



REQUEST

REQUEST TITLE:

Art Coordination Consultancy Services Panel 2018

REQUEST NUMBER:

2017/05404

CLOSING TIME:

**Wednesday 1 November 2017, Before 2:30 PM, Australian
Western Standard Time**

**Submissions to be lodged at Tendering Services,
Ground Floor, Optima Centre, 16 Parkland Road,
Osborne Park WA 6017**

ISSUED BY:

**Department of Finance - Building Management and Works
on behalf of the Minister for Works**

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NOTICE TO RESPONDENTS W.A. GOVERNMENT AMENDMENTS TO AS 4122 – 2010

This Request incorporates the terms of the AS 4122 – 2010 General Conditions of Contract for Consultants **WHICH HAVE BEEN AMENDED** by Schedule 1.

The General Conditions in this Request and any contract awarded will differ from the corresponding clauses in AS 4122 – 2010 as published by Standards Australia.

AMENDMENTS LOG

THIS LOG IS FOR INFORMATION PURPOSES ONLY AND
DOES NOT FORM PART OF THE PROPOSAL BRIEF

NO.	CLAUSE NUMBER	AMENDMENT	EFFECTIVE DATE
1.1	A.1.2.2	Updated contact details for contractual and routine queries.	Aug 2019
	A.6.3	Amended Pre-determined Fee Scale to include fee values for \$1million - \$2million	
	A.6.7.1	Amended travel disbursement clause	
1.2	A.1	Corrected capital works budget threshold for the Scheme as \$2million	Nov 2019
	A.1.2 A.6.10.3	New clause enabling the Principal to consider applications at any time from suitably qualified Aboriginal Enterprises seeking to become members of the Panel. Applications made under this clause will be subject to an assessment against the evaluation criteria as outlined in the Request.	
	A.1.2.1	New clause to allow electronic submission	
1.3	A.6.3	Amended Pre-determined Fee Scale for complex projects	July 2021
1.4	A.7.1 A.12	Inclusion of Access Requirements Clause in relation to COVID vaccination zones	Dec 2021

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PART A – REQUEST NO 05404

A.1 INTRODUCTION

This Request seeks to identify consultants that can demonstrate their experience and capacity to coordinate public art for State Government funded projects with a view to consultant engagement over the life of the panel contract.

The Department of Finance - Building Management and Works (**BMW**) provides a wide range of services related to the delivery of the State Government's non-residential building program. BMW uses its expertise in asset and maintenance planning and project delivery to ensure probity, effective risk management and 'value for money' in all aspects of its operations.

BMW proposes to re-establish a pre-selected Panel of consultants capable of undertaking art coordination services for projects up to a \$150,000 fee threshold or \$5 million feeable value (Perth rates). Projects beyond these limits, and projects with specialised requirements, will be advertised for open tender. The Panel will also serve for hourly rates based advisory services up to the \$150,000 fee threshold.

The Art Coordination Services Panel 2018 (**the Panel**) will replace the existing Art Coordination Services Panel 2011 and will be utilised for Public Art Projects that are included in the Percent for Art Scheme.

The Percent for Art Scheme (**the Scheme**) is part of a broad government strategy to stimulate greater use of art in the built environment. Clients of the Scheme include a range of State Government agencies. The purpose of the Scheme is to commission artworks that are conceptually integrated with the buildings or their surroundings and contributes to a better environment for people to work in or visit.

Appropriately qualified professionals and consultant consultants will be appointed to the Panel to provide expert advice, artwork project definition, preparation of the artwork brief, commissioning artists, compliance reporting, and to administer various public art projects being carried out as part of the Percent for Art Scheme.

BMW and the Department of Local Government, Sport and Cultural Industries (**DLGSC**) collaborate to promote, manage and implement the Scheme. Civic building projects identified from State Government's capital works program with an estimated total building cost in excess of \$2 million are eligible for consideration and inclusion of a Percent for Art component. The Scheme uses an allocation of up to one percent (1%) of the estimated total construction cost of these projects to commission public artworks from artists. All associated costs of commissioning and installing the artwork is met within the commissioning agencies total budget. Projects below \$2 million may still incorporate a Percent for Art component at the discretion of the commissioning agency.

A range of Government agencies are likely to be served by this Panel including the Department of Justice, Department of Treasury, Department of Education,

Department of Training and Workforce Development, Main Roads Western Australia, Department of Health and the Western Australian Police Service. The art projects will vary in scale, form, complexity, timing and value. Art coordination services input may be required at any or all stages of the building project with which the art is associated (e.g. planning and approval, artist selection processes, design, construction, installation, reporting and documentation).

The nature and complexity of individual artwork projects will dictate the choice of a particular consultant, if any, from the Panel. It should be noted that consultants are not eligible to design and or/produce artworks for Percent for Art projects in which they are appointed as a member of the Panel.

Consultants appointed to the Panel will be required to follow the Percent for Art Guidelines and comply with present and future BMW online approval and payment processes and any necessary additional *Building Act 2011* WA processes.

Other Government agencies with power to construct, such as the Public Transport Authority and Main Roads Western Australia, and local councils may select members of the Panel for services the same as, or similar to those described in this document following best practice in the commissioning of public artworks.

A.1.1 TERM

BMW now advertises the BMW Art Coordination Services Panel through this Request for the 2018-2019 period. The Art Coordination Services Panel will operate for a period of one (1) year with BMW reserving the right to exercise up to four (4) annual extensions, each having one year duration, at BMW's discretion.

A.1.2 SUBMISSION OF OFFER

While the Principal reserves the right to refresh the Panel at any time, Respondents may only submit applications to become a Member of the Panel in response to this initial release of the Request, in which case Offers must be submitted by the Closing Time.

The Principal also reserves the right to consider applications at any time from suitably qualified Aboriginal Enterprises. Applications made under this clause will be subject to an assessment against the evaluation criteria as outlined in the Request. If successful the applicant will be appointed to the Panel in addition to the existing Panel Members.

The Respondent shall submit two separate sealed envelopes.

1. The **first envelope** shall be clearly marked "**Envelope One - Responses To Qualitative Criteria**" and shall contain **one (1)** unbound original response and **three (3)** bound/stapled copies and **one (1)** compact disc copy or USB flash drive copy of the response that contain:

- Completed Part C – Respondent's Offer.
2. The **second envelope** shall be clearly marked "**Envelope Two - Schedule of Hourly Rates**" and shall contain **one (1)** unbound original and **one (1)** compact disc copy or USB flash drive copy response that contain:
- Completed Part D – Respondent's Offer – Submitted Schedule of Hourly Rates.

A.1.2.1 LODGEMENT OF OFFER

1. The Respondent may submit the Offer by hand at:
**Tendering Services, Ground Floor, Optima Centre
16 Parkland Road, Osborne Park WA 6017**
2. The Respondent may submit the Offer by post at:
Locked Bag 11, Osborne Park WA 6916.
3. The Respondent may submit the electronically:
Provided that the Respondent is registered with Tenders WA for electronic submission the Respondent may submit their Offer electronically by uploading one complete set of documents to a maximum limit of 100MB per upload request at: www.tenders.wa.gov.au. Respondents are strongly encouraged to register on Tenders WA website for free to ensure that they receive any amendments to the Request.

All electronic submissions must be in one or more of the following file formats:

.doc*	.pub*	.pdf#	.txt	.rtf	.ppt	.xls*
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* Microsoft Compatible
Adobe Compatible
NB: Zipped Files Acceptable

Please allow sufficient time for the submission of Offers as late tenders will not be accepted.

A.1.2.2 CONTACT PERSON

All Respondent enquiries must be referred to the person nominated below.
Respondents must not rely on any other information provided by any other person.

Name: Alex Raynes-Goldie
Title: Manager Percent for Art
Telephone: (08) 6551 2213
E-mail: Alex.Raynes-Goldie@finance.wa.gov.au

A.1.3 STRUCTURE OF THIS DOCUMENT

Part A of this document describes how the Panel will function, including the evaluation and Panel appointment process, the operation of, and allocation of work through the Panel, and the Panel terms and conditions.

Part B of this document describes the general specification for the scope of services and the General Conditions of Contract for application in specific project commissions.

Part C of this document includes the Qualitative Criteria and various forms and declarations that must be submitted in the Respondent's Offer in a separate sealed envelope.

Part D is the Submitted Schedule of Hourly Rates to be submitted in a separate sealed envelope.

Separate documents supplied by BMW:

- Addenda (if any)

Supporting documents not supplied by BMW are available from:

Standards Australia:

The following Codes can be located at: <http://www.standards.org.au/>

- AS 4122 - 2010 General Conditions of Contract for Consultants, which should be read in conjunction with the WA Government Amendments to AS4122-2010 in Schedule 1.
- AS 4120 - 1994 Code of Tendering;
- AS 4121 - 1994 Code of Ethics and Procedures for the Selection of Consultants; and
- AS 2124 – 1992 General Conditions of Contract

Australian Procurement and Construction Council (APCC)

The National Code of Practice for the Construction Industry 1997 can be downloaded by visiting the APCC website: <http://www.apcc.gov.au/>

Building Commission (WA)

WA building legislation covers the way building approvals are managed in Western Australia. The *Building Act 2011* (WA) came into effect in April 2012.

BMW procedures will now require evidence of compliance to the National Construction Code (NCC) and will ensure delivery of the certification processes required under legislation and associated standards. All Lead Consultants and BMW Project Managers will be expected to ensure the delivery of certification processes required under the legislation. For more information, please visit: <http://www.buildingcommission.wa.gov.au/>

A.2 OBJECTIVES OF THE PANEL

The Art Coordination Consultancy Services Panel has been developed to support BMW in delivering its art commissioning services in planning, delivering and maintaining Government's non-residential buildings portfolio, in both metropolitan and regional Western Australia.

The objectives of the Panel are to:

- (a) Enable new art projects to be started quickly by prompt engagement of the artists;
- (b) Reduce the time, effort and cost in tendering for and establishing contracts;
- (c) Provide a mechanism that allows the optimal commission quality to be achieved;
- (d) Demonstrate good procurement practice; and
- (e) Achieve value for money.

A.3 SUMMARY OF SERVICE REQUIREMENTS

The Panel may be used to engage Art coordination consultants for any work required in the commissioning of art in the planning, delivery and maintenance of Government's non-residential buildings program, in either metropolitan or regional Western Australia.

The Consultant project team will be required to undertake the following services on a Lump Sum Fee basis unless otherwise specified:

- management of the project
- artwork scoping
- stakeholder liaison
- establishment of brief and brief finalisation
- site investigation
- manage art work schematic design
- manage artwork design development
- contract documentation
- tender assessment
- contract administration
- scheduling
- project handover

Full details of the scope of services are shown in Part B.1 – Scope of Services.

From time to time, the Principal will require art coordination services that are different to or beyond the normal requirements described in Part B – Specifications. Such

work may be commissioned using submitted hourly rates on the basis of an agreed scope of work.

A.4 OPERATION OF PANEL

The Art Coordination Services Panel will be used to select firms (groups or individuals) for art projects costing up to \$5 million, with total fees including sub consultants of not more than \$150,000. This Panel will also cover feasibility studies and art project advisory and coordination services where fees are expected to be within this range. The Panel will operate on a *pre-selected* basis, and clients can select a firm from the Panel without the requirement for any further selection process.

The nature, scope, scale and complexity of individual projects will determine the choice of a particular firm, if any, from the Panel.

Operational process

The Panel will typically operate as follows:

1. The BMW Manager Percent for Art and the BMW project leader or delegate will review the Panel and select a Panel Member from the list. This will typically be done in conjunction with the commissioning agency and take into account any particular project or client requirements.
2. The BMW Manager Percent for Art or BMW project leader responsible for the project will contact the Panel Member's representative, advising of the nature of the artwork contract, the proposed scope of the work, travel and accommodation provision if applicable, and request the Panel Member's representative to submit a detailed fee proposal. The fee will be in accordance with the consultants' tendered Schedule of fees and hourly rates. The fee proposal so derived shall be a Lump Sum Fee unless otherwise agreed with the BMW project leader.
3. The BMW project leader, responsible for the project will review the Panel Member's proposal, and if deemed acceptable, seek the commissioning agency's approval and financial authority to award the contract to the Panel Member.
4. Subject to commissioning agency approval, BMW will accept the proposal and make the appropriate contract arrangements.
5. Where the BMW project leader considers the Panel Member's proposal is not in accord with the schedule agreed at the time of appointing the Panel Member to the Panel, the Panel Member's representative will be offered the opportunity to justify and/or amend the proposal.
6. If the Panel Member cannot justify the discrepancy in the proposal, or is not prepared to amend the proposal in accord with the schedule agreed at the time of establishing the Panel Member's membership on the Art Coordination Services

Panel, BMW will decline the Panel Member's proposal and the process will recommence at Step 1 with an alternate Panel Member from the Panel.

Note that should the Principal be other than the Minister for Works, then the commissioning agency or contract managers may carry out the above functions.

A.5 SELECTION PROCESS

This Request invites Offers from suitably qualified consultants for membership of the Panel. Respondents will initially be evaluated against the Prequalification Requirements specified in Clause A.5.6. Respondents that meet the requirements will then be evaluated against the Qualitative Criteria as described herein. Offers received that have not addressed all of the Qualitative Criteria may be ruled invalid.

The Principal is not obliged to accept any Offer and may reject without liability any or all Offers submitted. The Principal may at its discretion not accept any Offer from entities subsidised or funded directly or indirectly by State or Federal Government.

A.5.1 PANEL COMPOSITION

BMW reserves the right to limit the Panel to 8-12 consultants who best demonstrate experience and appropriate qualifications to provide quality services in the coordination of public art projects at the predetermined price.

A.5.2 PANEL BACKGROUND

Based on historical data, the value of public art projects carried out as part of the Percent for Art Scheme has generally ranged between \$50,000 to \$200,000. Typically, projects fall between the 100,000 to \$150,000 range.

BMW cannot guarantee the number of projects that will be covered by the Panel. As an indicator, approximately 148 projects were allocated with a total art commission budget of \$16 Million in 2011-2017 period, with about half of these projects located outside of the metropolitan area.

