



## REQUEST FOR TENDER 6 - 2223

<b>Request for Tender (RFT)</b>	<b>CONTRACT TO MANAGE THE CUNDERDIN MEMORIAL SWIMMING POOL COMPLEX</b>
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<b>Deadline:</b>	4.00pm, Monday 29 <sup>th</sup> May 2023
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<b>Address for Hand Delivery</b>	Tender 6 - 2223 CEO - Shire of Cunderdin 37 Lundy Avenue CUNDERDIN WA 6407
<b>Address for Postal Delivery</b>	Chief Executive Officer Shire of Cunderdin PO Box 100 CUNDERDIN WA 6407
<b>Email</b>	<a href="mailto:tenders@cunderdin.wa.gov.au">tenders@cunderdin.wa.gov.au</a> <i>Facsimile tenders will not be accepted.</i>

<b>RFT Number:</b>	<b>RFT T6 - 2223</b>
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# 1 PRINCIPAL'S REQUEST

## 1.1 CONTRACT REQUIREMENTS IN BRIEF

The Shire of Cunderdin is seeking tenders from suitably qualified and experienced aquatic facility managers to undertake the management of the Cunderdin Memorial Swimming Pool Complex. The successful tender will need to demonstrate a willingness to work in partnership with the Shire and the local community in terms of provision of services and agreed programmes and activities.

The Cunderdin Swimming Pool Complex is located on Lundy Avenue within the townsite of Cunderdin. Cunderdin is located on the Great Eastern Highway, 158km from the Perth metropolitan area. The Centre includes an 8 lane 50m outdoor swimming pool and a separate toddler/infant pool. A kiosk is also operated at the centre by the contract manager. The centre is open seasonally from 1 November to 31 March (seasonally negotiable).

The successful tenderer will be required to enter into a fixed price contractual agreement with the Shire of Cunderdin for a period of FIVE (5) years commencing with the 2023/24 pool season.

## 1.2 TENDER DOCUMENTS

This Request for Tender is comprised of the following parts:

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

## 1.3 DEFINITIONS

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

<b>Attachments:</b>	The documents you attach as part of your Tender;
<b>Contractor:</b>	Means the person or persons, corporation or corporations whose Tender is accepted by the Principal, and includes the executors or administrators, successors and assigns of such person or persons, corporation or corporations;
<b>Deadline:</b>	The deadline for lodgement of your Tender;
<b>General Conditions of Contract:</b>	Means the General Conditions of Contract nominated in Part 1;
<b>Offer:</b>	Your offer to be selected to supply the Requirements;
<b>Principal:</b>	Shire of Cunderdin
<b>Request:</b>	This document;
<b>Requirements:</b>	The services requested by the Principal;
<b>Selection Criteria:</b>	The criteria used by the Principal in evaluating your Tender;
<b>Special Conditions:</b>	The additional contractual terms;
<b>Specification:</b>	The Statement of Requirements that the Principal requests you to provide if selected;
<b>Tender:</b>	Completed Offer form, response to the Selection Criteria and Attachments;
<b>Tenderer:</b>	Someone who has or intends to submit an Offer to the Principal.

## 1.4 HOW TO PREPARE YOUR TENDER

- (a) Carefully read all parts of this document.

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

## 1.5 CONTACT PERSONS

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

<b>Contractual Enquiries</b>		<b>Specification Enquiries</b>	
Name:	Stuart Hobley	Name:	Hayley Byrnes
Telephone:	08 9635 2700	Telephone:	08 9635 2700
Mobile:	0458 351 008	Mobile:	0448 049 584
Email:	<a href="mailto:stuart.hobley@cunderdin.wa.gov.au">stuart.hobley@cunderdin.wa.gov.au</a>	Email:	<a href="mailto:hayley.byrnes@cunderdin.wa.gov.au">hayley.byrnes@cunderdin.wa.gov.au</a>

## 1.6 TENDER BRIEFING/SITE INSPECTION

Attendance at a pre-inspection meeting is not mandatory.

A pre-tender inspection can be arranged at the request of the Tenderer by contacting the nominated Contact Person.

