June 2023.

### **2.2 BACKGROUND INFORMATION**

The Shire has a need for quality gravel base course material for road construction and maintenance projects.

### **2.3 SCOPE OF WORK**

This document is an invitation to tender for the supply of base course material consisting of durable pebble in soil mortar to the Shire of Waroona, on an as required basis. Supply will be on the basis of 'supply, supply and delivery' delivery will be by trucks with a side tipper configuration only.

The Principal expects to require in the order of 7000 cubic metres of this material in the duration of the contract however this is subject to increase or decrease at the sole discretion of the Principal. Delivery sites refer 3.4.2 Price schedule.

The use of a side tipper truck/ trailer will be required for the delivery of materials.

The material shall be free from particles having any dimension greater than 50mm

The Gravel base course material to be supplied shall be tested with representative test results provided as part of the contractor's submission for this tender refer: 2.4.4 Testing

### **2.4 SPECIFIC REQUIREMENTS OF THE CONTRACT**

#### **2.4.1 UNIT OF MEASUREMENT**

All material supplied under this contract will be expressed in loose cubic metres and measured as per Clause 2.4.7.

#### **2.4.2 CONTRACT OPTIONS**

##### **Supply, Load and Delivery**

The Contractor will be responsible for the supply, loading and transportation of material from the contractor's quarry to the nominated site. The Principal has listed at Clause 3.4.2. – Price Schedule, the locations where the gravel will be required. Tenderers shall satisfy themselves as to these locations. Generally, the material will be required to be deposited on the road surface during construction operations or stockpiled as directed by the Principal's representative on site. In the case of any delivery to the Shire Depot, the material shall be stockpiled in an area as directed by the Principal. Pushing up and 'stacking' on site of any stockpiled material does not form part of this tender. Tenderers shall also provide a price for the material 'at the gate' of their pit and also a per kilometre rate for transport from their pit to any alternative site in the Shire of Waroona. This is to allow delivery of material to sites other than those listed in Clause 3.4.2. Should this option be required at some stage in the duration of the contract resulting from this tender, the lead length between the Contractor's pit and the Shire's required site shall be determined and agreed to by the Principal. The per kilometre rate will apply only to the loaded trip for each truck movement.

### 2.4.3 MATERIAL SPECIFICATIONS

The material shall be free from particles having any dimension greater than 50mm and free from clods, stumps, roots, sticks, vegetable matter or other deleterious materials. When the stockpiled material contains oversized material, the Contractor shall screen the stockpiles to ensure that the material does not contain more than 20% by mass of material retained on a 37.5mm sieve. The screen aperture shall be selected so that only the minimum quantity of material is removed from the existing stockpile to satisfy this requirement. Base Course material having any dimension greater than 50mm shall be deemed oversized and shall not be delivered to the pavement construction area.

The material shall conform to the following requirements.

#### **Particle Size Distribution**

The Particle Size Distribution shall be determined in accordance with Test Method WA 115.1. The particle size distribution of the portion passing a 37.5mm AS sieve shall conform to the grading limits shown in **Table 2.1**. The grading of material passing the 37.5mm sieve shall vary from course to fine in a uniform and consistent manner. The material shall not be gap graded as represented by the grading crossing from the maximum limit for one sieve size to the minimum limit for another sieve size, and shall conform as closely as possible to the specified target grading.

**Table 2.1 - Particle Size Distribution Gravel Base Course**

As Sieve Size (mm)	% Passing by Mass Target Grading	% Passing by Mass Minimum and Maximum Limits
37.5	100	100
19.0	86	72 – 90
9.5	64	50 - 78
4.75	47	36 - 58
2.36	35	25 - 44
1.18	27	18 - 35
0.600	21	13 – 28
0.425	18	11 - 25
0.300	16	9 – 22
0.150	12	6 – 17
0.075	9	4 - 13
0.0135	6	2 - 9

#### **Other Acceptance Limits**

The material shall also comply with the limits shown in **Table 2.2**.

**Table 2.2 - Other Acceptance Limits Gravel Base Course**

Test	Limits	Test Method
Liquid limit	25.0% Maximum	WA 120.2
Linear Shrinkage	2.0% Maximum	WA 123.1
Maximum Dry Compressive Strength	2.3MPa Minimum	WA140.1
California Bearing Ratio (Soaked 4 days with 4.5kg Surcharge) at 96% of MDD and 100% of OMC	80% Minimum	WA 141.1

Plastic Limit (%)		WA121.1
Plastic Index (%)	8.5% Maximum	WA122.1
Bulk Density of Aggregate (uncompacted)		AS1141.4

#### 2.4.4 TESTING

All testing of material will be as directed by the Principal at the expense of the Contractor and carried out by an approved NATA Testing Laboratory. Testing may be requested at any time or at any stage of delivery throughout the duration of the contract. The Base Course material to be supplied shall be tested with representative test results provided as part of the contractor's submission for this tender refer: 3.3.2 Qualitative Criteria – B. Tenderer's resources.

The aim of the testing is to ensure that the material supplied conforms consistently to the specifications in section 2.4.3 and that the product is not contaminated by clay and other materials not conforming to the specification. Test samples shall be taken from representative locations within the stockpile of gravel material set aside for the Principal.

#### 2.4.5 LICENSING OF EQUIPMENT

All mobile equipment shall be licensed for operation, including on roads or verges where necessary and shall have a valid roadworthiness inspection certificate for the period of the Contract.

Operators shall hold all relevant and current licences for the safe operation of all equipment.

No responsibility will be accepted by the Principal for any plant or materials left unattended by the Contractor (or any sub-contractors).

#### 2.4.6 QUALITY AND QUANTITY OF SUPPLY

If at any time during the progress of supplying material, plant or equipment appear to the Principal to be insufficient, inefficient or inappropriate to secure the quality and quantity of supply required, or the proper rates of progress, the Principal may order the Contractor to increase their efficiency, improve their character, augment their number, or to substitute plant or equipment as the case may be, and the Contractor must conform to such orders.

Failure by the Principal to demand such variations or additions shall not relieve the Contractor of its obligations to secure the quality and quantity of supply and the rate of progress necessary to complete the order within the time required by the Contract and to the requirements of the Contract.

#### 2.4.7 DETERMINATION OF SUPPLIED VOLUMES

Tenderers shall indicate in their response to Clause 3.4.4 the method by which they intend to determine and record supplied volumes (measured in loose cubic metres) both in the case of supply and load and supply, load and deliver. The material bulk density test to be supplied as part of the contractor's tender submission shall form part of the supply volume method. Tenderers shall also indicate the method by which they intend to notify the principal of the supplied volumes. Bulk Density Test refer: table 2.2.

The Principal reserves the right to reject any method put forward and implement alternative measurement arrangements as the Principal sees fit and at the sole discretion of the Principal at any time during the course of the contract.

#### 2.4.8 CONTRACTOR PERSONNEL PERFORMANCE

The Principal reserves the right to dismiss any person supplied by the Contractor that is suspected of; breaching OSH requirements; poor work performance or being insufficiently

skilled. Should this occur then the Contractor must provide suitable alternative personnel as soon as possible.

#### **2.4.9 DEFECTS LIABILITY**

The Contractor shall supply all material consistently in accordance with the specifications in section 2.4. Specific Requirements of the contract.

Any material found not to comply with the Specification will be returned to the Quarry, and all costs associated with removal from site, transportation, replacement and lost time will at the Contractors expense.