A.5.3 PANEL ESTABLISHMENT SELECTION PROCEDURE

An evaluation panel will assess Offers received and make recommendations for inclusion on the Panel of those Respondents deemed to have demonstrated an acceptable response to the Qualitative Criteria.

A.5.4 PRINCIPAL'S DISCRETION

The Principal reserves the right to alter the operational parameters, terms and conditions and membership composition of the Panel at its discretion and at any time during the operation of the Panel.

A.5.5 ASSESSMENT PROCESS

The Offers will be assessed in the following order:

- prior to opening the envelope for Part D Submitted Schedule of Hourly Rates, Respondents' must first meet the Prequalification Requirements (Clause A.5.6);
- Respondents are then assessed by the evaluation committee on their responses to Part C Qualitative Criteria (Clause A.5.8);
- Following the qualitative assessment, Respondents considered to have the highest ranking qualitative response will have their Part D Schedule of Hourly Rates assessed.

Panel membership will be awarded to the Respondents who best demonstrate the ability to provide quality services at the submitted rates. The best value for money will be determined by assessing qualitative and compliance criteria, and considering price, economic, environmental, social benefits and the requirements of the Department.

Any Respondent that achieves an acceptable rating against the Qualitative Criteria, may be appointed to the Panel. However, BMW reserves the right to select many or few firms from the Panel to undertake work based on its assessment of performance of the Panel Member or in any way otherwise as it sees fit.

A.5.6 PREQUALIFICATION REQUIREMENTS

To be eligible for consideration and continued membership, the Respondent, director, partner, manager or other person responsible for the service must meet the Prequalification Requirements outlined below:

1. Professional qualifications or equivalent experience

Respondents must hold a recognised educational qualification in design, arts administration, fine art or equivalent experience – Complete the table at Part C Clause C.7.

2. Permanent Office

The Respondent must maintain a permanent operational office that is the Respondent's principal place of business or may be a branch office of the Respondent's principal place of business. When considering whether an establishment is a permanent operational office, BMW may request that the Respondent demonstrate that the establishment:

- Is a permanent fixed establishment (not a post office box or temporary facility such as a site office or caravan);
- Has been operational in the regional zone for a period of not less than 6 months;

- Will continue to remain operational and active after the completion of the Contract;
- Has established a full suite of communication facilities including mobile telephone, telephone, and email etc;
- Is resourced by at least one person that resides within the region, who is a permanent employee(s) of the Respondent (not contract staff) and who has relevant qualifications and experience; and
- Is marketed by the legal entity by way of corporate publications (letterheads), web site, telephone directory listings etc.

A.5.7 MAINTENANCE OF ELIGIBILITY OF PANEL MEMBERSHIP

To maintain eligibility to the Panel, a Panel Member must maintain employment of one or more key personnel who hold relevant experience, and who have demonstrated track record in the field of art coordination or the coordination of artworks sited in public spaces. Any changes must be agreed with BMW.

Panel Members that fail to maintain their eligibility to the Panel will be suspended from the Panel. In such circumstances, BMW may restore Panel numbers by adding the next most qualified Respondent to the Panel.

A Panel Member suspended from the Panel may seek reinstatement within a reasonable time of its suspension, following its demonstration to the Principal that eligibility criteria have been restored. In such circumstances, reinstatement shall be solely at the Principal's discretion.

A.5.8 QUALITATIVE CRITERIA

Assessment of Offers will include evaluation of the Qualitative Criteria below.

A weighted criteria system will be used for the selection of the Respondents for the Panel. Offers received that have not addressed each of the Qualitative Criteria may be ruled invalid.

Assessment of Offers will include evaluation of the following Qualitative Criteria. The percentage weighting shown against each criterion is the same percentage weighting that will be used during the evaluation.

The number of pages shown against each criterion is a guide to the suggested **maximum** length of each response.

Respondents must demonstrate their ability against each of the criteria to be considered competitive for the resultant Panel Arrangement.

CRITERIA	WEIGHTING
1. Experience (suggested maximum 3 pages + 1 page personnel CVs) Demonstrate your experience in managing public art projects or art in public spaces. Include one (1) page Curriculum Vitae (CV) for each proposed person.	20%
2. Knowledge (suggested maximum 2 pages) Demonstrate your knowledge and understanding of the issues, materials and processes engaged in artworks intended for public sites.	20%
3. Conceptual Capacity (suggested maximum 1 page) Demonstrate your understanding of three-dimensional spaces from a range of architectural drawings and site plans, and to identify the most appropriate strategies and themes for artworks executed in a range of art forms that harmonise with these spaces.	20%
4. Regional and Aboriginal Experience (suggested maximum 2 pages) Demonstrate your experience in managing art in Regional WA, including any with Aboriginal artists or community involvement. Provide evidence of any local regional based capacity to deliver art coordination services.	15%
5. Communication Skills, Writing & Team Work (suggested maximum 1 page) Demonstrate your communication skills as they would relate to the role of Art Coordinator within the project team. Outline your relevant previous experience in working collaboratively with project teams. Demonstrate your ability to analyse project data, write progress reports, develop artwork briefs and conduct expert assessments of completed artworks.	15%
6. Approach (suggested maximum 2 pages) Outline your understanding of, and approach to, the role of Art Coordinator within a public art project team including the use of expert advice to ensure safety.	10%

A.6 PANEL OPERATION

A.6.1 SELECTION AND ENGAGEMENT PROCESS

Once the Panel has been established, BMW Manager Percent for Art with BMW Project Leaders will select firms from the Panel based on the following considerations:

1. The required scope and nature of services required and estimate the Perth based project feeable value or hours required.
2. For projects lacking scope definition, BMW may select a firm to undertake investigations on an hourly rates basis.
3. BMW will select one firm from the state wide register and will advise the firm's representative of the nature of the contract, the proposed scope of work, the relevant fee and the availability of the personnel nominated in the formation of the Panel for the relevant type of work.
4. BMW will issue a formal Invitation for Proposal to the firm that includes a project scope and relevant contract conditions.
5. Once a contract is thus established, the work can commence. The commission details and consultant performance will be recorded.

A.6.1.1 BUYING RULES

The following buying rules will guide the selection of firms from the Panel, in accordance with BMW's works procurement policies:

Commission Details	Selection Method
Up to \$150,000	Direct appointment of a firm from the Panel. Primary consideration is to be given to members with a local regional business presence.
Greater than \$150,000	Open tender through a public advertisement.

The Principal reserves the right to modify the selection process and buying rules at its sole discretion at any time.

The Principal will advise where a commission is deemed "Complex" in such cases where multiple commissions are required within one project or significant Aboriginal liaison is encountered. In such cases the "Complex" fee rate shall apply (refer A.6.3).

A.6.1.2 PROJECT ALLOCATION FACTORS

BMW will select firms for invitation considering the following factors:

- (a) Nature of the work, including it's risk profile;

- (b) Known expertise, experience and availability of staff in the various firms;
- (c) Past performance of the various firms;
- (d) Current and previous allocation of work across the Panel;
- (e) Stakeholder requirements; and
- (f) For regional projects – local proximity and suitability to the project.

A.6.2 ACCESS TO PANEL BY THIRD PARTIES

The Principal may during the Term make the Panel available for the use of other parties other than the Principal. This may occur through the engagement of Panel Members directly by third parties performing functions for and on behalf of the Principal.

The Principal has a framework for the maintenance of public works using third party Facilities Managers who may be contractually responsible to the Principal for arranging that maintenance. It is envisaged that the Principal will allow access by those Facilities Managers to engage Panel Members from this Panel, to assist the Facilities Manager in performing that contractual obligation to the Principal.

The engagement of Panel Members by Facilities Managers will be consistent with existing State Government and Building Management and Works policies.

Panel Members may elect in their Offer whether or not to provide Services through this Panel Arrangement to third parties in addition to the Principal, or just the Principal alone in Part C Clause C.4 of this Request.

Where Panel Members have elected and agreed in their Offers in Part C Clause C.4 of this Request to provide Services to third parties in addition to the Principal, then Panel Members have hereby agreed:

- (i) To permit the Principal to disclose the Panel Members Offer to third parties approved by the Principal who may seek to access and engage Panel Members as third parties;
- (ii) To be engaged by third parties authorised by the Principal to access this Panel;
- (iii) To provide services to relevant third parties on the same terms and conditions (including but not limited to fees) as they would to the Principal, if the Panel Member is engaged by a third party properly accessing this Panel;
- (iv) That when a third party engages a Panel Member from the Panel, the resulting contract is between the Panel Member and the third party only. The Principal shall not be a party to the contract between the Panel Member and the third party;
- (v) That any third parties accessing the Panel do not have any powers of agency or any other power express or implied to legally bind the Contract Authority; and
- (vi) To accept the terms and conditions of any variation to the Panel Arrangement (whatever they may be) by the Contract Authority to formalise the access by third parties to the Panel under the Facilities Managers framework.

A.6.3 PRE-DETERMINED FEE SCALES

Contracts for Service deriving from membership of the Panel will generally be offered on a Lump Sum Fee basis. The Lump Sum Fee will be calculated as per the Schedule of Fees below.

The Lump Sum Fee Schedule below is GST Exclusive and includes disbursement costs at clause A.6.7 Schedule of Fees.

	CONVENTIONAL PROJECTS	COMPLEX PROJECTS
Project Feeable Value excl. GST (\$)	Percentage of Feeable Value (%) (GST Excl.)	Percentage of Feeable Value (%) (GST Excl.)
Up to \$50,000	12	16.8%
\$50,001 to \$60,000	11.5	16.1%
\$60,001 to \$80,000	11	15.4%
\$80,001 to \$100,000	10.5	14.7%
\$100,001 to \$120,000	10.5	14.7%
\$120,001 to \$140,000	10	14.0%
\$140,001 to \$160,000	10	14.0%
\$160,001 to \$180,000	10	14.0%
\$180,001 to \$200,000	10	14.0%
\$200,001 to \$300,000	9	12.6%
\$300,001 to \$400,000	7.5	10.5%
\$400,001 to \$500,000	7	9.8%
\$500,001 to \$600,000	6.5	9.1%
\$600,001 to \$700,000	6	8.4%
\$700,001 to \$800,000	5.5	7.7%
\$800,001 to \$900,000	5	7.0%
\$900,001 to \$1 million	5	7.0%
\$1 million to \$2million	3	4.2%
\$2 million to \$3 million	3	4.2%
\$3 million to \$4 million	2.4	3.4%
\$4 million to \$5 million	2	2.8%

Application of the Rate Scale – No discontinuity

The tendered scale shall be applied so consultants shall be paid the greater of either the fee payable at the top of a lower fee range band or the rate for the fee band. Consultants will not to be paid less for work in a higher fee band range than work undertaken in a lower range.

A.6.4 HOURLY RATES SCHEDULE

Respondents are to tender their hourly rates at Schedule D.

For the purposes of Clause 17.5 (a) of the General Conditions, the travel time allowance, where applicable, shall be paid at half the tendered Schedule D hourly rates.

A.6.5 FEE VARIATION

The submitted fee scales and hourly rates shall remain fixed for one (1) year from the Commencement Date of the Panel.

Firms may resubmit adjusted hourly rates one month prior to the annual contract anniversary of the Commencement Date of the Panel and one month prior to the anniversary of the Commencement Date of the Panel each year thereafter. The price shall vary according to the Consumer Price Index No. 6401.0 for Perth for the quarter preceding the date that the request is received by the Principal.

If the Principal approves a request to vary the price, the new rates will be effective from the anniversary of the Commencement Date of the Panel.

If no new rates are submitted, the previously submitted rates will apply for the following 12 months.

A.6.6 PAYMENT STAGES

A.6.6.1 PARTIAL COMMISSIONS

Partial commissions relate to contracts where the Respondent undertakes only part of the works project – generally up to the contract documentation stage.

For partial commissions the following Lump Sum Fee breakdown shall apply.

Service Stage	Fee Percentage
Brief Finalisation and Schematic Design (including site investigation and master planning)	20%
Design Development	30%
Artist Selection, Compliance certification and Contract Documentation	50%
Partial commission budget	100%

A.6.6.2 FULL COMMISSIONS

Full commissions relate to contracts where the Respondent undertakes the management of the entire works project from brief finalisation up to final completion.

For full commissions the following Lump Sum Fee breakdown shall apply.

Service Stage	Fee Percentage
Brief Finalisation and/or Schematic Design (including site investigation and master planning)	15%
Design Development	20%
Artist Selection, Compliance certification and Contract Documentation	35%
Contract Administration up to and including Practical Completion	25%
Contract Administration from Practical Completion up to and including Final Completion, Brochure, survey and plaque	5%
Full commission budget	100%

A.6.7 SCHEDULE OF FEES**A.6.7.1 PERCENTAGE FEE**

This fee covers a 'Standard Service' as defined in clause B.4 against the list of project values shown in the fee schedule in clause A.6.3.

The schedule of fees shall cover all the services required to be provided by the Respondent for the delivery of a 'Standard Service' and shall include all disbursements e.g. photocopying, telephone, postal expenses and any cost associated with compliance under the *Building Act 2011* (WA). Travel cost disbursements are excluded.

Unless specified otherwise in the Contract, no disbursements will be payable for Contracts involving a Contract delivery point within the Perth metropolitan area.

Disbursements related to travel and accommodation may be payable for Contracts located in regional Western Australia (as defined in the Buy Local Policy) where:

- a. the Contract delivery point is located more than 80 kilometres from the Permanent Operational Office from which the Consultant is managing and delivering the Contract; and
- b. the Contract Fee has been set with reference to the Predetermined Fees Schedule or hourly rates.

Respondents should be aware that the Lump Sum Fee Schedule covers contracts entered into as a result of membership of the Panel, and includes the cost of complying with the terms of the General Conditions, all amendments and the Special Conditions.

A.6.8 QUARTERLY REPORTING – USAGE STATISTICS

As a condition of remaining part of the Panel, Consultants must report back to BMW's Percent for Art Manager, on a quarterly basis (in March, June, September and December), details of the commissions that were commenced, progressed or completed through this Panel for the applicable quarter.