The site inspection may provide Tenderers with the opportunity to clarify any uncertainties with the Contact Person prior to the closing of the tender.

## 1.7 EVALUATION PROCESS

This is a Request for Tender (RFT).

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

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

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

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

## 1.8 SELECTION CRITERIA

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

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

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

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

### 1.8.1 COMPLIANCE CRITERIA

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

### 1.8.2 QUALITATIVE CRITERIA

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

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

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

### 1.8.3 PRICE CONSIDERATIONS

#### WEIGHTED COST CRITERIA

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

Criteria	Weighting
Tendered price	50%

### 1.9 PRICE BASIS

All prices for services offered under this Request are to be fixed for the term of the Contract. Tendered prices must include Goods and Services Tax (GST).

Unless otherwise indicated prices tendered must include all applicable levies, duties, taxes and charges. Any charge not stated in the Tender, as being additional will not be allowed as a charge for any transaction under any resultant Contract.

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

The following policies may affect this selection:

Policy 9.15 Shire of Cunderdin Procurement Policy

### 1.11 CONDITIONS OF TENDERING

#### 1.11.1 LODGEMENT OF TENDERS AND DELIVERY METHOD

The Tender must be lodged by the Deadline. The Deadline for this Request is 4.00pm Monday 29<sup>th</sup> May 2023

The Tender is to be:

- (a) Placed in a sealed envelope clearly endorsed with the tender number and title as shown on the front cover of this Request; and
- (b) Delivered by hand and placed in the Tender Box at Shire Administration Building, 37 Lundy Avenue, CUNDERDIN WA (by the Tenderer or the Tenderers private agent); or
- (c) Sent through the mail to the Chief Executive Officer, PO Box 100 CUNDERDIN WA 6407 in a sealed envelope and marked 'CONFIDENTIAL', clearly endorsed with the tender number and title as shown on the front cover of this Request.
- (d) Emailed to [stuart.hobley@cunderdin.wa.gov.au](mailto:stuart.hobley@cunderdin.wa.gov.au) marked 'CONFIDENTIAL' with the Tender Number and Title in the subject box.

Tenders submitted by Facsimile **WILL NOT** be accepted.

Tenderers must ensure that they have provided three (3) signed copy(s) of their Tender (one to be marked 'ORIGINAL' and bound, the other(s) to be marked 'COPY' and bound.

Any brochures or pamphlets must be attached to both the original and the copies.

All pages must be numbered consecutively and the Tender must include an index.

### **1.11.2 REJECTION OF TENDERS**

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

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

### **1.11.3 LATE TENDERS**

Tenders received:

- (a) after the Deadline; or
- (b) in a place other than that stipulated in this Request;

will not be accepted for evaluation.

### **1.11.4 ACCEPTANCE OF TENDERS**

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

### **1.11.5 DISCLOSURE OF CONTRACT INFORMATION**

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

All Tenderers will be given particulars of the successful Tenderer(s) or advising that no Tender was accepted.

### **1.11.6 ALTERNATIVE TENDERS**

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

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

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

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

### **1.11.7 TENDER VALIDITY PERIOD**

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

### **1.11.8 GENERAL CONDITIONS OF CONTRACT**

Tenders will be deemed to have been made on the basis of and to incorporate the General Conditions of Contract for the Provision of Services (**refer to Appendix B**).

### **1.11.9 PRECEDENCE OF DOCUMENTS**

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

## **1.11.10 TENDERERS TO INFORM THEMSELVES**

Tenderers will be deemed to have:

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

## **1.11.11 ALTERATIONS**

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

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

## **1.11.12 RISK ASSESSMENT**

The Principal may have access to and give consideration to:

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

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

## **1.11.13 OWNERSHIP OF TENDERS**

All documents, materials, articles and information submitted by the Tenderer as part of or in support of a Tender will become upon submission the absolute property of the Principal and will not be returned to the Tenderer at the conclusion of the Tender process PROVIDED that the Tenderer be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

## **1.11.14 CANVASSING OF OFFICIALS**

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

## **1.11.15 IDENTITY OF THE TENDERER**

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

## **1.11.16 TENDER OPENING**

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

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

## **1.11.17 IN-HOUSE TENDERS**

The Principal does not intend to submit an in-house Tender.