### **2.5 IMPLEMENTATION TIMETABLE**

#### **2.5.1 PURCHASE ORDERS**

The Principal will pre-order material according to its schedule, by written purchase order indicating the estimated quantity, rate of delivery and times for delivery. Subject to the work quantities being achieved by cumulative order, the Contractor shall supply the material specified within 24 hours of the last order, if so required by the Principal.

Order numbers may be issued by telephone, facsimile, email or paper copy.

#### **2.5.2 TIMING**

The normal hours of work will be within the hours of 7:30 am and 4:00 pm, Monday to Friday, or as may be required by the Principal or his authorised representative.

The Contractor shall be entitled only to such extensions of time for compliance with the Contract as the Principal, upon the written application of the Contractor, may in its absolute discretion grant in writing.

#### **2.5.3 DISRUPTION TO PROGRAMME**

The Contractor shall at the beginning of the day advise the Principal's Representative of any known breakdown or event which may affect the scheduled delivery or work for the day. Breakdowns or other events which occur during the day that may affect the scheduled delivery or work for the day shall be reported as soon as possible.

The Contractor shall liaise with the Principal's Representative for a suitable time period to recover lost ground.

No payment will be made for breakdown time.

### **2.6 COMPLIANCE WITH ACTS, REGULATIONS AND LOCAL LAWS**

The contractor (and any sub-contractors) are reminded that it is their responsibility to conform to, among others:

- Health (Miscellaneous Provisions) Act 1911
- Road Traffic Act 1974
- Motor Vehicle (Third Party Insurance) Act 1943
- Transport Act 1966
- Work Health & Safety Act 2020
- Environmental Protection Act 1986 and
- Mines Safety and Inspection Act 1994.

All Acts are deemed to include Amendments, Regulations, Codes of Practice and Guidelines.

## 2.7 OCCUPATIONAL SAFETY AND HEALTH

The Contractor (and any sub-contractors engaged by the Contractor) shall observe all requirements of the Work Health & Safety Act 2020 and Regulations with respect to providing a safe workplace. This includes plant and equipment and clothing, safety training for supervisors and employees and protection of the public.

All Contractor representatives must hold a current Construction Safety Awareness Training Card (Blue/ White Card).

The Contractor shall have an Occupational Safety and Health Management System, WHS Policy Statement, roles and responsibilities, General WHS procedures documented-Safe Operating Procedures, Public safety procedures, Induction and training procedures which all Contractor representatives adhere to. This documentation shall provide to the Manager of Works and Services or his authorised representative prior to pre-qualification induction also be reviewed by the Contractor annually and provided to the MWS or his authorised representative.

All Contractor representatives are required to undertake a Shire Pre-qualification Occupational Safety and Health induction course at their own expense at the Shire Depot or other venue as may be nominated by the Principals Representative, prior to commencing this service.

All Contractor representatives shall complete a site induction prior nominated start date by the Principals Representative

It is the responsibility of the Contractor to inform the Principal of any new Contractor representatives that have not undertaken the Shire induction course and to arrange at their own expense for these new representatives to attend an induction prior to commencing any works for the Shire.

Please note the principle has conducted a Site Inspection Report as per Appendix C, which is to be used as a guide for the Safety Management Plan. The identified hazards listed are to be used as a guide only. The hazards noted are those that have been identified when inspected, and the Shire of Waroona takes no responsibility for any hazards that have not been recorded. The contractor must still take responsibility and conduct a thorough site inspection and risk assessment as required under Occupational Safety and Health Act 1984 before any work can commence onsite.

## 2.8 TRAFFIC MANAGEMENT

The Contractor shall take all necessary actions to ensure that the Principal's assigned vehicles are assisted to achieve a safe and prompt turn round at the Contractors quarry.

The Principal will provide all necessary direction, signage and other control measures necessary for management of traffic in the vicinity of the work site. All traffic management measures shall be in place and fully operational before the Contractor commences the execution of any work.

The Contractor shall take all necessary actions to observe any traffic management arrangements in place at the time of delivery.

Should operators of plant under this contract be required as part of their duties to erect and maintain signage and undertake traffic management, they must be accredited in Basic Worksite Traffic Management (BWTM) and Traffic Controller (TC) in accordance with the Main Roads Western Australian "Traffic Management for Works on Roads Code of Practice".

## 2.9 ENVIRONMENTAL PROTECTION

The Contractor shall comply with the Environmental Protection Act 1986 and Codes of Practice, Guidelines and Regulations and any Amendments. Wherever practicable, environmentally friendly products shall be used.

The key requirements listed below shall be complied with such that Contractors assist in providing a service that is in harmony with the environment and operates in accordance with the principles of ecologically sustainable development.

An obligation is also implicit that the Contractor promotes conservation of the natural and built environment.

Key environmental requirements are:

1. Minimise disturbance and clearance of flora and fauna
2. Prevent weed infestation especially into native areas
3. Avoid unnecessary interruption or modification of natural or pre-existing drainage paths
4. Minimise removal or lopping of trees
5. Protect soil and water from contamination
6. Minimise and control soil erosion
7. Avoid unnecessary soil compaction
8. Protect native fauna habitats
9. Provide appropriate tools and properly maintained plant and equipment
10. Protect sites of cultural and natural heritage significance
11. Maintain the aesthetics of the area
12. Use waste minimisation management techniques; and
13. Any other relevant environmental issue that is applicable to each individual work site.



### 3. TENDERER'S OFFER

#### 3.1 OFFER FORM

The Chief Executive Officer  
Shire of Waroona  
52 Hesse Street  
**WAROONA WA 6215**

I/We \_\_\_\_\_  
(BLOCK LETTERS)

of \_\_\_\_\_  
(ADDRESS)

ABN/GST Status: \_\_\_\_\_ ACN (if any): \_\_\_\_\_

Telephone No: \_\_\_\_\_ Facsimile No: \_\_\_\_\_

E-mail: \_\_\_\_\_

#### **In response to T2022009 SUPPLY AND DELIVERY OF GRAVEL BASE COURSE MATERIAL:**

I/We agree that I am/We are bound by, and will comply with this Request and its associated schedules, attachments, all in accordance with the Conditions of Tendering contained in this Request signed and completed.

The tendered price is valid up to ninety (90) calendar days from the date of the Tender closing or forty-five (45) days from the Council's resolution for determining the Tender, whichever is the later unless extended on mutual agreement between the Principal and the Tenderer in writing.

I/We agree that there will be no cost payable by the Principal towards the preparation or submission of this Tender irrespective of its outcome.

The tendered consideration is as provided under the schedule of rates of prices in the prescribed format and submitted with this Tender.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

Signature of authorised signatory of Tenderer: \_\_\_\_\_

Name of authorised signatory (BLOCK LETTERS): \_\_\_\_\_

Position: \_\_\_\_\_

Address: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Name of witness: (BLOCK LETTERS): \_\_\_\_\_

Address: \_\_\_\_\_

## 3.2 TENDERER'S RESPONSE

The following checklist has been provided to assist you with your submission. Where it is necessary to provide additional information please ensure that all documents are clearly marked with the relevant attachment title to assist the evaluation panel with their assessment.

**NOTE:** All pages within Part 3 are to be completed and returned to the Principal as they form part of your Tender submission.

