

1. DEFINITIONS AND INTERPRETATIONS

1.1. Definitions

The following definitions and interpretations form part of this Request.

Addendum means any addendum issued by the Commission in relation to the Request and which is available at Tenders WA (www.tenders.wa.gov.au).

Authorised Body has the same meaning as in the *Procurement Act 2020* (WA).

Business Day means any day except a Saturday, Sunday or a Public Holiday in Perth, Western Australia.

Closing Time means the time and date specified on the front of the Request as the closing time for submission of Offers.

Commission means the Forest Products Commission as defined in section 3 of the *Forest Products Act 2000* (WA) (FP Act).

Contract means a Production Contract that may arise following the Request.

FP Act means the *Forest Products Act 2000* (WA).

Government means the Government of Western Australia.

Insolvency Event means the happening of any of these events:

- a) an order is made, or an application is made to a court for an order, that a body corporate be wound up; or
- b) except to reconstruct or amalgamate while solvent, a body corporate:
 - i) is wound up or dissolved; or
 - ii) resolves to wind itself up, or otherwise dissolve itself, or gives notice of its intention to do so; or
 - iii) enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or
- c) a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate;
or

- d) a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate or any asset or undertaking of a body corporate; or
- e) any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against any asset or undertaking of a body corporate; or
- f) the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment or order for the payment of money or the recovery of any property; or
- g) a body corporate:
 - i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation; or
 - ii) stops or suspends payment of all, or a class of, its debts; or
 - iii) is, or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:
 - 1. insolvent or unable to pay its debts when they fall due; or
 - 2. the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth); or
 - iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth); or
 - v) ceases, or threatens to cease, to carry on all or a material part of its business; or
- h) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth) or action is taken which could result in that event; or
- i) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; or
- j) anything analogous or having a substantially similar effect to any of the events specified above happens under the Law of any applicable jurisdiction.

Law means laws of Australia (whether Federal, State, Territory or Local Government) including orders, rules, regulations, executive orders, decrees, policies, judicial decisions and notifications as amended or supplemented from time to time.

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

Offer Information means all information submitted by the Respondent in response to, or in connection with, the Request.

Offer Validity Period means the period specified in 'Offer validity period' of Part A of the Request.

Offered Price means the price, or the price determined by applying the formula or method, specified in the Offer.

Panel means the panel of suppliers of the products or services or both appointed under a Standing Offer Arrangement.

Parliament means the Parliament of Western Australia.

Part means a part of the Request.

Production Contract has the same meaning given to that term under section 55 of the FP Act.

Public Holiday means the days specified as a public holiday, bank holiday or both in line with the *Second Schedule of the Public and Bank Holidays Act 1972 (WA)*.

Request means a quotation or tender, which has been issued by the Commission.

Request Conditions means this document.

Respondent means any person who submits an Offer.

Standing Offer Arrangement means a standing offer coordinated by the Commission awarded to a single supplier or Panel of suppliers to provide a service or supply goods under a Contract.

State means the State of Western Australia.

State Agency has the same meaning as given in the *Procurement Act 2020 (WA)*.

1.2. Interpretation

In the Request and unless the context otherwise requires:

- a) the singular includes the plural and vice versa; and
- b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
- c) a reference to a gender includes other genders; and
- d) a reference to a person includes (but is not limited to) the Commission, a public body, a company and an incorporated or unincorporated association or body of persons; and

- e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns; and
- f) if the Respondent consists of a partnership or joint venture, then:
 - i) an obligation imposed on the Respondent under a Request binds each person who comprises the Respondent jointly and severally; and
 - ii) each person who comprises the Respondent is deemed to agree to do all things necessary to enable the obligations imposed on the Respondent under the Request to be undertaken; and
 - iii) the act of one person who comprises the Respondent binds the other persons who comprise the Respondent; and
- g) an agreement, representation or warranty on the part of, or in favour of two (2) or more persons binds, or is for the benefit of, them jointly and severally; and
- h) a reference to the Request or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the Commission, or the Respondent; and
- i) a reference to a clause, schedule, attachment or appendix is a reference to a clause in, or a schedule, attachment or appendix to the Request; and
- j) all the provisions in any schedule, attachment or appendix to these Request Conditions are incorporated in, and form part of, the Request; and
- k) headings are included for convenience and do not affect the interpretation of the Request and Request Conditions; and
- l) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- m) no rule of interpretation is to be applied to disadvantage the Commission, on the basis that it was responsible for preparing the Request; and
- n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning; and
- o) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow; and
- p) a reference to writing includes all means of representing or reproducing words in visible form including by electronic means such as facsimile transmission; and
- q) a reference to a liability includes all obligations to pay money and all other losses,