## 2 SPECIFICATION

### 2.1 INTRODUCTION

The Shire of Cunderdin is seeking tenders from suitably qualified and experienced aquatic facility managers to undertake the management of the Cunderdin Memorial Swimming Pool Complex. The successful tender will need to demonstrate a willingness to work in partnership with the Shire and the local community in terms of provision of services and agreed programmes and activities.

The Cunderdin Memorial Swimming Pool Complex is located on Lundy Avenue, within the townsite of Cunderdin. Cunderdin is located on Great Eastern Highway, 158km from the Perth metropolitan area. The Centre includes a 6 lane 50m outdoor swimming pool and a separate toddler/infant pool. A kiosk is also available to be operated at the centre by the contract managers. The centre is open seasonally from 1 November to 31 March (season extensions negotiable). The centre is open 6 days a week from 12noon to 7pm. Early morning swimming is catered for and is negotiated annually with the Contractor for days and opening times.

The successful tender will be required to enter into a fixed price contractual agreement with the Shire of Cunderdin for a period of FIVE (5) years commencing from the 2023/24 pool season.

### 2.2 SCOPE OF WORK

#### Statement of Objectives

- To promote, enhance, maintain and improve the Cunderdin Memorial Swimming Pool Complex facilities for the benefit of the community;
- To provide efficient, accountable and quality management of a community asset and infrastructure;
- To operate the Cunderdin Memorial Swimming Pool Complex in a financially prudent and ethical manner;
- To ensure the provision of a comfortable and aesthetically pleasant complex for the enjoyment of the public;
- To ensure delivery of a high level of service to the community in a friendly and courteous manner; and
- To ensure that services are delivered by principles of best practice and standards.

### 2.3 SPECIFIC REQUIREMENTS OF THE CONTRACT

#### Operation of the Cunderdin Memorial Swimming Pool complex

In respect of the operation of the Cunderdin Swimming Pool Complex, the Contractor as part of their duties will undertake the following:

- At all times to operate the Cunderdin Memorial Swimming Pool Complex in accordance with requirements of all relevant Acts, Regulations and Local Laws and in particular shall ensure that all chemicals required for water treatment in respect of the Swimming Pool are correctly stored and utilised in accordance with the requirements of the Acts, Regulations, specifications or with any directions as may be given by the Council from time to time;
- To present to the Council, no later than the 30<sup>th</sup> of April of each year, an Annual Report outlining the operations of the Cunderdin Memorial Swimming Pool Complex for the completed pool season. This report is to include short term recommendations for facility improvement, as well as estimations relating to the necessary capital expenditure required to maintain the Cunderdin Memorial Swimming Pool Complex including all premises and buildings, to the standards required by the Council, and in order to comply with all relevant Acts, Regulations and Local Laws;
- That in the event of a problem relating to the Cunderdin Memorial Swimming Pool Complex, the Contractor shall notify the Council as soon as possible and the Council shall take reasonable action to prevent pool closure;
- The Contractor will keep and maintain a kiosk at all times whilst the Cunderdin Memorial Swimming Pool Complex is open to the public. The kiosk shall be constructed and maintained in accordance with the requirements of the Act and all foodstuffs available for purchases shall at all times comply with the requirements of the Act. No charges shall be levied by the Shire of Cunderdin for the use of the kiosk and associated equipment. The Contractor is responsible to insure any products against theft or spoilage;
- To ensure that the Cunderdin Swimming Pool Complex is ready for opening to the public by November 1<sup>st</sup> of each season, unless otherwise agreed upon;