### 3.2.1 ORGANISATIONAL PROFILE

Attach a copy of your organisation structure and provide background information on your company and label it <b>"Organisation Structure"</b> .	<b>"Organisation Structure" Attachment 1</b> Tick if attached <input type="checkbox"/>
If companies are involved, attach their current ASIC company extracts search including latest annual return and label it <b>"ASIC Company Extracts"</b> .	<b>"ASIC Company Extracts" Attachment 2</b> Tick if attached <input type="checkbox"/>

### 3.2.2 REFEREES

Attach details of your referees, and label it <b>"Referees"</b> . You should give examples of similar work provided for your referees where possible.	<b>"Referees" Attachment 3</b> Tick if attached <input type="checkbox"/>
---	---

### 3.2.3 AGENTS

Are you acting as an agent for another party?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
If Yes, attach details (including name and address) of your principal and label it <b>"Agents"</b> .	<b>"Agents" Attachment 4</b> Tick if attached <input type="checkbox"/>

### 3.2.4 TRUSTS

Are you acting as a trustee of a trust?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
If Yes, in an attachment labelled <b>"Trusts"</b> : (a) give the name of the trust and include a copy of the trust deed (and any related documents); and (b) if there is no trust deed, provide the names and addresses of beneficiaries.	<b>"Trusts" Attachment 5</b> Tick if attached <input type="checkbox"/>

### 3.2.5 SUBCONTRACTORS

Do you intend to subcontract any of the Requirements?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
If Yes, in an attachment labelled <b>"Subcontractors"</b> , provide details of the subcontractor(s) including: (a) the name, address and the number of people employed; and (b) the Requirements that will be subcontracted.	<b>"Subcontractors" Attachment 6</b> Tick if attached <input type="checkbox"/>

**3.2.6 CONFLICTS OF INTEREST**

Will any actual or potential conflict of interest in the performance of your obligations under the Contract exist if you are awarded the Contract, or are any such conflicts of interest likely to arise during the Contract?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
If Yes, please supply in an attachment details of any actual or potential conflict of interest and the way in which any conflict will be dealt with and label it “ <b>Conflicts of Interest</b> ”.	<b>“Conflicts of Interest” Attachment 7</b> Tick if attached <input type="checkbox"/>

**3.2.7 FINANCIAL POSITION**

Are you presently able to pay all your debts in full as and when they fall due?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
Are you currently engaged in litigation as a result of which you may be liable for \$50,000 or more?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
If you are awarded the Contract, will you be able to fulfil the Requirements from your own resources or from resources readily available to you and remain able to pay all of your debts in full as and when they fall due?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
In order to demonstrate your financial ability to undertake this contract, in an attachment labelled “ <b>Financial Position</b> ” include a profit and loss statement and the latest financial return for you and each of the other proposed contracting entities, together with a list of financial referees from your bank and/or accountant.	<b>“Financial Position” Attachment 8</b> Tick if attached <input type="checkbox"/>

**3.2.8 QUALITY ASSURANCE**

The Tenderer should have internal quality assurance systems in place, ideally conforming to ISO 9001. Does your organisation have any quality assurance or quality management systems in place?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
If you propose to subcontract, does your subcontractor have a “third party” quality management system in place?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
Supply evidence or details of your quality assurance position and where relevant of your supplier’s or subcontractor’s position, in an attachment labelled “ <b>Quality Assurance</b> ”.	<b>“Quality Assurance” Attachment 9</b> Tick if attached <input type="checkbox"/>

### 3.2.9 INSURANCE COVERAGE

<p>The insurance requirements for this Request are stipulated in the Special Conditions. Tenderers are to supply evidence of their insurance coverage in a format as outlined below or in an attachment labelled “<b>Insurance Coverage</b>”. A copy of the Certificate of Currency is to be provided with this Tender response.</p>				<p><b>“Insurance Coverage” Attachment 10</b> Tick if attached <input type="checkbox"/></p>
Type	Insurer – Broker	Policy Number	Value (\$)	Expiry Date
Public Liability				
Workers Compensation and Rehabilitation (WCA)				
Motor Vehicle Insurance				

### 3.3 SELECTION CRITERIA

#### 3.3.1 COMPLIANCE CRITERIA

Please select with a Yes or No whether you have complied with the following compliance criteria:

Description of Compliance Criteria	
(a) Compliance with the Specification contained in the Request.	<input type="checkbox"/> Yes / <input type="checkbox"/> No
(b) Compliance with the Conditions of Responding contained in this Request.	<input type="checkbox"/> Yes / <input type="checkbox"/> No
(c) Compliance with all necessary Licences and Registrations.	<input type="checkbox"/> Yes / <input type="checkbox"/> No
(d) Compliance with the Delivery Date.	<input type="checkbox"/> Yes / <input type="checkbox"/> No
(e) Compliance with and completion of the Price Schedule.	<input type="checkbox"/> Yes / <input type="checkbox"/> No

#### 3.3.2 QUALITATIVE CRITERIA

Before responding to the following qualitative criteria, Tenderers must note the following:

- All information relevant to your answers to each criterion are to be contained within your Tender
- Tenderers are to assume that the Evaluation Panel has no previous knowledge of your organisation, its activities or experience
- Tenderers are to provide full details for any claims, statements or examples used to address the qualitative criteria; and
- Tenderers are to address each issue outlined within a qualitative criterion.

<p><b>A. RELEVANT EXPERIENCE</b></p> <p>Describe your experience in completing/ supplying similar requirements. Tenderers must, as a minimum, address the following information in an attachment and label it “<b>Relevant Experience</b>”:</p> <ul style="list-style-type: none"> <li>a) Provide details of similar work</li> <li>b) Provide the scope of the Tenderer’s involvement including details of outcomes</li> <li>c) Provide details of issues that arose during the project and how these were managed by the Tenderer</li> <li>d) Demonstrate sound judgement and discretion; and</li> <li>e) Demonstrate competency and proven track record of achieving outcomes.</li> </ul>	<p style="text-align: center;"><b>Weighting 15%</b></p> <hr/> <p style="text-align: center;"><b>“Relevant Experience” Attachment 11</b></p> <p>Tick if attached <input type="checkbox"/></p>
<p><b>B. TENDERER’S RESOURCES</b></p> <p>Tenderers should demonstrate their ability to supply and sustain the necessary:</p> <ul style="list-style-type: none"> <li>a) Plant, equipment and materials</li> <li>b) Quality control</li> <li>c) The Gravel base course material to be supplied shall be tested with representative test results provided as part of the contractor’s submission for this tender refer: 2.4.4 Testing;</li> <li>d) Any contingency measures or back up of resources including plant and personnel (where applicable).</li> </ul> <p>As a minimum, Tenderers should provide a statement detailing their ability to supply the material in accordance with the Principal’s request, a current commitment schedule, plant/ equipment schedule and details of quality control procedures in an attachment and label it “<b>Tenderer’s Resources</b>”.</p>	<p style="text-align: center;"><b>Weighting 15%</b></p> <hr/> <p style="text-align: center;"><b>“Tenderer’s Resources” Attachment 12</b></p> <p>Tick if attached <input type="checkbox"/></p>