The purpose of receiving these reports from consultants is to undertake analysis of the usage of the Panel and monitoring the allocation of work to consultants on the Panel.

The Consultant is to be aware that should these reports not be submitted as required, the Principal may reconsider future tendering and contracting opportunities of the Consultant.

A.6.9 COLLABORATIVE ARRANGEMENTS

For certain projects involving a mix of skills or knowledge, or particularly those requiring regional participation, the Principal may invite two or more firms to work in collaboration under a single contract. Firms that have established arrangements to work collaboratively with other firms should clearly outline these arrangements in section C.6 of the Respondent's Offer.

These arrangements are not mandatory, but may be beneficial for small or emerging practices.

A.6.10 REGIONAL PROJECTS

For regional projects, the Principal may give preference to Panel Members that are determined to be a *business with a regional presence* where the Principal, at its sole discretion, determines that the Panel Member or Panel Members meet the project specific requirements. In making this determination, the Principal may take into consideration factors such as; potential for reduced cost of disbursements; local experience and knowledge; and the need for site attendance to be frequent or at short notice. These considerations will be in addition to the overall experience and capacity of the Panel Member.

Refer to Part C, Clause C.5 Registration as a Regional Business.

A.6.10.1 GENUINE BUSINESS PRESENCE IN A REGION

To receive consideration as a business with a regional presence the Respondent must demonstrate that it has a genuine business presence in the region. A genuine

regional business presence may be a permanent office or a branch office that is the Respondent's principal place of business located in the region.

The Respondent must demonstrate that their permanent operational regional office is a genuine place of business. In assessing whether the regional office is bona fide, the Principal may take into consideration, but is not necessarily limited to, the following:

- (a) Whether the office is a permanent fixed establishment (not a post office box or temporary facility such as a site office or caravan);
- (b) Whether the regional office has been operational and business conducted from that establishment being active in the local building and construction industry for a period of not less than six (6) months;
- (c) Whether the regional place of business will continue to remain operational and active in the local building and construction industry after the completion of the contract;
- (d) Whether established communication facilities such as telephones, etc (not only mobile phones) exist;
- (e) Whether the regional place of business is resourced by at least one person who resides within the region, who is a permanent employee of the Respondent (not contract staff) and who has relevant building and construction experience; and
- (f) Whether the place of business is marketed by the Respondent's legal entity by way of corporate publications (letterheads), telephone directory listings, website, etc.

A.6.10.2 MANAGE THE CONTRACT FROM THE PERMANENT OPERATIONAL OFFICE

When considering whether the contract will be managed from the Respondent's permanent operational office, the Principal may request that the Respondent demonstrate that the permanent employee(s) located in its regional permanent operational office will be actively involved in the day to day technical performance of the works under the contract. This does not prohibit the Respondent from carrying out some of the works under the contract from another office or by employees from other offices.

A.6.10.3 MANAGE THE CONTRACT FROM THE PERMANENT OPERATIONAL OFFICE

The Principal reserves the right to consider applications at any time from suitably qualified Aboriginal Enterprises seeking to become members of the Panel. Applications made under this clause will be subject to an assessment against the evaluation criteria as outlined in the Request. If successful the applicant will be appointed to the Panel.

A.6.11 ABORIGINAL ENTERPRISE AND EMPLOYMENT TENDERING PREFERENCE POLICY

One of the key objectives in the State Government Aboriginal Economic Participation Strategy is to achieve a sustained increase in the level of supply of services to Government by enterprises that employ, or are owned and operated by, Aboriginal residents of Western Australia. Any increased access to service contracts by Aboriginal owned and operated enterprises or by enterprises with a strategy for employing Aboriginal people provides increased employment and economic opportunities for Aboriginal Western Australians.

To address this objective BMW's Aboriginal Enterprise & Employment Tendering Preference Policy applies to this tender to the extent specified herein.

Respondents for the Panel that comply with the requirements of the Aboriginal Enterprise & Employment Preference Policy may be given priority for suitable projects.

Refer to Clause C.12 Claim for Aboriginal Enterprise and Employment Tendering Preference Form.

To receive consideration for a priority selection under the policy Respondents must comply with the following definition related to the Aboriginal Enterprise and Employment Tendering Preference Policy.

A.6.12 DEFINITIONS

The term *Aboriginal Person* means a person who is of Aboriginal or Torres Strait Islander descent who identifies as such and is accepted as such by the community in which he or she lives or has lived.

The term *Aboriginal Enterprise* means:

- (a) A sole trader, where the person is an Aboriginal Person; or
- (b) A partnership or firm, where not less than 50% of the partners are Aboriginal Persons; or
- (c) A corporation that has its registered and head offices in Western Australia, where *Aboriginal Persons* own not less than 50% of the legal entity submitting the tender.

The term *Aboriginal Employer* means any legal entity that employs an *Aboriginal Person*, including an apprentice or a trainee.

The term *Joint Venture with Aboriginal Participation* means a joint venture between any Aboriginal Enterprise and non-Aboriginal Enterprise where not less than 50% of the equity in the joint venture is owned by the Aboriginal Enterprise.

A.6.13 PERFORMANCE MONITORING

A.6.13.1 CONSULTANT PERFORMANCE REPORTS AND DEMERIT SCHEME

Appointment to the Panel, and remaining a Panel Member, is not based solely on a one-off assessment of Offers, but rather an ongoing process of monitoring a Panel Member's performance. BMW conducts performance reporting through BMW Project Managers who measure and report on the performance of Consultants against criteria related to their Commissions.

This process assists both parties reaching a common understanding of expectations in relation to the Services to be delivered, as well as helping to identify areas in which the Consultant is excelling and any areas that require improvement.

The Principal will seek to allocate higher proportions of appropriate work to members that demonstrate consistent quality performance.

The Principal at its sole discretion may review the status of any Panel Member, at any time, and may temporarily suspend or remove any Panel Member from the Panel if it or one of its personnel:

- (i) Fails to perform satisfactorily or breaches the requirements of the Panel on a repeated basis;
- (ii) Exposes government to significant financial loss;
- (iii) Engages in unprofessional conduct or unreasonable dealings with the Principal or its agents;
- (iv) Makes negative comments about the Principal or its agents to other parties;
- (v) Fails to keep the Principal informed in accordance with the requirements of the Panel;
- (vi) Repeatedly accepts a Commission for a project and does not provide the promised personnel for the project without good reason; or
- (vii) Repeatedly declines offers for work.

Before such action is taken, the Panel Member will be given details of the matters prompting the Principal's concern and will be given an opportunity to justify why it should not be suspended or removed.

The Principal will continue to develop its performance monitoring mechanisms as it sees fit and will advise Panel Members as required.

A.6.13.2 SUPPLIER DEMERIT SCHEME

Panel Members are subject to BMW's Supplier Demerit Scheme. Details of the scheme are available on the *BMW Qualifying for Work with BMW* page located within the *Contractor Information* section of BMW's website which can be accessed through www.finance.wa.gov.au

A.6.13.3 REPORTING PERIODS

The reporting periods are to be determined by the Project Manager with the Consultant at the initial meeting following engagement of the Consultant.

For projects with a lifespan of six (6) months or less, performance reports are required to be completed by Project Managers immediately following practical completion and at any time where there is exceptional performance.

For projects progressing longer than six (6) months, performance reports are required to be completed by Project Managers at the following key project stages:

- (i) Practical Completion
- (ii) Finalisation of Contract
- (iii) Exceptional Performance (excellent or unsatisfactory performance).

The BMW Project Manager has the primary responsibility of completing the Consultant Performance Reports, with input from the Superintendent's Representative.

A.6.14 CHANGES IN CORPORATE CIRCUMSTANCES

Significant changes in corporate circumstances and Specified Personnel may affect the ability of a member to fulfil its obligations under the Panel.

Panel Members must notify the Principal at least two (2) months before the change is proposed to occur of any significant changes to the Panel Member's circumstances, such as corporate restructures, takeovers/mergers, changes in ABN/ACN etc. The contact for such notifications is the Manager Percent for Art.

Major changes in the Panel Member's circumstances may trigger a reassessment of its continuing Panel membership. In such circumstances, the Principal will contact the Panel Member to discuss the necessary course of action. Failure to notify the Manager Percent for Art of major changes may result in a re-assessment of the Member's status on the Panel.

Panel Members must not purport to transfer, assign or novate their Panel membership without the express written consent of the Principal. Panel Members in breach of this requirement may have their Panel membership suspended or terminated by the Principal as it sees fit.

Panel Members will be deemed to have purported to transfer, assign or novate their Panel membership if there has been a change of the legal entity or the controlling interests of the legal entity purporting to provide Services under the Panel. Where this has occurred without the express written consent of the Principal, the Panel Member is in breach of this Panel Arrangement and its Panel membership may be suspended or terminated by the Principal as it sees fit.

A.6.15 KEY PERSONNEL TO BE AVAILABLE

In making submissions for this Panel, the Respondent undertakes to provide the staff nominated in the proposal and make them available during business working hours. Panel Members failing to support the service during business hours may be suspended from the Panel at the Department's discretion.

A.6.16 CHANGES IN SPECIFIED PERSONNEL

Panel Members must notify the Principal within two (2) weeks of changes occurring to its Specified Personnel. The Principal may either accept the change of the Specified Personnel or reassess the Panel Member's capacity to discharge its obligation under the Panel Arrangement and any current or future Commission. If the Principal forms a view in its absolute discretion that the Panel Member will not have sufficient capacity to discharge those obligations as a result of the change to Specified Personnel, then the Principal may suspend or terminate the Panel Member's membership to the Panel as the Principal sees fit.

A.6.17 COMPETENCY AND QUALITY OF SPECIFIED PERSONNEL

Panel Members shall:

- (a) Ensure that its systems, processes and procedures used to source, screen (including Police Clearances), test and hire personnel that will undertake work for the Principal are robust and of a high standard;
- (b) Ensure that personnel undertaking work for the Principal are appropriately qualified, skilled and experienced for the work for the relevant Service; and
- (c) Manage the performance of personnel undertaking work for the Principal.

A.6.18 PANEL MEMBERSHIP

The Principal reserves the right at any time to increase or decrease the number of Panel Members it wishes to retain on the Panel to meet its works' program.

A.6.18.1 NEW MEMBERSHIP

The Principal may, at its sole discretion, invite Offers from new Respondents to be appointed to the Panel on an as required basis during the Term.

The Principal may or may not invite such applications based on its assessment of the capacity of the firms already on the Panel to meet the anticipated demand for services to deliver the government's works program.

New Respondents will need to complete all the requirements of Parts C and D of this Request and will be assessed similarly as previous Respondents to the Panel Request.

It is a condition of appointment to, and in order to retain membership of the Panel, that the Consultant shall not be indirectly or directly involved in tendering for or undertaking works arising from the operation of the Panel.

A.6.18.2 WITHDRAWAL FROM PANEL

A Panel Member may withdraw, in writing, from the Panel at any time due to personal or business circumstances. If any Commissions cannot be completed prior to withdrawal from the Panel, the Principal will work with the Panel Member to reallocate work accordingly.

A.6.19 PROVISION OF INFORMATION

The Consultant is required to comply with various policy, procedural, reporting, record keeping and contractual obligations, in accordance with summary below:

Information	Clause Reference	Obligation	Due
Changes to Hourly Rates	A.6.5	Firms submit adjusted hourly rates for approval by the Principal	One month prior to the Anniversary of the Commencement Date of the Panel
Usage Statistics	A.6.8	Submit quarterly reports of Commissions	Quarterly – March, June, September, December
Corporate Circumstances	A.6.14	Notify changes in structure, ABN/ACN, contact details	Within 2 months after change has occurred
Key Personnel	A.6.16	Notify changes of specified key personnel	Within 2 weeks after change has occurred
New Panel Membership	A.6.18.1	New firms apply to join the Panel	As required basis
Insurances	A.8	Maintain insurance Certificates of Currency	Before commencing work

The Principal, at its sole discretion, may review the status of any firm on the Panel, at any time, and temporarily or permanently suspend any firm from the Panel should the above contractual obligations not be fulfilled.

A.7 TERMS AND CONDITIONS OF THE PANEL

A.7.1 DEFINITIONS

In this Request:

Annexure means the Commission specific General Conditions Annexure prepared on behalf of the Principal.

BMW means Building Management and Works, Department of Finance.

Client means the Government agency for which the project is being delivered.

Commencement Date of the Panel means the date that the Panel Arrangement commences operation as specified in the first “Letter of Appointment to Panel” to successful Respondents to this Request. In the absence of any such date being so specified, then the date of the first Letter of Appointment to Panel issued by the Principal under the Panel Arrangement applies.

Commission means an engagement to perform Services for the Principal pursuant to the Panel Arrangement for a Commission based on the scope of works as set out in clause B.3.

Complex Project means a project that involves customised contracting and management. Complex projects include those with aboriginal artist mentoring and regional artist residency, and where private public partnership contracts commissions artwork. BMW may deem at its sole discretion as to whether a project is complex.

Consultant means the appointed Panel Member that has been commissioned to perform the required Services.

Facilities Manager means a contractor who currently has an agreement with the Principal to provide property asset and/or management of maintenance services for Government agencies.

General Conditions means AS 4122-2010 “General Conditions for Consultants (incorporating Amendment No. 1)” as amended by the WA Government Amendments to AS 4122-2010 shown in Schedule 1 of this Request.

Invitation for Proposal means a letter on behalf of the Principal or Lead Consultant inviting a Panel Member to provide a proposal in relation to a Commission that specifies the Services to be performed by the firm on the Panel, in accordance with the terms and conditions of the Panel Arrangement.

Lead Consultant means the Consultant that has been appointed by the Principal to lead a technical team to deliver a project.

Letter of Acceptance means a letter issued by the Principal to a Consultant accepting that Consultant’s proposal, offered through the Invitation for Proposal

Letter, and engaging that Consultant to perform the required Services for a Commission.

Letter of Appointment to Panel means a Letter of Acceptance issued by the Principal to a successful Respondent to this Request accepting that Respondent's Offer and appointing that Respondent to the Panel, pursuant to the terms of this Panel Arrangement.