- To ensure that at the end of the Contract the Cunderdin Memorial Swimming Pool Complex is closed down, all plant is to be serviced and the whole, including all premises, buildings, plant, equipment and other items are secured;
- To ensure that only persons suitably qualified in accordance with the requirements of the Act, and all relevant Acts, Regulations and Local Laws are employed as Managers or Attendants of the complex. Further, the Manager/Attendant are to be qualified in methods of rescue and resuscitation and hold a Certificate of Competency as a qualified person in accordance with the *Health Act (Swimming Pools) Regulations 2007* as issued by the Executive Director of Public Health, Western Australia.
- To ensure that the internal surrounds of the Cunderdin Memorial Swimming Pool Complex, including the Pool concourse, are maintained in a well-kept, clean and safe condition in accordance with the requirements of the Council and to ensure that any directions in respect to those areas given by the Council from time to time are immediately acted upon;
- To ensure that the internal and external areas of all buildings at the Cunderdin Memorial Swimming Pool Complex, including offices, toilets, change rooms, sheds, outbuildings, paths and walkways are maintained in a well-kept, hygienic and safe condition at all times and in accordance with the requirements of the Council and that any directions in this regard given by Council from time to time are acted upon;
- To order and ensure that all stores, chemicals, equipment, tools or other items required for the maintenance and operation of the Cunderdin Memorial Swimming Pool Complex in accordance with the standards and requirements of the Act or other Acts, Regulations or Local Laws or of Council are safely and securely stored so as to be inaccessible to the general public (including patrons of the Cunderdin Swimming Pool Complex);
- To ensure that all gates, doors, windows, and other means of entrance to any building or area including plant rooms, balance tanks, storerooms, kiosks, or any other room to which the public, including patrons of the Cunderdin Memorial Swimming Pool Complex, are not permitted access, are kept locked and secure at all times except as necessary for emergency purposes;
- To ensure that the Cunderdin Memorial Swimming Pool Complex is left secure at all times when not in use and all safety or security lighting or other apparatus or equipment required to be utilised is utilised and maintained in a safe operation condition at all times;
- To ensure that all reasonable instructions or directions either given verbally or in writing by the Council are implemented and complied with within seven (7) days of the date on which they are given or within such a period of time as may be confirmed by Council;
- To deposit all admission charges collected on a weekly basis at the Shire of Cunderdin office and complete the necessary pool admission records as required by Council;
- To permit the Council, or other authorised officers, to have access to the pool premises and all buildings and improvements at reasonable times by arrangement with the Contractor;
- The clarity of the water in the swimming pool is maintained in accordance with sub-regulation 10 of the *Health Act (Swimming Pools) Regulations 2007*;
- The chemical standards of the swimming pool are maintained in accordance with sub-regulation 11 of the *Health Act (Swimming Pools) Regulations 2007*;
- Ensure that the water samples are undertaken and recorded in accordance with sub-regulation 12 of the *Health Act (Swimming Pools) Regulations 2007* as follows:
  - At least twice daily for residual free chlorine and pH: and
  - At least weekly for isocyanurate levels;
- That public notice is given at least two (2) weeks prior and immediately prior to the pool being closed for major events / carnivals in *The Bandicoot* and/or Shire Website/Facebook pages.

## 2.4 IMPLEMENTATION TIMETABLE

The contract will commence with the pre-season preparation of the pool for opening on 1 November 2023.

### 3 TENDERER'S OFFER

#### 3.1 OFFER FORM

The Chief Executive Officer  
Shire of Cunderdin  
PO Box 100  
CUNDERDIN WA 6407

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

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

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

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

E-mail (if any): \_\_\_\_\_

#### In response to RFT T1 - 1819 CONTRACT MANAGEMENT OF CUNDERDIN MEMORIAL SWIMMING POOL COMPLEX

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

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

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

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

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

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

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

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

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

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

### 3.2 TENDERER'S RESPONSE

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

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

#### 3.2.1 ORGANISATIONAL PROFILE

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

#### 3.2.2 REFEREES

Attach details of your referees, and label it <b>“Referees”</b> . You should give examples of work provided for your referees where possible.	<b>“Referees”</b>	Tick if attached <input type="checkbox"/>
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#### 3.2.3 AGENTS

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

#### 3.2.4 TRUSTS

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

#### 3.2.5 SUBCONTRACTORS

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

**3.2.6 CONFLICTS OF INTEREST**

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

**3.2.7 FINANCIAL POSITION**

Are you presently able to pay all your debts in full as and when they fall due?	Yes / No
Are you currently engaged in litigation as a result of which you may be liable for \$50,000 or more?	Yes / No
If you are awarded the Contract, will you be able to fulfil the Requirements from your own resources or from resources readily available to you and remain able to pay all of your debts in full as and when they fall due?	Yes / No