<p><b>C. Demonstrated Understanding</b></p> <p>Respondents should detail the process they intend to use to achieve the Requirements of the Specification. Areas that you may wish to cover include:</p> <ul style="list-style-type: none"> <li>a) The process for the delivery of the goods/services;</li> <li>b) A demonstrated understanding of the specifications/ scope of works.</li> <li>c) Local knowledge</li> </ul> <p>Supply details and provide an outline of your proposed methodology in an attachment labelled “<b>Demonstrated Understanding</b>”.</p>	<p><b>Weighting</b> <b>10%</b></p> <hr/> <p><b>Demonstrated Understanding</b></p> <p>Tick if attached <input type="checkbox"/></p>
<p><b>D. Value Adding Proposal</b></p> <p>An opportunity is provided to add extra value to your response through means other than price reduction or improvements to specification. A proposal to provide “value adding” will be assessed and scored based on the benefits it will provide to the Principal. The form of value adding is unrestricted, but as an example, may include areas such as flexibility of service access to various other products, services or supply of new products &amp;/or materials.</p> <p>Supply details and label it “<b>Value Added Proposal</b>”.</p>	<p><b>Weighting</b> <b>10%</b></p> <hr/> <p><b>“Value Adding ”</b></p> <p>Tick if attached <input type="checkbox"/></p>
<p>Are you prepared to allow a discount for prompt settlement of accounts?</p>	<p><input type="checkbox"/> Yes / <input type="checkbox"/> No</p>
<p>If you are offering different discounts for different periods, or other discounts such as volume discounts, detail them in an attachment labelled “<b>Discounts</b>”.</p>	<p><b>“Discounts” Attachment 13</b></p> <p>Tick if attached <input type="checkbox"/></p>
<p><b>E) Cost</b></p> <p>Tenderers are to complete the Price Schedule Refer: 3.4 Price Information</p>	<p><b>Weighting</b> <b>50%</b></p>

**3.4 PRICE INFORMATION**

Tenderers **must** complete the following “Price Schedule”. Before completing the Price Schedule, Tenderers should ensure they have read this entire Request.

**3.4.2 PRICE SCHEDULE**

Provide rates for the supply and delivery of gravel base course material.

**Note: Rates specified for delivery will be for trucks with a side tipper configuration only**

Contract Options	Delivery Location	Place of Origin (Regional preference policy)	Loose Bulk Density (LBD)	per CUBIC METRE					
				\$ ex. GST		GST		\$ inc. GST	
				Gravel Cost	\$/km	Gravel Cost	\$/km	Gravel Cost	\$/km
Supply, Load and Deliver	Johnston Rd								
	Coronation Rd								
	Somers Rd								
	Nanga Rd								
	Waroona Shire Depot Thatcher Street /Town site Waroona								
Other Locations - Supply, Load and Deliver rates	Other Locations Cost = Price of gravel at pit + \$/km rate			Gravel Cost	\$/km	Gravel Cost	\$/km	Gravel Cost	\$/km





**3.4.3 SCHEDULE OF PLANT**

To be completed by the Tenderer in sufficient detail to allow the Principal to assess the ability of the Tenderer to comply with the Tender Documents.

List details, size, make and type of all vehicles and equipment that will be utilised in the performance of this contract - provide additional page(s) if needed.

Plant/ Equipment Item	Size	Make	Type

Include location of Tenderer's quarry that will be used as the base if this Tender is successful.

<b>Tenderers Quarry Location</b>	
----------------------------------	--

**3.4.4 DETERMINATION OF SUPPLIED / SUPPLYF AND DELIVER VOLUMES:**

In accordance with Clause 2.4.7, indicate method of volume determination (provide additional pages if needed):

Determination of Supplied Volumes:
Determination of Loaded & Delivered Volumes

## 4 APPENDIX A – SPECIAL CONDITIONS OF CONTRACT

### 4.1 SPECIAL CONDITIONS

#### 4.1.1 PERIOD OF CONTRACT AND TERMINATION

The contract will commence as soon as practical as advised in the letter of acceptance issued to the successful Tenderer and will run for the period until the contract concludes 30<sup>th</sup> June 2023. In the event of the Contractor failing in any manner to carry out the Contract to the Principal's satisfaction, the Principal may forthwith determine the Contract by written notice to the Contractor.

#### 4.1.2 INSURANCES

The Contractor shall be solely responsible for the services and shall bear the sole risk for any loss or damage whether to any person or property caused by or resulting from, directly or indirectly, any act or omission of the Contractor or any default or negligence by the Contractor irrespective of any negligence, default or breach of statutory duty on the part of the Council.

The Contractor and its subcontractor(s) (if any) will be required to effect and maintain:

- (a) Public liability insurance in the sum of at least \$20,000,000 (twenty million dollars) in respect of any one occurrence and for an unlimited number of claims.
- (b) Workers Compensation or Personal Accident Insurance cover as required by law (whichever may apply).
- (c) Motor Vehicle insurance in the sum of full replacement of the vehicle including all accessories, service agreements and warranties, to be supplied in respect of any one occurrence and for an unlimited number of claims.
- (d) If the Contractor or any Sub-Contractor employs any person or persons to perform the services or any part thereof, documentation certifying current workers compensation insurance, public liability insurance and third party property damage insurance to the specifications and criteria required by the contractor must be provided to Council before commencement of services.

Or satisfy the Shire of Waroona of its ability to meet obligations arising from the indemnity provisions of the contract. The contractor shall provide council, prior to the commencement date, certificates of currency for all insurances that provides evidence of validity and currency of the insurance policies; such approval shall not be unreasonably withheld.

#### 4.1.3 COMPLIANCE WITH LEGISLATION ETC

For as long as the Contractor shall continue to perform the Services hereunder the Contractor shall at all times at its own cost and expense observe, perform and comply with all Acts of both Federal and State Parliaments and all regulations, local laws, ordinances or orders made thereunder and the lawful requirements of any public municipal or other authority so far as the same may affect or apply to the Consultant or the Services and the Consultant shall indemnify and keep indemnified the Principal from and against all actions, suits, costs, charges, claims and demands in respect thereof.

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,

Industrial Agreements and orders of Competent Courts or Industrial Tribunals applicable to the work to be done in the performance of the Services.

#### 4.1.4 RECORDS AND AUDIT

The contractor must retain all documentation created or received by it in relation to work under the Contract for 10 years from the date of practical completion of the whole of the works.

Subject to any legitimate claim for privilege, the Contractor must promptly provide the Principal and anyone nominated in writing by the Principal with access to the documents retained under this sub-clause upon a written request from the Principal, if the access is required:

- a) for the Principal to carry out any obligation or in order to exercise any entitlement under the Contract;
- b) for the Principal to comply with any legislative requirements;
- c) for any reason relating to any person's safety or the protection of property or the environment;
- d) because any person has made a claim or demand on the Principal (whether or not any legal proceedings have been issued) arising out of or in connection with work under the Contract and the Principal with any copies of documents in connection with the claim or demand; or
- e) for any other reasonable purpose identified by the Principal in its request.

The Contractor must promptly provide the Principal with any copies of documents inspected upon receipt of a written request from the Principal. The Principal agrees to pay reasonable copying cost incurred by the Contractor in complying with this sub-clause.

#### 4.1.5 PRICE

Prices tendered are to as per clause 3.4.2 Price Schedule All prices for goods and/or services offered are to be fixed for the term of the Contract. Tendered prices must include Goods and Services Tax (GST). Unless otherwise indicated prices tendered must include delivery unloading, packing, marking and all applicable levies, duties, taxes and charges. Any charge not stated in the tender as being additional will not be allowed as a charge for any transaction under any resultant Contract

#### 4.1.6 SITE INSPECTION REPORT

Please note the principle has conducted a Site Inspection Report as per Appendix C, which is to be used as a guide for the Safety Management Plan. The identified hazards listed are to be used as a guide only. The hazards noted are those that have been identified when inspected, and the Shire of Waroona takes no responsibility for any hazards that have not been recorded. The contractor must still take responsibility and conduct a thorough site inspection and risk assessment as required under Work Health & safety Act 2020 before any work can commence onsite.