Lump Sum Fee means the Lump Sum Fee calculated for a project by reference to the submitted Schedule of Fees.

Offer means the offer submitted by the Respondent in response to the Request.

Panel means the Respondents that have submitted to this Request or subsequently applied for Panel membership and been appointed by the Principal to Art Coordination Consultancy Services Panel 2017, the subject of this Request.

Panel Arrangement means the arrangement for the supply of Services by the Panel Members to the Principal or the Principal's Lead Consultants pursuant to the terms and conditions of this Request.

Principal means the Minister for Works being the body corporate created under Section 5 of the *Public Works Act 1902* (WA).

Project Manager means the individual appointed in writing to represent BMW to manage the Commission.

Request means this Request Number 2017/05404 Art Coordination Consultancy Services Panel 2018.

Respondent means the party submitting an Offer under this Request.

Services mean the services to be provided under a Commission and described in or reasonably inferred from the Scope of Services under Part B and described in the Project Brief, including the supply of Deliverables which is described in the Invitation for Proposal.

Specified Personnel means experienced personnel, nominated by the Respondent in their Offer, to be available for projects derived from the Panel.

Sub consultant means a secondary consultant that has been appointed by the Lead Consultant, from the Panel or otherwise, to provide certain services to assist in the delivery of a Commission.

Superintendent means the individual appointed in writing by the Principal to administer the building or works contract for a project as the Superintendent.

Superintendent's Representative means the individual appointed in writing by the Superintendent to act in the capacity of, and undertake specified duties for and on behalf of, the Superintendent.

Term means the initial term of the Panel Arrangement and includes any extension of that initial term.

Vaccination Zones – A State Government Agency facility that requires contractors to be vaccinated to access that facility.

A.7.2 GENERAL CONDITIONS OF CONTRACT

Australian Standard AS 4122-2010 “General Conditions of Contract for Consultants (incorporating Amendment No. 1)” as amended by this Request are the General Conditions and are referred to throughout the Request as the General Conditions.

For the purposes of the Request, the General Conditions are hereby amended in accordance with **Schedule 1** W.A. Government Amendments to AS 4122-2010 contained in this Request.

Any reference in the General Conditions to the “Client” as a party to the General Conditions shall be construed to be a reference to the “Principal” or the “Lead Consultant” where relevant, dependant on who the Consultant has been Commissioned by pursuant to the Panel Arrangement.

Any definitions appearing in Clause 1.1 of the General Conditions shall have the corresponding meaning in this Request unless the intention is clearly and unambiguously to the contrary.

The General Conditions form part of the terms and conditions governing any Commission along with the terms contained in this Request. Also forming part of any Commission is the project specific AS 4122-2010 Annexure appearing in Clause A7.4 completed as part of the Invitation for Proposal in respect of any particular Commission.

A.7.3 SPECIAL CONDITIONS OF CONTRACT

The Special Conditions of Contract governing the General Conditions for engagement of consultants as outlined in this document, unless specifically amended for any individual contract.

Where there is any inconsistency these Special Conditions shall take precedence over the General Conditions.

A.7.4 THE ENGAGEMENT

Amend clause 1.1 Part A Annexure Item 3 of the General Conditions by inserting the contract document *are constituted by*

- (A) *The Principal’s invitation to submit a proposal;*
- (B) *The Consultant’s Proposal;*
- (C) *The Code of Practice for the WA Building and Construction Industry;*
- (D) *The Letter of Engagement;*
- (E) *The General Conditions;*
- (F) *The Special Conditions of Engagement;*

- (G) *The Annexure to the General conditions for engagement of consultants;*
- (H) *The Consultant's Brief;*
- (I) *The Project Brief and;*
- (J) *The addenda and any other correspondence issued to the Consultant by the Principal."*

A.7.5 DESCRIPTION OF THE WORKS

The works comprise that stated in the consultant brief and such other work, which may be necessary for the completion of the project as described in the project brief.

A.7.6 NATURE OF CONTRACT

The firms shall be paid on a basis as stated in clause A.6.6.

A.7.7 NOTICE OF CLAIMS

The firm shall notify the Principal, in writing, within seven (7) days of notification of any claim or potential claim made against the firm which arises wholly or in part from provisions of this contract.

A.7.8 CONTROL OF FIRM'S EMPLOYEES AND SUB-CONSULTANTS

The Principal may direct the Panel Member to have removed from the project or from any activity connected with the work under the contract, within such time as the Principal directs, any person employed in connection with the work under the contract who, in the opinion of the Principal, is guilty of misconduct or is incompetent or negligent. The person shall not thereafter be employed on the project or on activities connected with the work under the contract without the prior written approval of the Principal.

The firm shall not change any member of its project team or any of its sub consultants or allow its sub consultants to change any members of their project teams that formed part of the firm's proposal or has been subsequently approved by the Principal without prior written approval of the Principal, such approval shall not unreasonably be withheld.

A.7.9 APPROVALS

The Panel Member shall not initiate or proceed with any component of service as listed in the Annexure without prior written approval of the Principal.

A.7.10 DISCRETION

Where under this Panel Arrangement, the Principal has a right, power, discretion or other function (including to accept, agree, approve, comment on or reject any matter), the Principal will be entitled to exercise that right, power, discretion or other function in its absolute discretion, unless the content expressly provides otherwise.

A.7.11 PRINCIPAL'S RIGHTS

The Principal reserves the right, without limiting any other rights which the Principal may have under the Panel Arrangement, and without giving any reason or prior notice to the Respondent or Consultant, as applicable, to:

- (i) Reject or refuse to consider or evaluate any Offer;
- (ii) Appoint suitably assessed Respondent to the Panel as it sees fit;
- (iii) Suspend or cancel the membership of any Panel Member by written notification. The period of suspension shall remain at the sole discretion of the Principal;
- (iv) Alter the composition of the Panel at any time during the operation of the Panel;
- (v) Allocate work and award contracts based on an assessment of the varying capability and capacity of the Panel Member from time to time;
- (vi) Allocate nil, any or all work under this Panel to any particular Panel Member; and
- (vii) Where it is apparent to the Principal that a person engaged under the Panel is not sufficiently capable to undertake the required work, to terminate the Commission or require the Panel Member to provide a more capable person.

A.7.12 CANCELLATION AND VARIATION

The Principal reserves the right at any time to cancel, vary, supplement, supersede or replace the Request or Panel Arrangement or any part of the Request or Panel Arrangement by giving Panel Members or Respondents (as the case may be) timely written notification.

A.7.13 NO CLAIM

To the extent permitted by law, the Respondent will have no claim against the Principal arising from, or in connection with, the exercise or failure to exercise the Principal's rights under this Request.

A.7.14 FURTHER INFORMATION

After the submission of an Offer, the Principal may:

- (i) Request additional information from the Respondent in relation to the content of the Offer for the sole purpose of clarifying the Offer; and
- (ii) Request information from the Respondent regarding the financial capacity of the Respondent.

If the Principal considers that there are unintentional errors of form in the Offer submitted by the Respondent where the error is clear and not critical to comparative evaluation of Offers, the Principal may request the Respondent to correct or clarify the error, but will not permit any material alteration or addition to that Offer. The decision to permit a Respondent to correct such an error is only within the sole and absolute discretion of the Principal only.

If the Principal makes a request for further information, the Respondent or Panel Member (as the case may be) must provide that information within five (5) working days, unless otherwise agreed by the Principal.

A.7.15 SUBMISSION OF OFFER

Offers which have not been submitted strictly in accordance with the requirements described in Parts C and D will not be considered.

A.7.16 AGREEMENT WITH REQUEST CONDITIONS

In submitting an Offer, the Respondent is deemed to have read and agreed to all terms and conditions of the Request.

A.7.17 AGREEMENT BY RESPONDENT

In submitting an Offer, the Respondent warrants and agrees that:

- (i) All information in its Offer is true and correct at the time of its submission;
- (ii) Other than in respect of information provided by the Principal to the Respondent in writing, it relies entirely on its own enquiries in relation to all matters in respect of the Request and the General Conditions;
- (iii) It has examined and understood the Request, each addendum issued under the Request, the General Conditions, and any other information available to the Respondent in respect of the Request;
- (iv) It has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Offer, which is obtainable by the making of reasonable enquiries;
- (v) Other than in respect of information provided by the Principal to the Respondent in writing, it does not rely on any warranty or representation of the Principal or any person actually or ostensibly acting on behalf of the Principal; and
- (vi) Irrespective of whether its Offer is accepted or not, it will pay its own costs and expenses in connection with:
 - (a) The preparation and submission of its Offer; and

- (b) Any discussions, enquiries or negotiations with, or provision or consideration of further information to the Principal, whether before or after the submission of any Offer.

A.7.18 OFFER VALIDITY PERIOD

The Offer must remain valid and open for a period of six (6) months from the date on which the Offer is submitted unless otherwise agreed in writing between the Principal and the Respondent.

A.7.19 CONFIDENTIALITY

Panel Members must keep confidential all information that the Principal has specified as confidential information. The firm must not use or disclose to any person the Principal's confidential information except:

- (i) Where necessary for the purpose of supplying the Services;
- (ii) As authorised in writing by the Principal;
- (iii) To the extent that the confidential information is public knowledge (other than because of a breach of this clause by the Panel Member);
- (iv) As required by any law, judicial or parliamentary body or Government Agency; and
- (v) When required (and only to the extent required) to the firm's professional advisers. The Panel Member must ensure that such professional advisers are bound by the confidentiality obligations imposed on the firm under this clause.

A.7.20 CONFLICT OF INTEREST

- (i) The Respondent must disclose in its Offer (under Part C Clause C.9) and prior to any Commission under the Panel, any circumstances, arrangements or understandings which constitute, or may reasonably be considered to constitute, an actual, potential or perceived conflict of interest in relation to the Request or in the performance of a Commission (see AS 4121-1994).
- (ii) The Panel Member must not place itself in a position which may, or will give rise to an actual, potential or perceived conflict of interest during the Term or during a Commission.
- (iii) The Respondent or Panel Member (as the case may be) must otherwise notify the Principal promptly in writing upon becoming aware of any actual, potential or perceived circumstances, arrangements or understandings which constitute, or which may reasonably be considered to constitute, an actual, potential or perceived conflict of interest with the Respondent's or the Panel Member's obligations under this Request or under a Commission.
- (iv) The Principal may still accept the Respondent's Offer, or award a Commission to a Panel Member, if the Principal considers that the Respondent or Panel

Member (as the case may be) has, or could reasonably be considered to have, an actual, potential or perceived conflict of interest in relation to the Request or the performance of a Commission. In making its decision, the Principal may request further information, including details of any proposed strategy for managing any actual, potential or perceived conflicts of interest.

- (v) To the extent that the Principal directs the Respondent or Panel Member (as the case may be) to take particular action in respect to a conflict of interest, then:
 - (a) In the case of a Respondent who is unable or unwilling to comply with such a direction, the Respondent's Offer may not be considered further; and
 - (b) In the case of a Panel Member who is unable or unwilling to comply with such a direction, the Panel Member may have its membership on the Panel suspended or cancelled as the Principal sees fit.

A.7.21 OWNERSHIP / INTELLECTUAL PROPERTY

- (i) All documents, materials, articles and information produced by the Respondent as part of, or in support of an Offer (including subsequent Offers under the Panel) shall become upon submission the absolute property of the Crown in right of the State of Western Australia, and will not be returned to the Respondent.
- (ii) Documents, materials, articles and information produced by the Consultant resulting from a Commission undertaken from this Panel shall become, upon creation, the absolute property of the Crown in right of the State of Western Australia.

A.7.22 ADDENDA

Written addenda issued by the Principal are the only explanations of, or variations to, this Request that will be accepted by the Principal.

A.7.23 DISCLOSURE OF INFORMATION

- (i) The Respondent agrees and acknowledges that any information or further information submitted with its Offer, and any Commission which results from membership of this Panel, is subject to the *Freedom of Information Act 1992* (WA) and may also be disclosed by the Principal under a court order or upon request by Parliament or any committee of Parliament or if otherwise required by law.
- (ii) By submitting an Offer, the Respondent releases the Principal from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting from the disclosure of any information under this section.

- (iii) The Respondent agrees and acknowledges that the powers and responsibilities of the Auditor General under the *Financial Management Act 2006* (WA) and the *Auditor General Act 2006* (WA) are not affected in any way by this Request.
- (iv) Subject to this section, and to the provisions of the *Financial Management Act 2006* (WA) and the *Auditor General Act 2006* (WA), the Principal will not make public any information related to the Offer that the Respondent expressly and reasonably nominates as confidential. However, the Principal may require the Respondent to withdraw any claim to confidentiality in respect of any part of the Offer as a condition of acceptance of the Offer.

A.7.24 GST/RECIPIENT CREATED TAX INVOICE AGREEMENT

A.7.24.1 GOODS AND SERVICES TAX (GST)

Where the service to be provided through this Request or any part thereof is a taxable supply under the GST Act, the total price or fee shall be inclusive of all applicable Goods and Services (GST) at the GST rate in force for the time being.

The Commission derived from the pre-determined percentage fee scales at Schedule 1 or submitted hourly rates shall be deemed to be GST exclusive.

A.7.24.2 RECIPIENT CREATED TAX INVOICE AGREEMENT

The Respondent shall lodge with its proposal the Recipient Created Tax Invoice Agreement (RCTI) included in Part C Clause C.11. The lodged RCTI shall be completed and signed by a person authorised to do so.

Failure to lodge the completed and signed RCTI as required may result in a delay in the payment of claims.

For each contract Commission, the Panel Member may be required to lodge, with its proposal, a contract-specific RCTI.

A.7.25 NO GUARANTEE OF WORK

Panel Members acknowledge that the Principal is under no obligation to provide any work to them through the Panel.

A.7.26 NATURE OF CONTRACT

Depending on the nature of the contract, the Consultant shall be engaged on either a Lump Sum Fee or Hourly Rate basis as stated in the Invitation for Proposal.