- costs and expenses of any kind; and
- r) a reference to a month is to a calendar month and a reference to a year is to a calendar year; and
 - s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day; and
 - t) if a date stipulated for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day; and
 - u) a reference to time is Perth, Western Australia time; and
 - v) a reference to a monetary amount means that amount in Australian currency.

2. SUBMISSION OF OFFER

- a) Any Offer, which is not:
 - i) submitted before the Closing Time; or
 - ii) complete at the Closing Time; or
 - iii) submitted in accordance with the provisions of 'Submission of Offers' in Part A of the Request,

will be excluded from consideration, unless the Respondent can provide conclusive evidence of mishandling of the Offer.

- b) For the purposes of the Request, mishandling will only have occurred where in the case of submission of the Offer by hand or by post, the Offer was received by the Commission prior to the Closing Time, but the Offer was not transferred by the Commission to the Commission's tender box by the Closing Time.
- c) If the Respondent submits the Offer electronically, then the Respondent must ensure that the electronic copy of the Offer is in one of the following file formats and extensions: .doc*/docx*; .pub*; pdf#; .txt; .rtf; .ppt/pptx; or .xls/xlxs*

* Microsoft compatible # Adobe Compatible.

Note: zipped files acceptable.

- d) The electronic Offer referred to in clause 1(c) above must be received in full by the Commission prior to the Closing Time.

- e) If the Respondent submits their Offer electronically, the Respondent agrees that:
- i) receipt of the Offer will be determined by the date and time shown on the electronic tender lodgement service receipt issued or, if no receipt is issued, the date and time which the Commission's database records that the Offer was received; and
 - ii) if the Offer contains any corrupt software (including, but not limited to, a virus), then notwithstanding any disclaimer made by the Respondent in respect of viruses, the Respondent must pay the Commission all costs incurred by the Commission arising from, or in connection with, the corrupted software; and
 - iii) submission of electronic files may take time and the Respondent is responsible for assessment of the time required for full transmission of the Offer; and
 - iv) the Commission or the Government will not be responsible in any way for any loss, damage or corruption of the electronic copy of the Offer; and
 - v) if the Offer becomes corrupted, illegible or incomplete as a result of a transmission, storage or encryption or decryption, then the Commission may request the Respondent to provide another copy of their Offer either electronically or in hard copy or both; and
 - vi) if the Commission requests the provision of another copy of the Offer, then the Respondent must:
 - 1. provide the copy in the form or forms requested within the period specified by the Commission; and
 - 2. provide a statutory declaration that the copy is a true copy of the Offer, which was electronically submitted by the Respondent and that no changes to the Offer have been made after the initial attempted electronic Offer; and
 - 3. provide a copy of the electronic tender lodgement service receipt for the initial attempted electronic Offer.
- f) The Commission reserves the right to reject the Offer of any Respondent who fails to comply with the requirements of the request described in clause 2(e)(vi).
- g) An Offer is not assignable by the Respondent without the prior written consent of the Commission.
- h) If the Offer is submitted by a consortium of two (2) or more persons either by way of joint venture, partnership or otherwise, those persons are bound by the Request Conditions jointly and severally.

- i) The Offer upon submission will be the absolute property of the Commission and will not be returned to the Respondent. Nothing in this provision affects the intellectual property rights of the Respondent in the Offer except that the Commission may make such copies of the Offer as the Commission requires for the proper evaluation of the Offer.