## 5 APPENDIX B – SITE INSPECTION REPORT

Prior to the calling of Tenders and or Quotations the Principal will complete a Site Inspection Report, which purpose is to make the Tenderer/Contractor aware of any recorded hazards prior to submitting their Tender and/or Quotation.

This Site Inspection Report is to be added to the Tender and or Quote document as an attachment.

Job Name: Supply and Deliver Gravel Base Course Material

Location: Various Sites

Inspected By: Murry Bracknell

Date: 23/06/2022

1. ASSESS THE AREA – Does the work site involve any of the following?			
Identify Hazard:	Answer		
Is there a risk of a person falling two metres or more?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Does the work involve demolition?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Does the work involve the disturbance or removal of asbestos?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Does the work involve structural alterations that require temporary support to prevent collapse?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Does the work involve confined spaces?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Does the work involve excavation to a depth greater than 1.5 meters?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Does the work involve the construction of tunnels?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Is the work site situated near pressurized gas pipes, including consumer mains?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Is the work site situated near chemicals, fuel or refrigerant lines?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Is the work near power lines (overhead or underground)?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Is the work site contaminated?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Does the work involve tilt up and pre-cast concrete?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Is the work site on or adjacent to roadways or railways?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Does the work involved any movement of powered mobile plant?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Is the work site in, over or adjacent to water or other liquids where there is a risk of drowning?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Other:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	

2. FIND THE ENERGIES – Look up / Down / Beside / Inside <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>							
Will the contractor be exposed to?							
1. Vehicles	<input checked="" type="checkbox"/>	Vehicle – person	<input checked="" type="checkbox"/>	Vehicle - Over edge	<input type="checkbox"/>	Vehicle-jolt-jar	<input checked="" type="checkbox"/>
2. Gravity	<input checked="" type="checkbox"/>	People falling/tripping	<input checked="" type="checkbox"/>	Objects falling	<input type="checkbox"/>	Geotechnical	<input checked="" type="checkbox"/>
3. Human	<input checked="" type="checkbox"/>	Lifting	<input type="checkbox"/>	Pushing	<input type="checkbox"/>	Pulling	<input type="checkbox"/>
4. Electrical	<input type="checkbox"/>	Hand held equipment.	<input type="checkbox"/>	High voltage	<input type="checkbox"/>	Overhead wires.	<input type="checkbox"/>
5. Mechanical	<input checked="" type="checkbox"/>	Caught in	<input type="checkbox"/>	Caught between.	<input type="checkbox"/>	Struck by	<input checked="" type="checkbox"/>
6. Vibration	<input type="checkbox"/>	Noise	<input checked="" type="checkbox"/>	Hand – arm	<input type="checkbox"/>	Whole body	<input type="checkbox"/>
7. Chemical	<input type="checkbox"/>	Liquids	<input type="checkbox"/>	Vapours	<input type="checkbox"/>	Solids	<input type="checkbox"/>
8. Radiation	<input type="checkbox"/>	Sunlight	<input checked="" type="checkbox"/>	Radioactive Source	<input type="checkbox"/>		<input type="checkbox"/>
9. Flying Objects.	<input type="checkbox"/>	Projectiles	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
10. Other	<input type="checkbox"/>	Bites/stings	<input checked="" type="checkbox"/>	Sharp Edges	<input type="checkbox"/>	Dust	<input type="checkbox"/>

*Disclaimer: The Identified Hazards in this document are to use as a guide only for the Tenderer/Contractor to prepare a Safety Management Plan. The hazards noted are those that have been identified when inspected, and The Shire of Waroona takes no responsibility for any hazards that have not been recorded. The Contractor must still take responsibility and conduct a thorough site inspection and risk assessment as required under Work Health and Safety Act 2020 before any work can commence onsite as conditions such as weather, environment and personnel etc can have an impact.*

## 6 APPENDIX C – GENERAL CONDITIONS OF CONTRACT

**FOR THE SUPPLY OF GOODS AND THE  
PROVISION OF GENERAL SERVICES**

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## 6.1 CONSTRUCTION OF CONTRACT

The Contract shall be governed by the laws of the State of Western Australia and the parties hereby submit to the exclusive jurisdiction of the courts of that State.

## 6.2 DEFINITIONS

In the Contract, except where the context otherwise requires:

**'Clause'** means a clause of these General Conditions.

**'Contract'** means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor.

**'Contract Price'** means:

- (a) the monetary consideration stated in the Contract for the sale of the Goods to the Principal whether expressed as a lump sum or price per unit or by weight or volume or otherwise;
- (b) where payment is to be made on a Lump Sum Basis, the sum which is stated in the contract to be payable to the Contractor for the supply of the Services by the Contractor and the performance of the obligations of the Contractor under the Contract;
- (c) where payment is to be made on a Schedule of Rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the Schedule of Rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in the Schedule of Rates;
- (d) where payment is to be made on a Lump Sum and a Schedule of Rates Basis, the aggregate of the sums referred to in paragraphs (a), (b), (c) and (d) above,

but excluding any additions or deductions, which may be required to be made pursuant to the Contract.

**'Contractor'** means the party named in the Contract as the seller of the Goods and the supplier of the Services the subject of the Contract.

**'Date for Delivery'** means:

- (a) where the Contract or Order specifies a date for delivery, that date; or
- (b) where the Contract or Order specifies a period of time for delivery, the last day of that period.

**'Goods and Services'** means the goods the subject of the Contract or such of them as shall be described in the Order and the whole of the services, tasks, work and requisites to be supplied rendered provided or performed by the Contractor including all variations provided for by the Contract as more fully set out in the Contract.

**'Local Government'** means any local government established under the *"Local Government Act 1995"* or the Principal.

**'Officer'** means any officer or person authorised by the Principal to act on its behalf for the purpose of the Contract.

**'Order'** means a purchase order from the Principal to the Contractor requiring the supply of specific Goods and Services.

**'Principal'** means the Shire of Waroona.

**'Specification'** means any Special Conditions, Technical Specification, Drawings and Schedules forming part of the Contract; and such Specification shall be read with these General Conditions as an integral part of the Contract, but in the event of any inconsistency between the Specification and these General Conditions the former shall (unless the Contract otherwise provides) prevail.

Unless the context otherwise requires, the singular includes the plural and vice versa. The clause headings of the General Conditions of Contract shall not in any way affect their interpretation. Any one gender includes all genders.

### 6.3 EVIDENCE OF CONTRACT

The Contract shall be evidenced by the Special Conditions of Contract, General Conditions of Contract, Specifications, Response, Letter of Acceptance and all things referred to therein.

The precedence of documents in the event of a conflict or inconsistency shall follow the sequence as detailed above.

Should any part of the Contract be held in law to be invalid, that part shall be severed from the Contract and the remainder of the Contract shall have full force and effect.

### 6.4 NOTICES

Any notice or other communication under the Contract shall be in writing and signed and shall be given or served by:

- (a) Hand delivery or prepaid post to the address of the recipient specified in the Contract or at such other address as may from time to time be notified in writing to the party giving the notice by the intended recipient but in any event to the last notified address: or
- (b) Facsimile transmission to the facsimile number of the recipient specified in the Contract or at such other number as may from time to time be notified in writing to the party giving the notice by the intended recipient but in any event to the last notified number.

A printed or copied signature will be sufficient for the purpose of sending any notice or other communication.