A.7.27 CIVIL LIABILITY ACT 2002 (WA)

- (a) Subject to sub clause (b), and notwithstanding any other provision of this contract, the operation of Part 1F of the Civil Liability Act 2002 (WA) is

excluded in relation to all and any rights, obligations and liabilities (including negligence) arising out of or in connection with this contract or the performance of the Services;

- (b) Sub clause (a) only applies in relation to the Services performed or subcontracted by the Consultant under this contract (as may be amended from time to time), and does not extend to other contracts entered into by the Client for which the Services may be required, such that should the Client engage a builder (or other third party) to construct a building or provide goods or services in addition to the Services the subject of this contract, then as between the Consultant and any such builder (or third party), then Part 1F of the Civil Liability Act (2002) (WA) is not excluded.

A.8 INSURANCES

The Respondent shall submit as part of its Offer evidence of the insurances for the minimum cover as outlined below.

For certain Commissions, the Project Manager, after taking into consideration project specific risks, may request additional insurance cover for a Commission and the Panel Member shall provide evidence to the satisfaction and approval in writing of the Principal prior to commencing on the Commission. This is in addition to the minimum insurance requirements of this Request. Refer Part C Clause C.10.

Before commencing specific project work pursuant to this Panel Arrangement, the Consultant shall provide evidence of up to date insurance Certificates of Currency to the satisfaction and approval in writing of the Principal, of the following insurances:

A.8.1 PUBLIC LIABILITY INSURANCE

Pursuant to the Request and in accordance with Clause 30.2 of the General Conditions, Consultants shall maintain Public Liability insurance covering the legal liability of the Consultant and the Consultant's personnel arising out of the services for an amount of not less than **\$5 million** for any one occurrence and unlimited in the aggregate.

A.8.2 PROFESSIONAL INDEMNITY INSURANCE

Pursuant to the Request and in accordance with Clause 30.4 of the General Conditions, Consultants shall maintain Professional Indemnity insurance covering the breach of duty owed in a professional capacity arising out of any act, negligence, error or omission made or done by the Consultant or any consultant or agent engaged by or on behalf of the Consultant in respect of the Services provided in connection with the Panel Arrangement and must be maintained for a period of at least six (6) years after termination or expiration of the Commission or alternatively six (6) year run-off cover must be obtained by the Consultant for an amount not less

than **\$1 million** for any one claim and in the annual aggregate, with the provision of one automatic reinstatement of the full sum insured in any one period of insurance.

The insurance policy must be extended to include:

- (i) Fraud, dishonesty, defamation, breach of confidentiality, infringement of patent, copyright, design, trade mark or circuit layout rights;
- (ii) Loss of or damage to documents and data; and
- (iv) Breach of Chapters 2 and 3 of the Australian Consumer Law and the Australian Consumer Law (WA).

A.8.3 WORKERS' COMPENSATION / EMPLOYERS' INDEMNITY INSURANCE

Workers' Compensation/Employers' Indemnity insurance in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* (WA), including cover for common law liability for an amount of not less than **\$50 million** for any one event in respect of workers of the Panel Member. The insurance policy must be extended to indemnify the Principal for claims and liability under section 175(2) of the *Workers' Compensation and Injury Management Act 1981*.

Note: Sole traders, who work for themselves and do not have direct employees, are not required to be covered under a workers' compensation insurance policy.

A.8.4 INSPECTIONS AND PROVISIONS OF INSURANCE POLICIES

Before commencing work under the Panel, the firm shall provide evidence, to the satisfaction and approval in writing of the Principal, of the insurance's having been taken out for the purposes of clause 30 of the General Conditions. Current insurance is required by the firm whenever it undertakes work for BMW. Inspection is not required separately for each project undertaken but further inspection of insurances is required whenever the Panel is extended or insurance policies are renewed.

A.9 PUBLIC DISCLOSURE OF CONTRACT DETAILS

- (i) The contract award information for all contracts above \$50,000 will be publicly available and published on the Tenders WA website after the contract is legally established.
- (ii) 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.

A.10 ACCESS BY THE AUDITOR GENERAL

The parties acknowledge and agree that, notwithstanding any provisions of this contract to the contrary, the powers and responsibilities of the Auditor General for the State of Western Australia under the *Financial Management Act 2006* are not limited or affected by the terms of the Panel Arrangement.

A.11 POLICE CLEARANCES

- (i) The Principal may request the Consultant, at any time and from time to time, to obtain and provide it with a National Police Clearance in respect of any Personnel.
- (ii) The Consultant must comply with a request under A.11 within thirty (30) business days of the request.
- (iii) If any police clearance shows that any of the Specified Personnel has committed a criminal offence punishable by imprisonment or detention, the Principal may, without prejudice to their other rights under the contract, request the Consultant to promptly remove the personnel from involvement in the Services under the contract.
- (iv) If the Consultant is requested to remove any personnel under this Clause A.11, the Consultant must, at its own cost, promptly comply with the request and, if instructed so, arrange for a replacement of that personnel.

A.12 ACCESS REQUIREMENTS – COVID VACCINATION ZONES

Contractors must be able to provide evidence of vaccination against COVID-19 when attending Vaccination Zones. A list of Vaccination Zones is available at www.wa.gov.au/government/publications/vaccine-requirements-department-of-finance-contractors-consultants-and-suppliers.

Evidence of vaccination must be in the form of:

- A COVID-19 digital vaccination certificate; or
- An Australian Immunisation Register immunisation history statement.

Contractors unable to provide this evidence will not be permitted to access the facility or be eligible to receive payment for their time.

A.13 ACCESS

1. Subject to the Principal, Consultant or both (as applicable):
 - (i) giving reasonable prior notice to the Consultant; and
 - (ii) complying with all reasonable directions and procedures of the Consultant relating to occupational health, safety, security and confidentiality in connection with the Consultant's premises, the Consultant must allow the Principal to:

- (a) have reasonable access to any premises used or occupied by the Consultant in connection with the Services;
 - (b) have reasonable access to all records in the custody or control of the Consultant; and
 - (c) examine, audit, copy and use any records in the custody or control of the Consultant.
2. The Consultant must keep accurate, complete and current written records in respect of the Contract including without limitation:
- (a) the type of Services, including the separate tasks, supplied to the Principal on each day during the Term;
 - (b) the time that the Consultant spent providing the Services on each day during the Term; and
 - (c) the name and title of all Specified Personnel who provided the Services or were responsible for supervising the provision of the Services.
3. The Consultant must comply with the directions of the Principal in relation to the keeping of Records whether those directions relate to the period before or after the expiry of the Term.
4. The Consultant must keep all records for at least 7 years after the expiry or termination of The Panel.
5. The Consultant must do everything necessary to obtain any third party consent which are required to enable the Principal to have access to Records under this Clause A.12.

A.14 PREMISES

- 1. The Principal will provide the Consultant with access to the Principal's premises as specified in the contract to enable the Consultant to fulfil its obligations under the contract.
- 2. Access may be temporarily denied or suspended by the Principal, at its sole discretion.
- 3. Where access is temporarily denied or suspended by the Client (except in circumstances where access is temporarily denied or suspended due to an investigation into the conduct of the Consultant or the Specified Personnel), the Consultant will be entitled to an extension of time to complete any obligations which are directly and adversely affected by the denial of access.
- 4. Without limiting the foregoing, the Principal will, following a temporary denial or suspension of access, permit a resumption of access as soon as practicable.
- 5. The Consultant must comply with all reasonable directions and procedures of the Principal and the owner or occupier relating to occupational health, safety, security and confidentiality.

A.15 NOTICE OF CLAIMS

The Panel Members shall notify the Principal, in writing, within seven (7) days of notification of any claim or potential claim made against the Panel Member, which arises wholly or in part from provisions of this Panel Arrangement.

PART B - SPECIFICATION

Part B outlines the Scope of Services in relation to specific artwork commissions derived from the Panel.

The extent of Contracts for Service established under this Panel will be defined at the time of establishment of the individual project contract in the Letter of Acceptance.

B.1 SCOPE OF SERVICES

Panel Members will be required to provide any or all of the full range of professional services involved in the realisation of public art projects. Such services include but are not limited to:

1. Feasibility Studies
2. Coordination of all aspects of the artwork project
3. Implementation of the BMW artwork procurement strategy
4. Development of the artwork project brief(s)
5. Co-ordination of artist commissioning processes
6. Liaison with the scheme's stakeholders, other consultants and service organisations
7. Monitoring and reporting on project progress, artwork design, documentation and fabrication.
8. Timely provision of project information to the project partners (BMW and DLGSC)
9. Post-project completion reporting, including delivery of artwork documentation to the DLGSC and completion of post project questionnaires for evaluation surveys.
10. Contract management
11. Project close-off, brochure information report, arranging brochure, (report detailed at B.7.6 including maintenance schedule, as built construction drawings slides, plaque, expert assessment – before Project Occupancy Certification)
12. Facilitate DLGSC post completion survey of artist and stakeholders.

B.1.1 SCOPE OF STANDARD SERVICE

The Scope of Service and detailed conditions of engagement relevant to each contract arising from membership of the Panel will vary from contract to contract. The requirements for a 'standard service' for contracts derived from membership of the Panel Services include items 2 to 12 above and comprise the following services:

- Project management and progress reporting
- Project Definition, including establishment of the artwork brief with stakeholders
- Implementation of the BMW artwork procurement strategy
- Coordination of the artist selection and commissioning process
- Contract Management of the artist contract(s); including certification of artist claims, coordination of, and reporting on, artwork design, documentation, fabrication and installation

- Project close-off, delivery of project documentation and maintenance schedule for commissioning agency to BMW Contract Manager
- Delivery of artwork brochure and attribution plaque
- Submission of expert's advice and follow up support no longer than 12 months following artwork completion.
- Ensure the timely delivery of Design and As Constructed drawings and certifications as required by the *Building Act 2011*(WA).

B.2 CONSULTANT BRIEF

Responsibility for the delivery of projects that involve firms contracted from the Art Coordination Services Panel may rest with the nominated representative, either an individual officer from a commissioning client agency, a facility manager, or a member of a Project Board. Where a Project Board is responsible it will generally comprise representatives of the commissioning client agency, and other nominated parties.

The firm will be required to liaise with the commissioning agency or facility manager's representative as appropriate. Alternatively liaison may be with the Project Board and other nominated representative on an as required basis for the duration of the contract.

The Panel Member is expected to work in a proactive and consultative manner with representatives of BMW and DLGSC, the commissioning agency, interested stakeholders and nominated parties.

B.3 MANAGEMENT AND PROGRESS REPORTING

The Consultant is responsible for management of all aspects of the artwork project including, budget control, time control, progress reporting, and liaison with all relevant parties; which may include the commissioning client, Department of Local Government Sport and Cultural Industries, community groups, end users, relevant Authorities, and City or Shire Councils.

B.4 PROJECT DEFINITION – ARTWORK BRIEF

The Consultant is responsible for liaising with the BMW Manager Percent for Art, BMW Project Manager, project team, client representatives, artist and user groups, and any other involved parties to define the nature and scope of the art project, and to develop an artwork brief for the project.

The artwork brief will;

- clarify the opportunities and constraints existing in relation to the artwork project
- identify and address any special or particular requirements of the project
- identify appropriate supporting concepts, cultural considerations, and contexts for the artwork(s)

- suggest the scope of appropriate art forms for the artwork(s), eg; music, visual arts, performing arts, creative writing, digital or technology-based, audio-visual, landscape-integrated and kinetic works.
- propose appropriate strategies for the realisation of the artwork(s)
- identify potential sites or locations for the artwork(s)
- ensure *Building Act 2011* (WA) compliance documentation where necessary is provided to the project design certification team.

B.5 ARTIST SELECTION PROCEDURE

The Consultant shall comply with the relevant State Supply Commission guidelines. The Consultant is responsible for the implementation of the artists/artwork selection procedure.

This will involve some or all of the following stages:

- Calling for “Expressions of Interest” from artists by public advertisement for artwork projects over \$50,000 through the BMW Tenders Office or for “Registrations of Interest” from artists by advertisement for artwork projects under \$50,000, through key service organisation, the Artists Foundation of Western Australia and the partner (DLGSC and BMW) websites.
- Establishment of an artwork selection committee.
- Writing and preparation of briefing packages for artists.
- Convening of briefing sessions for artists, where appropriate.
- Responding to artists’ enquiries.
- The collection of material (digital images, slides/multimedia/CVs/maquettes/design proposals etc) provided by artists for consideration in Stage 1, by the artwork selection committee.
- Facilitating the artwork selection committee meetings, as a non-voting member, convened to shortlist artists, through implementing the BMW evaluation matrix and arranging the completion of conflict of interest declarations by the voting Panel Members.
- Inviting Stage 2 short listed artists to prepare design proposals for the “Design Proposal” stage.
- Facilitating the artwork selection committee meetings, as a non-voting member, convened to assess design proposals and select successful artists for the art Commission through implementing the BMW evaluation matrix.
- Advising artists of the results of the selection process and providing structured feedback.
- Minuting the decisions and deliberations of artist selection committee meetings and completing the evaluation matrix.
- Recording in writing each step of the artist selection process, financial details, including names and contact details of individuals and stakeholder groups involved.

B.6 CONTRACT MANAGEMENT

The consultant is responsible for administering and coordinating the artwork contract. This will involve;

- Assisting the artist(s) to budget for the artworks and to prepare payment and time schedules which form part of the BMW artist contract.
- Undertake any required training for BMW payment and approval systems.
- Coordinating the collaboration between the artist(s), the project design team, the client and the building user, on behalf of the BMW Project Manager.
- Establishing and coordinating local networks where necessary to facilitate local content and use of local skills particularly in remote or regionally located projects.
- Monitoring and reporting on all aspects of the design development, documentation, fabrication and installation of the artwork(s), including times of site access.
- Certification of artist invoices for payment by the BMW Project Manager and use of BMW's payment and approval systems as required.
- Control of time and cost issues; to ensure that the artwork project is delivered by the agreed dates and within the agreed budget.
- To identify where necessary any potential variations to contract.
- Facilitate compliance with the *Building Act 2011* (WA) where required.