3. COMMISSION'S RIGHTS

- a) The Commission is not obliged to accept the Offer containing the lowest (for procurement) or highest (for the sale of Forest Products) Offered Price.
- b) If the Respondent's Offer makes reference to information on its website, or on any other website, the Commission will not take into account that information when evaluating an Offer.
- c) The Commission is under no obligation to accept the Offer and may reject the Offer or all Offers at the Commission's discretion, including:
 - i) **(failure to comply with the Request Conditions)** if the Offer fails to comply with the Request Conditions; and
 - ii) **(failure to comply with requirements)** if the Offer fails to comply with any of the requirements in the Request; and
 - iii) **(false or misleading)** if the Offer contains information or representations that are false or misleading; and
 - iv) **(change of control)** if anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Respondent to another person, including in respect of a Respondent which is a body corporate, if there is a change in control of the Respondent within the meaning of the *Corporations Act 2001* (Cth); and
 - v) **(change of consortium membership)** in respect of the Respondent which consists of a consortium, if there is a change of membership of the consortium members; and
 - vi) **(financial capacity)** if the Respondent becomes bankrupt or suffers an Insolvency Event; and
 - vii) **(change of policy or commercial reasons)** if the Commission decides to cancel the Request due to changes of policy or for commercial reasons.
- d) The Commission may accept the Offer in whole or in part.
- e) After the Closing Time, the Commission 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, and if so requested, the Respondent must provide such information within ten (10) Business Days to the Commission.
- f) In evaluating the Offer, the Commission may take into account any information regarding the Respondent that the Commission has in its possession or receives from any source, including information about the past or current performance of the Respondent under any other contract, arrangement or dealing between the Respondent and a State Agency.
- g) The Commission reserves the right to conduct site visits as it deems appropriate.

4. THE COMMISSION'S DISCRETION

Whenever the consent of the Commission is required under the Request, that consent may be given or withheld by the Commission in the Commission's absolute discretion and may be given subject to such conditions as the Commission may determine.

5. CANCELLATION AND VARIATION

- a) The Commission reserves the right, at any time, to cancel, vary, supplement, supersede or replace the Request or any part of the Request.
- b) If the Commission cancels, varies, supplements, supersedes or replaces the Request, then;
 - i) the Commission will advise each Respondent that the Request has been cancelled, varied, supplemented, superseded or replaced; and
 - ii) the Respondent shall not have any recourse against the Commission whatsoever including for claims for any costs or expenses incurred up to and including the date that the Request or any part of the Request is cancelled, varied, supplemented, superseded or replaced.

6. WITHDRAWAL OF OFFER AND OFFER VALIDITY PERIOD

The Respondent may withdraw the Offer at any time prior to acceptance of its Offer by notifying the Commission in writing.

7. SELECTION OF PREFERRED RESPONDENT

- a) The Commission may select, but is not obliged to select, one or more Respondents as a preferred Respondent.
- b) Selection as a preferred Respondent does not confer any rights on a preferred Respondent and the Request Conditions, including clause 3, continue to apply until a Contract is awarded or the Request is terminated.

- c) The Respondent agrees that, if it is selected as a preferred Respondent:
 - i) its Offer will remain open for acceptance by the Commission at any time prior to the expiry of the Offer Validity Period; and
 - ii) the Commission may choose to negotiate any aspect of the Offer; and
 - iii) the Commission may request the Respondent to provide a performance guarantee, a bank guarantee or some other form of security on terms and conditions acceptable to the Commission.
- d) At any time during the negotiations, either the Commission or the preferred Respondent may terminate the negotiations for any reason.
- e) If the Commission does terminate negotiations, the Commission may:
 - i) accept the Respondent's original Offer; or
 - ii) select and then negotiate with any other Respondent as a preferred Respondent in accordance with this clause 8; or
 - iii) terminate the Request.

8. AGREEMENT BY THE RESPONDENT

In submitting the Offer, the Respondent agrees that:

- a) **(information true and correct)** all information in the Offer and all Offer Information is true and correct at the time of its submission; and
- b) **(relies on own enquiries)** other than in respect of information provided by the Commission in writing, it relies entirely on its own enquiries in relation to all matters in respect of the Request, Request Conditions and Contract that may be awarded under the Request process; and
- c) **(understood the Request)** it has examined and understood the Request, these Request Conditions, the Contract and any other information available to the Respondent in respect of the Request; and
- d) **(understood Addenda)** prior to the Closing Time, the Respondent must log on to Tenders WA (www.tenders.wa.gov.au) to ensure that prior to submitting its Offer it has examined and understood each Addendum in respect of the Request as by submitting its Offer it will be deemed to have examined and understood each Addendum; and
- e) **(made reasonable enquiries)** 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, which enquiries the Respondent has made; and