### 6.5 CONTRACTOR TO HAVE INFORMED ITSELF

The Contractor shall be deemed to have:

- (a) Examined carefully and to have acquired actual knowledge of the contents of the Drawings, Specification, Schedules, Bills of Quantities (if any), Conditions of Response or Quotation, these General Conditions of Contract and the Special Conditions of Contract (if any) and any other information made available in writing by the Principal to the Contractor for the purpose of quoting; and
- (b) Examined the site and its surroundings (if applicable); and
- (c) Satisfied itself as to the correctness and sufficiency of its Submission or Response and that its price covers the cost of complying with all its obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the contract; and
- (d) Obtained and properly examined all information relevant to the risks, contingencies and other circumstances that may have had an effect on its Submission or Response and which was obtainable by the making of reasonable enquiries.

Failure by the Contractor to do all or any of the things it is deemed to have done under this clause will not relieve the Contractor of its liability to perform and complete the Contract in accordance with the terms and conditions thereof.

### 6.6 COMPLYING WITH STATUTORY REQUIREMENTS

The Contractor shall comply with the requirements of all Acts of the Parliament of the Commonwealth and with the requirements of the provisions of all Acts of the Parliament of the State of Western Australia and with the requirements of all ordinances, rules, regulations, by-laws,



orders, codes of practice and proclamations made or issued under any such Act and with the lawful requirements of public and other authorities in any way affecting or applicable to the Services or the performance of the Contract.

Without limiting in any way the generality of the foregoing, the Contractor shall duly and punctually observe, perform and comply with the provisions of the “*Work Health & Safety Act 2020*” and all improvement notices, prohibition notices and codes of practice (if any) issued thereunder and having application to this Contract.

If, in the opinion of the Contractor, the provisions of any document forming part of the Contract are at variance with any such requirements, the Contractor shall give written notice to the Principal specifying the departure from such provisions which he considers necessary to comply with such requirements.

If such a requirement necessitates a change to the work under the Contract, the Principal may order a variation. Except to the extent that a variation is ordered by the Principal as set forth above, the Contractor shall bear the cost of complying with the requirement.

## 6.7 ASSIGNMENT AND SUBCONTRACTING

The Contractor shall not without the prior written approval of the Principal:

- (a) Assign the Contract, or any part thereof or any payment thereunder. Approval to assign shall be on terms and conditions determined by the Principal
- (b) Subcontract the whole or any part of the Contract. Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Contract.

## 6.8 INDEMNITY

The Contractor shall indemnify and keep indemnified the Principal against all loss of or damage to the property of the Principal and from and against any claim, demand, action, suit or proceeding that may be made or brought by any person against the Principal or employees, professional consultants or agents of the Principal or any of them in respect of personal injury to or the death of any person whomsoever or loss of or damage to any property whatsoever arising out of or as a consequence of the sale or delivery of the Goods or the supply or provision of the Services by the Contractor or its employees, agents or subcontractors and also from any costs and expenses that may be incurred in connection with any such claim, demand, action, suit or proceeding.

Notwithstanding the preceding paragraph, the Contractor shall not be rendered liable for personal injury to or the death of any person or loss of or damage to property resulting from any breach by the Principal of any provision of the Contract or any negligent act or omission of the Principal, or the employees, professional consultants or agents of the Principal nor for any claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto.

## 6.9 PATENT RIGHTS / COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

The Contractor warrants that neither the Goods or Services nor any design, documents or methods of working provided by the Contractor will infringe any patent, registered design, trademark or name, copyright or other protected right.

The Contractor shall indemnify and at all times keep the Principal indemnified against any action, claim, demand, costs or expenses arising from or incurred by reason of any infringement or alleged infringement of any letters patent, design, trade mark or name, copyright or other protected right in respect of any goods, articles, services, equipment, machinery, plant or thing, system or method of performing, using, fixing, working or arrangement used, fixed, provided or supplied by the Contractor.

All payments and royalties payable in respect of any such letters patent or other protected right, shall be included by the Contractor in the Contract and shall be paid by itself to the person, persons, or body to whom they may be due or payable.

In the event of any claim being made or brought against the Principal in respect of any of the matters stated in this clause, the Contractor shall be immediately notified thereof. The Contractor shall, with the assistance if required of the Principal, but at the Contractor's sole expense, conduct all negotiations for the settlement of the same or any litigation that may arise there from and in the event of the failure by the Contractor so to do, the Principal shall have power to suspend payment of any money due to the Contractor under the Contract until such claim has been satisfied, settled, or withdrawn. Should any money due, or which may thereafter become due, to the Contractor, or which may have been deposited by the Contractor as security under the Contract, be insufficient to satisfy or settle any such claim and such claim has not been satisfied or withdrawn at the date when the Contract would otherwise have been completed, the balance outstanding in respect of the claim shall be a debt due by the Contractor to the Principal.

### **6.10 SPECIFIED BRANDS OF GOODS**

Where a particular brand of Goods is specified in the Contract, no other brand shall be supplied unless otherwise approved in writing by the Principal.

### **6.11 PRICE VARIATIONS**

Contract prices shall be firm unless otherwise stated in the Contract.

Where Contract prices are variable, and the Contractor wishes to claim for a variation in price during the term of the Contract, then the Contractor shall give the Principal full details of the make-up of the claim, including all applicable information as to the cost of materials, direct labour, overheads, profit and such other cost components as the Principal may require to verify any claim for variation. All applications for variation must show in statement form the existing approved Contract prices, the proposed price increase and proposed new Contract price on an item by item basis and shall be accompanied by all relevant determinations and documents in support of the claim.

Where the Contract price is the price ruling at date of performance of the Services the Contractor shall produce to the Principal evidence to verify each claim for payment.

Where trade list prices form the basis of the Contract the Contractor shall identify the trade list referred to by date, number or other suitable reference.

Reductions affecting the Contract rates shall be notified by the Contractor to the Principal immediately they occur and the Contractor shall repay to the Principal the full amount of any overpayment made by the Principal within fourteen (14) days of the reduction being authorised by the Principal.

Applications for variation of variable Contract prices or rates by the Contractor shall be submitted in writing to the Principal as far in advance as practicable of the date from which the variation is sought to commence.

All variations approved by the Principal shall operate from a date determined by the Principal, which shall not be earlier than the date of the formal application for variation.

The onus shall be upon the Contractor to prove to the satisfaction of the Principal all details of any variation claimed.

In all matters of price variations (up or down) the Contractor shall make available to the Principal within the time specified by the Principal such information, records, facts and figures as the Principal shall require. Failure to supply the required information, records, and facts and figures shall entitle the Principal to refuse the variation.

Where the variation is to be determined on the basis of decisions by the Australian Competition and Consumer Commission such variations will be effective on the date nominated by the Australian Competition and Consumer Commission and will be binding on all parties. Should the Australian Competition and Consumer Commission cease to operate during the period of the Contract, a new variation arrangement will be negotiated by mutual agreement. If agreement cannot be reached, the Contract may forthwith be determined by either party by written notice to the other.

## 6.12 QUALITY OF GOODS AND SERVICES

All Goods and Services shall conform to the Specification and the standards specified in the Contract.

Where no standards are specified in the Contract, the Goods and Services shall comply with the appropriate and current standard of the Standards Association of Australia and if there is no such standard then with the appropriate and current standard of the British Standards Institution, the International Standards Organisation or such other standard as the Principal shall consider appropriate.

If no standards are applicable, the Goods supplied shall be suitable for their purpose as stated in the Contract and fully capable of their intended use and the Services shall be of the highest standard and carried out promptly with all due skill, care and diligence.

## 6.13 SUPPLY OF GOODS AND SERVICES BY ORDER

The Contractor shall fulfil all Orders for Goods and Services placed by the Principal during the term or currency of the Contract.