B.7 PROJECT CLOSE-OFF

Prior to final payment of the firms fee by BMW, the firm is responsible for ensuring that at the conclusion of the project the artist(s) provide BMW with the deliverables specified in the artist contract. These deliverables include:

- a maintenance schedule for the artwork
- digital images documenting the artwork(s). Digital images can be supplied on CD or USB flash drive with the minimum image requirements as follows: image 5 mega pixel minimum, in .jpeg or .tiff file format.
- a brief description of the finished artwork(s) suitable for promotion and publication purposes.
- responsibility for procurement and fixing of a framed brochure and /or plaque at the site of the artwork to BMW specifications. Attribution can be integrated into the artwork as negotiated with the commissioned artist. (The firm will be reimbursed by BMW for the cost of the frame/plaque).

B.8 THE DEPARTMENT OF FINANCE/BMW ROLE

BMW will:

- Provide information regarding Policy, Government Contracts, and Standards;
- Consider and endorse where appropriate the procurement method(s) recommended by the firm;
- Provide tendering services in accordance with Government procedures;
- Make progress payments to artists upon certification by the firm; and
- Make progress payments to the firm upon reaching agreed milestones.

B.8.1 REPORTING

In addition to any requirements of specific projects for which the firm may be engaged, the Panel Member is required to attend quarterly meetings with the BMW Manager Percent for Art and other BMW representatives and representatives from the new division of DLGSC - Culture and the Arts. The Panel Member will provide regular written progress reports on the status of the art projects for which the firm has been commissioned, typically on a quarterly basis, and also upon request from the BMW Manager Percent for Art. The Panel Member will refer all media inquiries to BMW representatives.

Panel Members appointed to the Panel may be required to conduct an assessment of projects completed by financial year. Developed by the Scheme's partners. The assessment will include:

- descriptive details about the artwork such as:
 - commissioned artist(s) name(s)
 - the date and title(s) of the artwork(s) commissioned
 - the location of the artwork on the site
 - a list of materials, techniques and finishes employed in the artwork(s)
- the commissioning agency
- artist and other stakeholder details and feedback
- attribution
- environmental considerations
- condition assessments
- other appropriate background information.

B.8.2 SUBCONSULTANTS

Subconsultants are not a requirement of this proposal.

B.8.3 ON-LINE CONTRACT MANAGEMENT

Consultants shall use BMW's online project and contract management system for all fee claims relating to major capital works projects. Access to the system will be provided by BMW upon successful appointment to the Panel, where a user name and password will be released.

The information to be provided online shall include, but not necessarily be limited to: project details, project status reports, any fee variations, fee and disbursement records, progress fee claim details, certificates for currency of insurances, recipient created tax invoice agreements, variations, payment certificates in accordance with the standard consultant and construction contract documentation.

BMW will provide onsite training for all Consultants.

BMW's project and contract management system is primarily based on a Microsoft Office and Windows operating environment. For consultancy firms utilising Apple Mac operating systems, Internet Explorer can be run in one of the following ways:

1. Run a Windows partition – this requires a reboot every time Internet Explorer is required to be run;
2. Using applications which intercept Internet Explorer commands and allows them to run on the Mac;
3. Use virtual ware or an emulator.
4. Firms running Linux or Unix operating systems can also run Internet Explorer by using virtual ware or an emulator.

B.8.4 PROJECT BRIEF

As nominated for each contract for service derived from appointment to the Panel

PART C - RESPONDENT'S OFFER

C.1 NOTE TO RESPONDENT

Part C should be completed by the Respondent and returned to BMW in a **separate sealed envelope** in accordance with Submission of Offer Clause Part A.1.3.

In preparing its Offer, the Respondent must:

- (a) address each requirement in the form set out in this Part C;
- (b) take into account the contract requirements, as explained in the Request Conditions and General Conditions of Contract;
- (c) assume that BMW has no knowledge of the Respondent, its activities, experience or any previous work undertaken by the Respondent for BMW or any other Public Authority; and
- (d) Identify any information provided in the Offer that the Respondent wishes to be kept as confidential.

C.2 IDENTITY OF RESPONDENT

The Respondent must provide the following details:

Name of Legal Entity	
Name of Trust (if applicable)	
ACN (if a company)	
Business Name	
ABN	
Registered address or address of principal place of business	
Website	
Number of years the Respondent's Firm has been operating	
Contact Person	
Contact Person Position Title	
Email	
Mobile Telephone	
Telephone	
Address for service of contractual notices	

C.3 CORPORATE STATUS:

The Respondent must provide details of its corporate status by ticking one of the boxes below and providing the necessary supporting information.

- ☐ Sole trader
- ☐ Partnership (Attach, on a separate sheet, the full names of all Partners).
- ☐ Incorporated Company (Attach a copy of the ASIC registration details including the full names of directors and shareholders. Should the Company be a Trustee also provide the names of the Trust beneficiaries and copy of the Trust Deed).
- ☐ Incorporated Joint Venture (Attach a copy of the ASIC registration details including the full names of directors and shareholders).
- ☐ Unincorporated Joint Venture (i.e. Consortium) (Attach details of each member of the consortium as appropriate to the corporate structure of the member).
- ☐ Trading Trust (Attach a copy of the Trust Deed).
- ☐ Other (Attach details)

C.4 ACCESS TO PANEL BY THIRD PARTIES

The Respondent must nominate whether it agrees to provide Services under this Panel to third parties in addition to the Principal in accordance with Clause B.1 by ticking one of the boxes below.

- OPTION 1:** I/We accept to provide Services to third parties pursuant to Clause B.1 in addition to the Principal and agree to accept the terms and conditions of any variation to the Panel Arrangement by the Principal in relation to the same. ☐
- OPTION 2:** I/We do NOT agree to provide Services to third parties and only agree to be engaged by the Principal directly pursuant to the terms and conditions of the Panel Arrangement. ☐

C.5 REGISTRATION AS A REGIONAL BUSINESS

The Respondent must nominate whether it operates from a regional premises by ticking one of the boxes below, and providing the necessary supporting information.

- ☐ the Respondent operates from regional premises (full details of regional premises must be provided in accordance with clause A.6.10.1); or
- ☐ the Respondent does not operate from regional premises

C.6 COLLABORATIVE ARRANGEMENTS (OPTIONAL)

The Respondent may identify firms in the following table that it is prepared to work in a collaborative arrangement with in accordance with clause A.6.9.

Name of Firm	Extent of Previous Collaboration
(extend list as required)	

Outline the nature of these arrangements detailing, but not limited to the following:

- (a) Basis of agreement
- (b) Management framework
- (c) Key responsibilities of each party
- (d) Dispute resolution procedures

C.7 PREQUALIFICATION REQUIREMENTS

To be eligible for consideration, the Respondent, the director, partner, manager, or other person responsible for the Service must meet the following Prequalification Requirements:

- hold a recognised educational qualification in design, arts administration, fine art or equivalent experience.

RESPONDENT TO COMPLETE:

Names & positions of persons responsible for the Service	Provide details of relevant qualifications, registrations, memberships, accreditation etc

C.8 QUALITATIVE CRITERIA

The Respondent must address each of the Qualitative Criteria.

The Qualitative Criteria are not weighted equally. Refer to the % weighting for each requirement listed below.

Respondents must demonstrate their ability against each criterion to be considered for inclusion in the Panel.

Respondents must demonstrate their ability against each of the criteria to be considered competitive for the resultant Panel Arrangement.

CRITERIA	WEIGHTING
1. Experience (suggested maximum 3 pages + 1 page personnel CVs) Demonstrate your experience in managing public art projects or art in public spaces. Include one (1) page curriculum vitae for each proposed person.	20%
2. Knowledge (suggested maximum 2 pages) Demonstrate your knowledge and understanding of the issues, materials and processes engaged in artworks intended for public sites.	20%
3. Conceptual Capacity (suggested maximum 1 page) Demonstrate your understanding of three-dimensional spaces from a range of architectural drawings and site plans, and to identify the most appropriate strategies and themes for artworks executed in a range of art forms that harmonise with these spaces.	20%
4. Regional and Aboriginal Experience (suggested maximum 2 pages) Demonstrate your experience in managing art in Regional WA, including any with Aboriginal artists or community involvement. Provide evidence of any local regional based capacity to deliver art coordination services.	15%
5. Communication Skills, Writing & Team Work (suggested maximum 1 page) Demonstrate your communication skills as they would relate to the role of Art Coordinator within the project team. Outline your relevant previous experience in working collaboratively with project teams. Demonstrate your ability to analyse project data, write progress reports, develop artwork briefs and conduct expert assessments of completed artworks.	15%
6. Approach (suggested maximum 2 pages) Outline your understanding of, and approach to, the role of Art Coordinator within a public art project team including the use of expert advice to ensure safety.	10%

C.9 COMPLIANCE AND DISCLOSURE REQUIREMENTS

The Principal, in its assessment, will also consider the extent to which the Offer satisfies the following Compliance and Disclosure Requirements. The Principal reserves the right to reject any Offer that does not properly address any of the Compliance and Disclosure Requirements and suspend any Panel member that does not demonstrate an ongoing compliance to the Compliance and Disclosure Requirements.

(a) Compliance

(i) *Request Conditions*

The Respondent must confirm whether it will comply with the terms and conditions of the Request in Part A. If the Respondent will not comply with any clause of Request conditions, the Respondent must set out:

- i. the clause(s) of the Request conditions it will not comply with;
- ii. the extent of non-compliance – including the alternative clause, if any, or a description of any changes it requires to the Request conditions; and
- iii. the reason for non-compliance.

RESPONDENT TO COMPLETE:

Does the Respondent agree to the Request conditions?

(Yes / No)

If no, provide details.

(b) Disclosures

(i) *Participants (including subcontractors)*

RESPONDENT TO COMPLETE:

Is the Respondent acting as an agent or trustee for another person or persons?

(Yes / No)

If yes, provide details.

AND

Is the Respondent acting jointly or in association with another firm, person or persons?

(Yes / No)

If yes, provide details.

AND

Has the Respondent engaged, or does the Respondent intend to engage, another person or persons as a subcontractor in connection with the provision of the Art Coordination Consultancy Services.

(Yes / No)

If yes, provide details.

(ii) Criminal Convictions

The Respondent must confirm that neither the Respondent nor any person included in the Specified Personnel has any current criminal convictions for any offences from any court, or currently the subject of any charge pending before any court.

RESPONDENT TO COMPLETE:

Does the Respondent have any current criminal convictions for any offences from any court, or currently the subject of any charge pending before any court?

(Yes / No)

If yes, provide details.

(iii) Conflict of Interest

The Respondent must declare and provide details of any actual, potential or perceived conflict of interest.

RESPONDENT TO COMPLETE:

Does the Respondent have any actual, potential or perceived conflict of interest in relation to the performance of the Contract (if awarded) by the Respondent?

(Yes / No)

If yes, the reasons why.

C.10 INSURANCE REQUIREMENTS**RESPONDENT TO COMPLETE:**

Does the Respondent have the insurance required under Part A.8?

(Yes / No)

If yes, the Respondent must complete the following table:

	Insurer	ABN	Policy No	Insured Amount	Expiry Date	Exclusions, if any
On Site Public Liability Insurance						
Professional Indemnity						
Workers' Compensation including common law liability of \$50m <u>*Not mandatory for sole traders</u>						

OR

If no, does the Respondent confirm that if it is appointed to the Art Coordination Consultancy Services Panel, then it will obtain the insurance policies specified prior to engagement for specific project work?

(Yes / No)

If no, the reasons why.

The Respondent must forward its current certificates of insurance with this Offer to the Principal and must ensure that the Principal is provided with up to date insurance Certificates of Currency at all times.

The Principal reserves the right to suspend any firm on the Panel if the insurance details provided fall out of date or cease to be applicable for any reason.

C.11 RECIPIENT CREATED TAX INVOICE AGREEMENT**(REQUIRED FOR PACMAN USE ONLY)**

This Agreement is submitted in relation to any contracts derived from the Art Coordination Consultancy Services Panel No: 2017/05404.

In accordance with the Australian Tax Office's (ATO's) Goods and Services Tax Ruling (GSTR) 2000/10 paragraph 13(e) the following is agreed between the Department of Finance – acting for and on behalf of The Principal (The Minister for Works) and

(ENTER THE FULL NAME OF THE CONSULTANT)

1. The Department of Finance will issue tax invoices to the Consultant in respect of the payments by the Principal under Contracts derived from this Panel;
2. The Consultant shall not issue tax invoices in respect of claims for payment issued by the Consultant under Contracts derived from this Panel;
3. The Consultant is registered for the GST at the time of this agreement and that it will notify the Department of Finance if it ceases to be registered.
4. The Consultant's Australian Business Number (ABN) is:

(The Consultant is to enter its ABN and if applicable its GST Branch registration number)

5. The Department of Finance is currently registered for the GST and will notify the Consultant if it ceases to be registered.
6. The Department of Finance ABN is **99 593 347 728**

Name of Consultant: _____

(IN BLOCK LETTERS)

This Agreement is signed by a person authorised to do so on behalf of the Consultant.

Signature: _____

Full Name: _____

(IN BLOCK LETTERS)

Position with Consultant: _____

(IN BLOCK LETTERS)

Date: _____

C.12 CLAIM FOR REGISTRATION FOR ABORIGINAL ENTERPRISE AND EMPLOYMENT TENDERING PREFERENCE

For the purpose of registration for Aboriginal Enterprise and Employment Tendering Preference the Respondent must submit this completed form.

Is the Respondent:

(PLEASE TICK APPROPRIATE BOX)

- (a) A sole trader, where the person is an *Aboriginal Person*: Yes ☐ No ☐
- (b) A partnership or firm, where not less than 50% of the partners are *Aboriginal Persons*: Yes ☐ No ☐
- (c) A corporation that has its registered and head offices in Western Australia, where *Aboriginal Persons* own not less than 50% of the legal entity submitting the tender: Yes ☐ No ☐
- (d) A legal entity that employs an *Aboriginal Person*, including an apprentice or a trainee: Yes ☐ No ☐
- (e) A *Joint Venture with Aboriginal Participation* that is a joint venture between any *Aboriginal Enterprise* and non-Aboriginal Enterprise where not less than 50% of the equity in the joint venture is owned by the *Aboriginal Enterprise* submitting the tender: Yes ☐ No ☐

If Yes to any of the above please attach supporting information.