- f) **(does not rely on warranties)** other than in respect of information provided by the Commission in writing, it does not rely on any warranty or representation of the Commission or any person actually or ostensibly acting on behalf of the Commission; and
- g) **(no reference to information on websites)** it must not make reference to any information contained on the Respondent's website or any other website. Any information on the Respondent's website or any other website which the Respondent wished the Commission to rely on must be set out in full in the Respondent's Offer; and
- h) **(no secret commission)** it has not paid or received and will not pay or receive any secret commission in respect of the Request; and
- i) **(no inflation or deflation of Offered Price)** its Offered Price is not inflated or deflated to advantage another Respondent; and
- j) **(no collusion)** it has not colluded and will not collude with any other person in respect of the Request; and
- k) **(no unlawful arrangement)** it has not entered and will not enter into any unlawful arrangement with any other person in respect of the Request; and
- l) **(no improper influence)** it has not sought and will not seek to influence any decision in respect of the Request by improper means; and
- m) **(no investment guarantees or security)** it agrees that nothing in the Request is construed as giving any form of investment guarantee or security; and
- n) **(own cost and expenses)** it will pay its own costs and expenses in connection with:
 - i) preparing and submitting the Offer; and
 - ii) attending any non-mandatory or mandatory briefing; and
 - iii) any discussions, enquiries or negotiations with, or provision or consideration of further information to the Commission, whether before or after the submission of any Offer irrespective of whether its Offer is accepted or not.

9. DISCLOSURE OF SUBMISSION INFORMATION

- a) The Respondent agrees and acknowledges that its Offer and its Offer Information are subject to the *Freedom of Information Act 1992 (WA)* or *Procurement Act 2020 (WA)*, or both, and may also be disclosed by the Commission to the Minister responsible for the FP Act or under a court order or upon request by Parliament, or any committee of Parliament, or if otherwise required by Law.
- b) By submitting an Offer, the Respondent releases the Commission and the State

from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting from the disclosure of the Offer and the Offer Information under this clause 9 by the Commission or the State.

- c) The Respondent agrees and acknowledges that the powers and responsibilities of the Auditor General for the State under the *Financial Management Act 2006 (WA)* and the *Auditor General's Act 2006 (WA)* are not affected in any way by the Request.
- d) Subject to this clause and to the provisions of the *Financial Management Act 2006 (WA)* and the *Auditor General's Act 2006 (WA)*, the Commission will not make public any part of the Offer or any Offer Information that the Respondent expressly and reasonably nominates in the Offer as confidential. However, the Commission may require the Respondent to withdraw any claim to confidentiality in respect of any part of the Offer or any Offer Information as a condition of acceptance of the Offer.

10. CONFLICT OF INTEREST

- a) The Respondent must, prior to any acceptance of its Offer by the Commission, disclose to the Commission any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to the Request or the performance of the Contract (if awarded) by the Respondent.
- b) The Commission may, in its discretion, accept or reject the Respondent's Offer if the Commission considers that the Respondent 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 any resultant Contract (if awarded) by the Respondent.

11. NO BRIBE, INDUCEMENT OR OFFER OF EMPLOYMENT

- a) The Respondent must not, without the prior written consent of the Commission, directly or indirectly approach or communicate with any officer or employee of the Commission having any connection or involvement with this Request, with respect to:
 - i) an offer of employment; or
 - ii) availability of employment;with the Respondent or any related entity.
- b) The Respondent must not, directly or indirectly, offer a bribe, gift or inducement to any officer or employee of the Commission in connection with the Request.



12. AGREEMENT WITH THE REQUEST CONDITIONS

As part of the Offer, the Respondent is deemed to have read and agreed to these Request Conditions.

13. JURISDICTION

The Law of the State will govern the Request or any Contracts that may arise under the Request, and parties to the Request or Contract agree to submit themselves to the exclusive jurisdiction of the courts of Western Australia.

14. CONDITIONS OF REQUEST

The Commission's Request Conditions, Contract, and material outlined in the appendices are incorporated in the Request document.