Where the Contract is for the supply of Goods by reference to:

- (a) 'Variable Quantities', the Principal shall not be required to purchase all or any Goods listed EXCEPT such of the Goods as may be ordered by the Principal.
- (b) 'Approximate Quantities', the quantities stated shall be regarded as an estimate only of the quantity which may be required. The Principal shall not be bound to purchase the exact nominated quantity of Goods, but the quantity ordered may vary within a margin not exceeding 25 percent above or below the nominated approximate quantity and any such variance shall not affect the unit price of the Goods.
- (c) 'Fixed Quantities', the Principal shall purchase the actual quantity shown.

The Principal may order requirements of any one type or item of the Goods either in one single lot or instalments or in such quantities as may be required.

Where the Contract is for the supply of Services by reference to:

- (a) A list of Services and prices in a Schedule to the Specification, the Principal shall not be required to take or accept all or any of the Services listed EXCEPT such of the Services as may be ordered by the Principal from time to time during the period of the Contract.
- (b) Where the quantity or value set out in any Schedule to the Specification is described as 'approximate' it shall be regarded only as an estimate of the quantity or value which may be required under the Contract and the Principal shall not be required to take or accept the said nominated approximate quantity or value of Services.

The right is reserved for the Principal to order its requirements of any one type or item of the Services either at one time or in instalments or in such quantities as may be required from time to time.

Nothing herein contained shall oblige the Principal to take or accept all its needs or requirements of the Services solely from the Contractor nor shall be taken to confer any exclusive right upon the Contractor to provide the Services to the Principal. **The Principal shall be free at all times to obtain**

the Services or any part of them from any other source provider or supplier thereof except Services the subject of an existing order to the Contractor.

#### **6.14 DELIVERY OF GOODS AND SERVICES**

The Contractor shall deliver the Goods and Services in full to the locations and at the times stated in the Contract or Order as the case may be. In this respect time shall be of the essence of the Contract.

Upon it becoming evident to the Contractor that delivery of the Goods and Services is likely to be delayed beyond the Date for Delivery, the Contractor shall promptly notify the Principal in writing. Such notification shall not release the Contractor from its obligation to deliver by the Date for Delivery or from any other obligation under the Contract, unless the Principal otherwise agrees in writing. The Contractor shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.

The Contractor shall be entitled only to such extensions of time for compliance with the Contract as the Principal, upon the written application of the Contractor, may in its absolute discretion grant in writing.

#### **6.15 EXPENSES OF DELIVERY OF GOODS**

Unless otherwise provided in the Contract, the Contractor shall pay all delivery, packaging, freight, insurance, and other charges whatsoever, in connection with the delivery of the Goods and the return of any Goods wrongly supplied.

#### **6.16 RECEIPT AND ACCEPTANCE**

Delivery, receipt and completion of the Goods and Services shall not of itself constitute acceptance of the Goods or Services by the Principal, with acceptance being subject to the approval of the Officer.

The Principal shall be deemed to have accepted the Goods and Services when:

- (a) the Officer notifies the Contractor that the Goods and Services have been accepted; or
- (b) when after the lapse of 14 days the Principal retains the Goods without notifying the Contractor that the Goods have been rejected PROVIDED THAT where it is a term of the Contract that the Goods be installed and/or commissioned that the Principal shall not be deemed to have accepted the Goods unless the Goods are satisfactorily installed and/or commissioned within the period stipulated in the Contract or, if no period is stipulated, within a reasonable period.

The risk of any damage, deterioration, theft or loss of the Goods after delivery but prior to acceptance shall remain with the Contractor except where the damage, deterioration, theft or loss results from a negligent act or omission of the Principal or its agents or employees.

Where prior to acceptance, the Goods are found to be defective or not in accordance with the Contract, the Principal may reject any or all of the Goods (the Rejected Goods).

#### **6.17 REJECTION AND REMOVAL OF GOODS**

The Officer shall notify the Contractor in writing within a reasonable time of the rejection of Goods and may direct that the rejected Goods be removed and either replaced or rectified by the Contractor at the Contractor's expense within such reasonable time as the Officer may direct.

Should the Contractor fail to duly and properly remove, replace or rectify the rejected Goods within the time specified in the notice of rejection the Principal shall be entitled to:

- (a) Exercise a general lien upon the Goods to cover all costs, fees and expenses of the Principal; and
- (b) Sell the rejected Goods; or
- (c) Have the Goods redelivered at the Contractor's risk and expense to the Contractor's premises, where the Contractor shall afford every facility to accept redelivery of the rejected Goods.

The Principal shall not be responsible for the care or custody of any rejected Goods.

Where the Contractor fails to deliver the Goods by the Date for Delivery, or where Goods are rejected and the Contractor fails to replace the rejected Goods or to deliver Goods conforming to the Contract forthwith upon written notice to do so, the Principal;

- (a) Shall have the right to purchase from another supplier substitute Goods of the kind and quality ordered; or
- (b) Where it is not possible or practicable to purchase from another supplier substitute Goods of the kind or quality ordered, purchase Goods which in the opinion of the Principal are most suitable, even though such Goods be of a superior kind and quality.

In both cases any extra cost or expense incurred over and above the Contract Price, shall be a debt due from the Contractor to the Principal.

## 6.18 DEFICIENT GOODS

Where after acceptance, the Goods are subsequently found not to be in accordance with the Contract or of an inferior quality, or differing from those ordered (whether by sample or quality), ("the deficient Goods"), the Principal may notify the Contractor of the deficiency, and require the Contractor to forthwith:

- (a) Remove the deficient Goods from the Principal's premises and at the Contractor's expense either to replace them with Goods conforming to the Contract or to rectify them to conform; or
- (b) Refund the price paid and thereupon to remove the deficient Goods from the Principal's premises; and
- (c) Upon a refund of the price paid for the deficient goods, property therein shall revert to the Contractor.

Any expense incurred by the Principal shall be a debt due from the Contractor to the Principal.

The Principal shall not be entitled to exercise any rights under this clause in respect of any defects or deficiencies that ought to have been apparent on reasonable examination of the Goods prior to acceptance.

Where the deficient Goods are not forthwith replaced or rectified by the Contractor as aforesaid the Principal may exercise the powers contained in Clauses 5.17 and 5.30 as if the same referred to the deficient Goods under the provisions of this Clause and the provisions of Clauses 5.17 and 5.30 were set out herein.

## 6.19 FAILURE TO PROVIDE GOODS AND SUPPLY SERVICES

Where a state of emergency exists or where the Contractor is unable or fails (for whatever reason) to supply and provide the goods and services at any time or in any place the Principal may without being liable in any way to the Contractor obtain or acquire such Goods and Services as it requires during the state of emergency or at that time or in that place (as the case may be) from any other supplier or provider thereof. The existence of a state of emergency shall be determined by the Principal in its sole discretion.

## **6.20 POWER TO ACT FOR THE PRINCIPAL**

Anything to be done or performed by the Principal may be done and performed by any person duly authorised by the Principal.

## **6.21 WARRANTIES**

The Contractor shall obtain all warranties specified in the Contract including any warranties that are obtained by any subcontractor, and shall ensure that the Principal will have the benefit of the said warranties.

## **6.22 VARIATION TO CONTRACT TERMS**

None of the terms of the Contract shall be varied, waived, discharged or released either at law or in equity, except by the express written agreement of the Principal.