If Yes to (d) provide an estimation of the proportion (%) of total cost that may be attributable to the direct employment costs of the *Aboriginal Person(s)* engaged on work under contracts derived from membership of the Panel.%

Name of Respondent:
(IN BLOCK LETTERS)

This Claim for Registration for Aboriginal Enterprise and Employment Tendering Preference is signed by a person authorised to do so on behalf of the Respondent in respect to the submitted Request Number 2014/007997 for membership of the Art Coordination Consultancy Services Panel 2018.

Signature:..... Full Name:
(IN BLOCK LETTERS)

Position with Respondent:.....Date:.....

C.13 CONFIRMATION OF ATTACHMENTS

Please confirm the contents of your Offer by ticking the boxes below:

IDENTITY OF RESPONDENT	<input type="checkbox"/>
CORPORATE STATUS	<input type="checkbox"/>
ACCESS TO PANEL BY THIRD PARTIES	<input type="checkbox"/>
REGISTRATION AS A REGIONAL BUSINESS	<input type="checkbox"/>
COLLABORATIVE ARRANGEMENTS	<input type="checkbox"/>
PREQUALIFICATION REQUIREMENTS	<input type="checkbox"/>
QUALITATIVE CRITERIA	<input type="checkbox"/>
COMPLIANCE AND DISCLOSURE REQUIREMENTS	<input type="checkbox"/>
INSURANCE REQUIREMENTS	<input type="checkbox"/>
RECIPIENT CREATED TAX INVOICE	<input type="checkbox"/>
CLAIM FOR REGISTRATION FOR ABORIGINAL ENTERPRISE	<input type="checkbox"/>
& EMPLOYMENT TENDERING PREFERENCE	<input type="checkbox"/>

C.14 RESPONDENT'S CERTIFICATION OF THE OFFER

In reply to the Request for Art Coordination Consultancy Services Panel I/we offer to perform the work under the contract in accordance with the Part A - REQUEST and subject to the terms and conditions contained in the General Conditions of Contract and Annexure.

This completed form and the schedules nominated under Parts C and Part D together will comprise the Respondent's Offer.

This Offer is signed by a person authorised to do so on behalf of the Respondent.

Signature: Witness Signature:

Full Name: (Please print) Witness Full Name: (Please print)

Position With Relationship To
Respondent:..... Respondent:

Date: Date:

PART D - RESPONDENT'S OFFER – SUBMITTED SCHEDULE OF HOURLY RATES

NAME OF RESPONDENT	
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Part D should be completed by the Respondent and returned to BMW in a **separate sealed envelope** in accordance with Clause Part A.1.3 Submission of Offer.

For further details see Clause A.5.5.

SUBMITTED HOURLY RATES SCHEDULE

The Respondent is invited to submit its firm's hourly rate. BMW shall apply travel time allowance at 50% of the hourly rates unless otherwise agreed.

<u>CONSULTING TIME RATE</u>	\$/Hour (GST Exclusive)	GST (@ 10%)	\$/Hour (GST Inclusive)
Partner / Director			
Associate			
<u>TRAVEL TIME RATE</u>			
Partner / Director			
Associate			

SCHEDULE 1 – WA GOVERNMENT AMENDMENTS TO AS 4122 - 2010

The following clauses have been amended and differ from the corresponding clauses in AS 4122-2010

CLAUSE 1 DEFINITIONS AND INTERPRETATION

• SUBCLAUSE 1.1 – DEFINITIONS

Immediately after the words “means the Documents listed in Item 3” insert the following:

, which have the order of precedence in accordance with the numbered list contained in Item 3 (which is shown in descending order);

• SUBCLAUSE 1.1 – DEFINITIONS

Insert the following new definition:

Consultant's Personnel means all employees, agents and Subcontractors of the Consultant.

Insert the following new definition:

Default includes, but is not limited to:-

(a) an Insolvency Event;

(b) wrongful suspension of work;

(c) failing to provide evidence of insurance;

(d) failing to exercise the standard of care required by Clause 4;

(e) failing to comply with a direction of the Client pursuant to Clause 8;

(f) in respect of Clause 10.4(c), knowingly providing documentary evidence containing an untrue statement;

(g) subject to Clause 12.2:

(i) failing to complete the Services by the time stated in Item 13 without reasonable cause or the Client's approval; or

(ii) if a program is attached, substantial departure from the program without reasonable cause or the Client's approval; or

(iii) where there is no time stated in Item 13 or construction program, failing to proceed with due expedition and without delay without reasonable cause or the Client's approval; and

(h) failing to comply with Clauses 13.1 and 13.2.

Delete the definition of Force Majeure and in lieu thereof insert the following:

Force Majeure Event means an event that makes it impossible for a party to perform its obligations in whole or part under this Contract

and which is beyond the reasonable control of the affected party including:

- (a) fire (other than fire caused by the affected party), flood, a category 3 or above tropical cyclone (as defined by the Australian Bureau of Meteorology) affecting the area where the Services are being performed, earthquake, tsunami or explosion;*
- (b) war, insurrection, civil disturbance or acts of terrorism; or*
- (c) act of God;*
- (d) impact of vehicles or aircraft; or*
- (e) epidemic or pandemic,*

but does not include:

- (f) lack of or inability to use funds for any reason;*
- (g) any occurrence which results from the wrongful or negligent act or omission of the affected party or the failure by the affected party to act in a prudent and proper manner and in accordance with clause 4;*
- (h) an event or circumstance where the event or circumstance or its effects on the affected party or the resulting inability of the affected party to perform its obligations could have been prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence consistent with that of a reasonable and prudent contractor;*
- (i) breakdown of any equipment used by the Consultant or any Subcontractor to the Consultant;*
- (j) strikes or Industrial Action by the Consultant's Personnel in any way directed at the Consultant or any Subcontractor or directed at the Site;*
- (k) weather conditions or any effects of weather conditions, other than as described in sub-paragraph (a) above;*
- (l) act or omission of the Subcontractors (including if a Subcontractor suffers an Insolvency Event);*
- (m) a failure by a third party to fulfil a contract commitment to an affected party other than as a result of an event in paragraph (a) to (e) above; or*
- (n) lack of resources, including local materials or personnel*

Insert the following new definition:

Industrial Action means any strike, lockout or failure to attend for work, the imposition of any ban, limitation or delay in the performance

of work, any refusal by an employee to work in accordance with that employee's contract of employment or the provisions of any Industrial Award, Agreement or Order, or the performance of work in a manner different from that in which it is customarily performed.

Insert the following new definition:

Industrial Award means an award, a registered or certified agreement or an order of the Western Australian Industrial Relations Commission or Australian Industrial Relations Commission and includes Preserved State Agreements and Notional Agreements Preserving State Awards, and any agreement including a workplace or enterprise agreement between an individual or group of individuals and the Consultant or a Subcontractor to the Consultant that is lodged, registered or certified in accordance with any law applying in Western Australia.

Insert the following new definition:

Subcontract means a contract or agreement between the Consultant and a third party under which the third party agrees to perform any part of the Services under this Contract.

Insert the following new definition:

Subcontractor means a person engaged by the Consultant under a subcontract.

CLAUSE 4 STANDARD OF CARE

After the first paragraph, insert the following two (2) paragraphs:

The Consultant must ensure that, when delivered to the Client, the Deliverables are suitable, appropriate and adequate for the purpose stated in the Scope and are in accordance with all industry standards that are reasonably applicable to the Deliverables.

The Consultant must engage personnel, employees, subconsultants and subcontractors with appropriate qualifications and experience to perform the Services.

CLAUSE 5 SCOPE

- SUBCLAUSE 5.4

Immediately after the words "The Consultant is entitled to an adjustment to the Fee and/or" insert the following:

an extension of

- SUBCLAUSE 5.5

Insert the following new subclause 5.5

5.5 If the Consultant does not notify the Client under Clause 5.2 within fourteen (14) days of receiving the Client Information from the Client, the Client Information shall be deemed to be accepted by the Consultant. Where the Client Information has been deemed to be accepted by the Consultant pursuant to this clause then the Consultant shall not be entitled to an adjustment to the Fee and/or an extension of time for providing the Services under clause 5.4 or any other provision of this Contract.

CLAUSE 7 INFORMATION

In the clause heading, immediately after the word *INFORMATION*, insert the words *AND DELIVERABLES*

Insert new subclause number 7.1 and delete the first word of the subclause 7.1 ("The") and in lieu thereof, insert the following:

When requested by the Consultant, the

Insert the following new subclause 7.2

7.2 *Other than as set out in clause 26.4 the Consultant must deliver to the Client all Deliverables as reasonably requested by the Client from time to time.*

CLAUSE 8 DIRECTIONS

Insert the following new subclause 8.6

8.6 *The Client may direct the Consultant to have removed from any activity connected with the Services, within such time as the Client directs, any person employed in connection with the Services who, in the opinion of the Client (acting reasonably), is not acting in the best interests of the project (which includes being, in the Client's opinion, guilty of misconduct or any criminal activity) or is incompetent or negligent.*

A person removed under this clause 8.6 must not thereafter be employed or engaged on the project or on activities connected with the Services by the Consultant without the prior written approval of the Client.

CLAUSE 9 VARIATIONS

- SUBCLAUSE 9.2

Delete subclause 9.2 and in lieu thereof insert the following:

9.2 *If the Consultant considers that a Direction constitutes a Variation but the Direction is not in writing or does not specify that it constitutes a Variation, then prior to commencing the work the subject of the Direction, the Consultant must notify the Client in writing that it considers that the Direction constitutes a Variation. The notice required to be given by the Consultant under this clause 9.2 must set out the grounds why the Consultant considers that the Direction constitutes a Variation.*

If the Client agrees that the Direction constitutes a Variation, then it must notify the Consultant in writing and Clause 9.3 will apply as if the Direction was given by the Client under Clause 9.1. If the Client does not agree that the Direction constitutes a Variation, then it must notify the Consultant in writing and Clause 32 will apply to resolve the Dispute. If the Consultant does not give the notice referred to in this Clause 9.2 prior to commencing the work the subject of the Direction, then notwithstanding the remainder of this Clause 9, the Consultant will be bound to implement and complete the required work and is not entitled to have the work valued as a Variation under Clause 9.3 or to make any claim, whether for payment, adjustment to the Fee or the time for completing the Services or otherwise, in respect of that work.

- SUBCLAUSE 9.4

Immediately after the words “outside the general Scope of the Services.” insert the following:

If the Consultant considers that compliance with a Direction under Clause 9.1 would vary the Services beyond the general Scope of the Services, it must notify the Client within 10 Business Days of the date of the Direction. Failure of the Consultant to notify the Client within 10 Business Days of the date of the Direction will constitute acceptance that the Direction is not outside the general Scope of the Services and, in that regard, the Consultant will be bound to comply with that Direction.

CLAUSE 10 PAYMENT

- **SUBCLAUSE 10.4**

Delete subclause 10.4 and in lieu thereof insert the following:

10.4 The payment claim must:

(a) in respect of the Services:

- (i) identify the Services to which the payment claim relates;*
- (ii) separately identify each Variation;*
- (iii) separately identify any other claim for payment under this Contract including a payment stated in Item 20; and*
- (iv) set out the amount of the Fee claimed, and how that amount was determined;*

(b) in respect of disbursements:

- (i) identify each disbursement claimed;*
- (ii) state the amount of the disbursement claimed;*
- (iii) be accompanied by relevant invoices and receipts for payment;*

(c) be accompanied by a statement from the Consultant confirming that:

- (i) all amounts which are then due and payable by the Consultant to its subcontractors and subconsultants have been duly paid by the Consultant;*
- (ii) the claim does not contain any amount for costs under the Contract which are expressly referred to as being at the Consultant's own cost;*
- (iii) no fees or wages are due and owing by the Consultant in respect of its obligations under the Contract for the period to which the payment claim relates; and*
- (iv) no subcontractor, subconsultant or any other person engaged by the Consultant arising out of or in connection with this Contract has a lien or similar entitlement to any of the Deliverables or any item in respect of the Deliverables;*
- (d) be accompanied by any other information and documentation reasonably required by the Client;*
- (e) be in the form of a valid tax invoice; and*
- (f) include details of any matters which have arisen to the date of the claim which may affect the total fees payable under this Clause and, where practicable, an estimate of the amount thereof.*

- **SUBCLAUSE 10.11**

Insert the following new subclause 10.11:

- 10.11 *The Client shall make payments to the Consultant only. The Consultant is responsible for making any payment that is due to its contractors, subcontractors, consultants and subconsultants.*

CLAUSE 12 TIME

- SUBCLAUSE 12.1

Immediately after the words "time stated in Item 13" insert the following:

, or if a program is attached, the Consultant must complete the Services in accordance with the program attached to this Contract. Where there is an inconsistency between any date appearing in the Contract and a program attached to this Contract then the date appearing in the Contract shall be deemed to prevail.

- SUBCLAUSE 12.1A

Insert the following new subclause 12.1A after subclause 12.1:

12.1A As soon as the Consultant reasonably considers that anything, including an act or omission of the Client or its employees, agents, subconsultants or subcontractors, may delay the performance of the Services, the Consultant must promptly notify the Client in writing with details of the possible delay and proposals for mitigating the potential for delay of completion of the Services.

- SUBCLAUSE 12.2

Delete subclause 12.2(b) "a Force Majeure"

- SUBCLAUSE 12.2

Delete the following:

Consultant notifies the Client of the delay and its cause promptly after the Consultant becomes aware of the delay or its cause, and provides reasonable evidence of the cause and duration of the delay.