## **6.23 SPECIAL PRICING AND OFFERS**

Any special price, licence fee, rate or charge in relation to the Goods and Services, or goods and services of a like nature which is offered by the Contractor to any Local Government and which is lower than under the Contract, shall be made available to the Principal and all purchasers.

The Contractor, through the period within which that special price, licence fee, rate or charge is being offered, shall only be bound to comply with the above, where the purchase is of similar circumstances and under substantially the same terms and conditions.

## **6.24 PAYMENT**

Unless otherwise provided in the Contract all payments shall be made within 30 days of receipt of the Contractor's invoice or claim, provided that the Goods and Services have been accepted and approved by the Officer.

Failure by the Principal to pay the amount payable at the due time will not be grounds to invalidate or avoid the Contract.

The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price unless otherwise provided in the Contract.

## **6.25 SUSPENSION OF PAYMENTS**

Should the Contractor refuse or neglect to carry out the instructions of the Principal in regard to any matter connected with the Contract, the Principal may suspend all payments to the Contractor until such instructions have been complied with.

## **6.26 DEDUCTION OF CHARGES OR DEBTS**

Without limiting the Principal's rights under the any of the foregoing clauses hereof any debt due from the Contractor to the Principal may be deducted by the Principal from any moneys which may be or thereafter become payable to the Contractor by the Principal, and if such moneys are insufficient for this purpose, then from the Contractor's security under the Contract. Nothing in this clause shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

The Contractor hereby acknowledges and agrees that all moneys becoming payable by the Contractor in respect of the Contract and all costs, expenses, losses, and damages hereinbefore mentioned, and for which the Contractor shall become liable at any time under the Contract, may be deducted and paid by the Principal from any sum or sums due, or which may become due, to

the Contractor under or in respect of any other contract or contracts which may be subsisting between the Contractor and the Principal for the time being.

## 6.27 STAMP DUTY

The Contractor shall pay all stamp duties in connection with the Contract.

## 6.28 GOODS AND SERVICES TAX

For the purposes of this clause:

- (a) "GST" means goods and services tax applicable to any taxable supplies as determined under the GST Act.
- (b) "GST Act" means "A New Tax System (Goods and Services Tax) Act 1999" and (where the context permits) includes the Regulations and the Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing with GST applying for the time being in the State of Western Australia.
- (c) "Supply", "taxable supply" and "tax invoices" have the same meanings as in the GST Act.

Where the supply of the Goods and Services or any part thereof is a taxable supply under the GST Act:

- (a) The Contract Price shall be inclusive of all applicable GST at the rate in force or the time being.
- (b) The obligation of the Principal to pay the Contract Price or any instalment thereof, and the right of the Contractor to recover the Contract Price or any instalment thereof, shall be subject to and conditional upon the prior issue by the Contractor and the prior receipt by the Principal of a tax invoice in respect of the Contract Price, or the relevant instalment thereof, which complies in all respects with the GST Act.

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

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

## 6.29 CUSTOMS AND EXCISE DUTIES

The Contract Price shall, unless otherwise stated, be inclusive of all applicable customs excise, levies, duties, taxes and charges at the rates in force at the date of closing of the Response.

The Contractor shall, if so requested, provide information as to the Customs Tariff classification, the amount of duty payable, its application to the Contract Price and date or proposed date of importation.

The Contractor shall:

- (a) If the Principal so requires, pay any dumping duty or security therefore which may be levied or demanded under the "Australian Customs Tariff (Anti Dumping) Act 1975", in respect of the Goods supplied under the Contract direct to the Principal or to the Australian Customs Service as the case may be.
- (b) Indemnify and keep indemnified the Principal against any liability for such dumping duty or security.

### 6.30 SETTLEMENT OF DISPUTES

The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.

Either party may refer to an appropriate independent expert, agreed to by the parties, any Goods and Services for examination and report as to their compliance with the Contract. The decision of the expert shall be final and binding upon both parties, and the expense of such reference shall be paid by the unsuccessful party.

Subject to the provisions of 5.30, any dispute or unresolved claim arising out of or relating to the Contract or the breach, termination or invalidity thereof ('the dispute') shall first be the subject of conciliation before a conciliator who is either agreed to by the parties or, failing agreement, who is appointed by the President of the Institute of Arbitrators and Mediators (WA Branch).

If the dispute has not been resolved within 28 days (or such other period agreed in writing between the parties) after the appointment of the conciliator, the dispute shall be referred to arbitration to be effected:

- (a) By an arbitrator mutually agreed upon between the parties; or
- (b) In default of such mutual agreement, by an arbitrator appointed by the President of the Institute of Arbitrators and Mediators,
- (c) In accordance with the provisions of the "*Commercial Arbitration Act 1985*".

### 6.31 TERMINATION OF CONTRACT

- (a) Subject to Clause 5.30, if the Contractor fails to duly and punctually observe perform and comply with any term, condition or stipulation on the part of the Contractor contained or implied in the Contract and such failure continues for a period of 14 days (or such other period as having regard to the circumstances the Principal may reasonably allow) after service on the Contractor of a written notice requiring the Contractor to observe perform and comply with such term, condition or stipulation or otherwise to remedy the breach; or
- (b) If the Contractor (being a corporation) goes into liquidation (except for the purpose of reconstruction or amalgamation) or is otherwise dissolved or if a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Contractor is appointed or if the Contractor enters into any composition or scheme of arrangement with its creditors or if an inspector or like official is appointed to examine the affairs of the Contractor or the Contractor enters into voluntary administration; or
- (c) If the Contractor (being a natural person) commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a Deed of Arrangement for the benefit of its creditors; or
- (d) If the Contractor assigns or subcontracts the Contract or any part thereof without the prior written consent of the Principal; or
- (e) If the Contractor includes in its Response any statement, representation, fact, matter, information or thing which is false untrue incorrect or inaccurate, whether known to the Contractor or not;

THEN and in any of the said cases, if the Principal considers that damages may not be an adequate remedy, the Principal may by notice in writing to the Contractor forthwith terminate the Contract whether any Orders remain outstanding or not and thereafter the Principal may engage or contract with any person or corporation other than the Contractor to perform and complete the Contract.

The Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal in consequence of any of the abovementioned matters and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered in court by the Principal.



### **6.32 WAIVER**

No forbearance, delay or indulgence by the Principal in enforcing the provisions of the Contract shall prejudice, restrict or limit the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

### **6.33 ENTIRE AGREEMENT**

The Contract supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the Principal and the Contractor relating to the Goods and Services.

### **6.34 RIGHTS AND REMEDIES**

The Principal may exercise the rights herein conferred in addition to all or any other rights or remedies which the Principal shall or may be entitled to against the Contractor whether at law or under the Contract.

### **6.35 INSURANCE**

Without limiting its obligations and responsibilities the Contractor, in the joint names of itself and the Principal for their respective rights interests and liabilities, shall effect and keep in effect during the currency of the Contract insurance policies covering all matters referred to in Clause 4.1.2

The insurance policies shall contain a cross-liability clause and otherwise be in terms, and effected with an insurance company, approved by the Principal which approval shall not be unreasonably withheld.

The Contractor shall lodge certificates of proof of the required insurance policies with the Principal before the commencement of the Services provision and at such other times as the Principal may require.

### **6.36 INDUSTRIAL AWARDS**

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, Industrial Agreements and orders of Competent Courts or Industrial Tribunals applicable to the Services and the work to be done under the Contract.

Failure by the Contractor to comply with sub clause 5.36 hereof shall entitle the Principal by notice in writing to the Contractor to forthwith terminate the Contract, but without prejudice to any other rights or remedies of the Principal.