And in lieu thereof, insert the following:

following conditions precedent to any entitlement to an extension of time are satisfied:

- (e) the Consultant must submit a written claim for an extension of time to the Client within 10 Business Days of the cause of the delay commencing, which claim must set out the facts on which the claim is based and the period of time for which an extension of time is claimed (or is expected to be claimed if the cause is ongoing);*
- (f) the completion of the Services has actually been delayed due to one of the causes of delay set out in this Clause 12.2 and*
- (g) the Consultant has taken all reasonable steps to minimise the delay and no reprogramming or alteration of the sequence of activities or other method could avoid the delay.*

- SUBCLAUSE 12.3

Immediately after the words "must pay the Consultant's reasonable" insert the following:

and necessary

- SUBCLAUSE 12.4

Insert the following new subclause 12.4:

- 12.4 *The Consultant's entitlement to an extension of time under Clause 12.2 will be reduced to the extent that the delay has been caused or contributed to by:*
- (a) an act or omission of the Consultant or its employees, agents, subconsultants or subcontractors; or*
 - (b) any cause of delay which is not set out in Clause 12.2.*

- SUBCLAUSE 12.5

Insert the following new subclause 12.5:

- 12.5 *Where Item 13 provides for a program to be provided by the Consultant for the purposes of Clause 12.1, then:*
- (a) The program shall be in a form appropriate to the project and acceptable to the Client and should:*
 - (i) set out a program for the delivery of the Services to meet the completion date or dates stated in the Annexure;*
 - (ii) indicate the interdependencies of each component part of the Services;*
 - (iii) allow appropriate periods for the review by the Client of Documents to be produced by the Consultant;*
 - (iv) clearly indicate any allowances made in the program for delays to the provision of the Services or any component parts of the Services outside the Consultant's control; and*
 - (v) include a separate time line for each discrete component of the Services and a completion date for each of those components.*
 - (b) During the Contract, the Consultant shall progressively make the necessary adjustments to the program to ensure each stated completion date is achieved. If the Consultant at any time believes that the Consultant may be unable to meet a completion date for any reason, the Consultant shall notify the Client in writing and state the remedial action necessary to achieve the completion date.*
 - (c) If the Client considers that the Consultant may not meet a completion date, it may notify the Consultant and require the Consultant to notify within a reasonable time specified in the notice what remedial action (if any) the Consultant proposes to take to ensure that the relevant completion date is met.*
 - (d) The Consultant shall submit reports to the Principal in an agreed format and at agreed intervals as to the progress of the Services. The consultant shall attend progress review and co-ordination meetings in accordance with the requirements of the Principal and at a location specified by the client and shall attend any other meetings which are desirable to ensure the proper and effective provision of the Services by the Consultant.*

- (e) *The Client may direct the Consultant to deviate from the current program provided by the Consultant. The Consultant shall be entitled to recover any extra costs and expenses incurred by it as a consequence of any deviation directed by the Principal under Clause 15.1 only if the deviation is required for the convenience of the Principal or the deviation is due to a cause outside the reasonable control of the Consultant.*

CLAUSE 13 LAW AND APPROVALS

- SUBCLAUSE 13.3

Delete subclause 13.3 and in lieu thereof insert the following:

- 13.3 *If there is a new Legislative Requirement or Approval, or a change in a Legislative Requirement or Approval which:*
- (a) occurs after agreement of the Fee;*
 - (b) the consultant is bound to comply with or obtain;*
 - (c) causes the Consultant to incur more or less cost or time than otherwise would have been incurred or expended (other than the costs of any fines or penalties); and*
 - (d) could not have been reasonably anticipated by the Consultant prior to the date of the Contract,*
- then, provided the Consultant has taken all reasonable steps to mitigate and minimise all costs and expenses, or any delay in the delivery of the Services, the difference in cost will be valued as a Variation and an extension of time may be granted in accordance with clause 12.*

CLAUSE 15 REVIEW AND ACCEPTANCE

- SUBCLAUSE 15.2

Delete the entire subclause and in lieu thereof insert the following:

- 15.2 *The Consultant remains responsible for the Services despite any:*
- (a) review or acceptance of any of the Services or the Deliverables by the Client;*
 - (b) Directions (other than any Directions which are either wrongful or negligent) given by the Client in respect of the Services, the Deliverables or the performance of the Consultant's obligations under the Contract; or*
 - (c) failure by the Client to review or accept any of the Services or Deliverables.*

CLAUSE 16 ADVERSE EVENT

After the first paragraph, insert the following paragraph:

The Consultant acknowledges and agrees that, except where expressly provided in the Contract, the Consultant will not be entitled to any extension of time, payment for costs incurred or other relief with respect to any matter or circumstances the subject of clause 16.

CLAUSE 18 KEY PERSONNEL

Delete the words "is not available due to circumstances beyond the reasonable control of the Consultant" and in lieu thereof insert the following:

- (a) *resigns from employment or terminates their employment or independent contract with the Consultant;*
- (b) *dies;*
- (c) *commits a breach of any express or implied term of their employment contract or independent contract and is terminated as a result; or*
- (d) *is otherwise incapable of continuing to perform duties in respect of the Services due to illness,*

CLAUSE 20 SUBCONTRACTING AND ASSIGNMENT

- SUBCLAUSE 20.3

Delete the words “(which must not be unreasonably withheld or delayed)” and in lieu thereof insert the following:

which:

- (a) *must not be unreasonably withheld or delayed; and*
- (b) *may be conditional upon such reasonable conditions as the Client may impose, including that the Consultant obtain from a subcontractor or subconsultant the corresponding Intellectual Property Rights granted to or vested in the Client pursuant to Clause 21 and appropriate professional indemnity insurance.*

- SUBCLAUSE 20.5

Insert the following new subclause 20.5:

20.5 For the purposes of Clause 20, transfer or assignment shall be taken to include any material changes to the Consultant where the Consultant, being a partnership, company, consortium or other composite body, undergoes a material change in its structure, shareholding, membership or control which in the opinion of the Principal will affect the manner in which or the ability of the Consultant to perform the Contract.

CLAUSE 21 COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

- SUBCLAUSE 21.4

Immediately after the words “the amount stated in Item 20” insert the following
(or if no amount is stated, no additional amount is payable to the Consultant).

CLAUSE 24 SUSPENSION BY THE CLIENT

- SUBCLAUSE 24.2

Delete the entire subclause and in lieu thereof insert the following:

Unless the suspension has been directed due to the Consultant’s breach of the Contract or breach of any Legislative Requirement or Approval, the Client must pay the Consultant any costs and expenses reasonably incurred by the Consultant as a result of the suspension. The Client will not be liable for payment under this Clause 24.2 unless and until:

- (a) *the Consultant provides evidence, to the reasonable satisfaction of the Client, of the costs and expenses incurred by the Consultant; and*
- (b) *the Consultant can demonstrate that the Consultant took all reasonable steps to mitigate and minimise any costs and expenses incurred by the Consultant by reason of the suspension.*

CLAUSE 25 SUSPENSION BY THE CONSULTANT

- SUBCLAUSE 25.3

Delete the entire subclause and in lieu thereof insert the following:

25.3 If the Consultant suspends the performance of the Services under Clause 25.1:

- (a) the Consultant must recommence the performance of the Services as soon as possible and give prompt notice to the Client of the recommencement of the Services;*
- (b) except as expressly provided elsewhere in the Contract, the Consultant will not be entitled to claim any additional costs, extension of time or other form of relief in respect of the suspension of the performance of the Services by the Consultant; and*
- (c) the Client's payment obligations under the Contract will be suspended during the period of the suspension of the performance of the Services, unless the parties otherwise agree in writing or the payment obligation relates to Services performed prior to the time of suspension.*

CLAUSE 26 TERMINATION WITHOUT CAUSE

In the clause heading, immediately after the word TERMINATION, delete the words WITHOUT CAUSE.

- SUBCLAUSE 26.2

Delete the entire subclause and in lieu thereof insert the following:

26.2 If the Contract is terminated under clause 26.1, the Client must pay to the Consultant:

- (a) the applicable portion of the Fee for the Services performed prior to the date of termination;*
- (b) all disbursements incurred by the Consultant prior to the date of the termination which would have been payable had this Contract not been terminated;*
- (c) any direct costs reasonably incurred by the Consultant in the expectation of completing the whole of the Services and not included in any payment by the Client; and*
- (d) all demobilisation costs reasonably incurred by the Consultant (but not including any relocation costs incurred by the Consultant).*

The Client is not liable to the Consultant under this clause 26 for any amount greater than the amount that the Client would have paid to the Consultant had this Contract been completely performed.

- SUBCLAUSE 26.4

Delete the entire subclause and in lieu thereof insert the following:

26.4 In the event that this Contract is terminated in accordance with this clause 26, following payment of the amount due to the Consultant under clause 26.2, the Consultant must deliver to the Client all Deliverables and all Documents which, on completion, would be Deliverables.

CLAUSE 27 TERMINATION DUE TO DEFAULT BY EITHER PARTY

Delete the entire clause and in lieu thereof insert the following:

27.1 *If either party commits a Default of this Contract, the other party may give to the party who committed the Default a written notice to remedy the Default. A notice given under this Clause 27.1 must:*

- (a) state it is a notice given under this clause;*
- (b) specify the alleged Default with reasonable details;*
- (c) require the party who committed the Default to remedy the Default; and*
- (d) specify the date (which must not be less than five Business Days after the notice is served) by which the party who committed the Default must remedy the Default.*

27.2 *If the recipient of a notice given under Clause 27.1 fails to:*

- (a) remedy the Default; or*
- (b) provide an undertaking in writing to the reasonable satisfaction of the party issuing the notice of the steps it intends to take to remedy the Default,*
within the time specified in the notice, the other party may, by further written notice:
- (c) terminate this Contract; or*
- (d) if the Default is a failure of the Client to pay the Consultant under Clause 10, the Consultant may suspend performance of the Services until payment is made.*

27.3 *If the Consultant suspends performance of the Contract pursuant to this clause, the Consultant must promptly lift the suspension after the Client remedies the breach unless the Consultant has terminated the Contract.”*

CLAUSE 28 INDEMNITY

- SUBCLAUSE 28.1

Immediately after the words “by the Consultant or negligent or” insert the following:
wilful or

CLAUSE 29 LIMITATION OF LIABILITY

- SUBCLAUSE 29.1

Immediately after the words “the amount specified in Item 24” delete the words “if any.” and in lieu thereof insert the following:

If no amount is specified in Item 24, the liability of the Consultant is not limited.

- SUBCLAUSE 29.2

Delete the entire subclause and in lieu thereof insert the following:

29.2 *Any limitation of liability granted under Clause 29.1 does not apply to liability arising from:*

- (a) personal injury (including psychological injury) or death;*
- (b) infringement of Intellectual Property Rights;*
- (c) any breach by the Consultant of Clause 19;*
- (d) any claims made by a third party in respect of exemplary and punitive damages;*
- (e) fraudulent, malicious or criminal conduct;*
- (f) wilful default;*
- (g) any act or omission with reckless disregard for the consequences; or*
- (h) any breach of confidence or privacy in connection with the Contract,*

of or by the Consultant or its officers, employees, agents, subconsultants and subcontractors.

CLAUSE 30 INSURANCE

- **SUBCLAUSE 30.8**

Insert the following new subclause 30.8 immediately after subclause 30.7:

30.8 The insurances contemplated by this Clause 30 are primary and not secondary to the indemnities referred to in this Contract. However, the Client is not obliged to make a claim or institute proceedings against any insurer under the insurance policies before enforcing any of its rights or remedies under the indemnities referred to in the Contract, or generally.

CLAUSE 31A FORCE MAJEURE

Insert the following new clause 31A:

31A.1 If a Force Majeure occurs:

- (a) the party affected by the Force Majeure must give notice to the other party, describing the Force Majeure in reasonable detail;*
- (b) the Client may, by written notice within 5 Business Days of the notice under clause 31A.1(a), in its absolute discretion and without any obligation to act reasonably, grant an extension of time for completion of the Services;*
- (c) the party affected by the Force Majeure will be excused from performance and will not be construed to be in default for so long as, and to the extent that:*
 - (i) the party's failure to perform an obligation under the Contract is due to the Force Majeure,*
 - (ii) the party continues to perform its obligations under the Contract which are not affected by the Force Majeure; and*
 - (iii) the party makes all reasonable efforts to prevent, reduce to a minimum and mitigate the effect of any delay caused by the Force Majeure.*

31A.2 If a Force Majeure prevents either party from performing any of its obligations under the Contract, the Client may elect to terminate the Contract by notice in writing to the Consultant and must pay the

Consultant for the Deliverables delivered prior to the date of termination, payment for which was not included on a previous claim for payment, the amount which would have been payable in respect of those Deliverables if the Contract had not been terminated and the Consultant had been entitled to and had made a payment claim on the date of termination. A claim for payment under this Clause 31A.2 must comply with the requirements of Clause 10.

31A.3 The Consultant must take all reasonable steps to mitigate and minimise any costs and expenses incurred, or to be incurred, by the Consultant by reason of the termination.

31A.4 Upon termination and payment of the amount due to the Consultant under Clause 31A.2, the Consultant must deliver to the Client any completed Contract Documents and those other documents commenced which when completed would have formed the Deliverables. The Consultant is not liable in respect of the Deliverables which are incomplete by reason only of the termination.

CLAUSE 32 DISPUTE RESOLUTION

- SUBCLAUSE 32.1

Delete the entire subclause and in lieu thereof insert the following:

If a dispute or difference between the Consultant and Client arises out of or in connection with the Contract either party shall within seven (7) days of the dispute or difference arising serve the other party with a notice of dispute in writing by certified mail identifying and providing all details of the dispute or difference.

CLAUSE 33 SERVICE OF NOTICES

- SUBCLAUSE 33.2

After reference to clauses 24, 25, 26, 27 and 31, insert the following:

31A

CLAUSE 35 GOVERNING LAW

Delete the words “and each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in that State or Territory” and insert the following paragraph in lieu thereof:

Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in that State or Territory and courts of appeal from them in respect of any proceedings arising out of or in connection with the Contract. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

CLAUSE 37 WARRANTIES

Insert the following new clause 37:

37 *The Consultant warrants that:*

- (a) *it has full power and authority to enter into and perform its obligations under the Contract;*
- (b) *the Consultant and all of the Consultant's personnel, employees, subconsultants and subcontractors are competent and have all the necessary skills, training and qualifications to perform the Services;*
- (c) *it has taken all necessary action to authorise the execution, delivery and performance of the Contract in accordance with its terms; and*
- (d) *the Contract constitutes legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its term.*