**3.2.8 INSURANCE COVERAGE**

The insurance requirements for this Request are stipulated in Appendix A - Special Conditions of Contract, 4.2 Insurances. Tenderers are to supply evidence of their insurance coverage in a format as outlined below or in an attachment labelled “Insurance Coverage”. A copy of the Certificate of Currency is to be provided to the Principal within thirty (30) days of acceptance.				“Insurance Coverage”	Tick if attached <input type="checkbox"/>
Type	Insurer – Broker	Policy Number	Value (\$)	Expiry Date	
Public Liability					
Workers Compensation					

### 3.3 SELECTION CRITERIA

#### 3.3.1 COMPLIANCE CRITERIA

Please select with a yes or no whether you have complied with the following compliance criteria:

Description of Compliance Criteria		
(a)	Compliance with the Specification contained in the Request.	Yes / No
(b)	Compliance with the Conditions of Tendering this Request.	Yes / No
(c)	Compliance with attendance at any mandatory tender briefing or site inspection.	NA
(d)	Compliance with the Quality Assurance requirement for this Request.	NA
(e)	Compliance with the Delivery Date.	Yes / No
(f)	Compliance with and completion of the Price Schedule.	Yes / No

#### 3.3.2 QUALITATIVE CRITERIA

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

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

<b>A) Relevant Experience</b> Describe your experience in completing /supplying similar Requirements. Tenderers must, as a minimum, address the following information in an attachment and label it <b>“Relevant Experience”</b> : (a) Provide details of similar work; (b) Provide scope of the Tenderer’s involvement including details of outcomes; (c) Provide details of issues that arose during the project and how these were managed; (d) Demonstrate sound judgement and discretion; and (e) Demonstrate competency and proven track record of achieving outcomes.	<b>Weighting</b> <20%>	
	<b>“Relevant Experience”</b>	<b>Tick if attached</b> <input type="checkbox"/>

<b>B) Key Personnel skills and experience</b> Tenderers should provide as a minimum information of proposed personnel to be allocated to this project, such as: (a) Their role in the performance of the Contract; (b) Curriculum vitae; (c) Membership to any professional or business association; (d) Qualifications, with particular emphasis on experience of personnel in projects of a similar requirement; and (e) Any additional information. Supply details in an attachment and label it <b>“Key Personnel”</b> .	<b>Weighting</b> <15%>	
	<b>“Key Personnel”</b>	<b>Tick if attached</b> <input type="checkbox"/>

<p><b>C) Tenderer's Resources</b></p> <p>Tenderers should demonstrate their ability to supply and sustain the necessary:</p> <p>(a) Plant, equipment and materials; and</p> <p>(b) Any contingency measures or back up of resources including personnel (where applicable).</p> <p>As a minimum, Tenderers should provide a current commitment schedule and plant/equipment schedule in an attachment and label it "<b>Tenderer's Resources</b>".</p>	<b>Weighting</b> <5%>	
	<b>"Tenderer's Resources"</b>	<b>Tick if attached</b> <input type="checkbox"/>

<p><b>D) Demonstrated Understanding</b></p> <p>Tenderers should detail the process they intend to use to achieve the Requirements of the Specification. Areas that you may wish to cover include:</p> <p>(a) A project schedule/timeline (where applicable);</p> <p>(b) The process for the delivery of the goods/services;</p> <p>(c) Training processes (if required); and</p> <p>(d) A demonstrated understanding of the scope of work</p> <p>Supply details and provide an outline of your proposed methodology in an attachment labelled "<b>Demonstrated Understanding</b>".</p>	<b>Weighting</b> <10%>	
	<b>"Demonstrated Understanding"</b>	<b>Tick if attached</b> <input type="checkbox"/>

### 3.4 PRICE INFORMATION

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

#### 3.4.1 DISCOUNTS

Are you prepared to allow a discount for prompt settlement of accounts?	Yes / No	
If you are offering different discounts for different periods, or other discounts such as volume discounts, detail them in an attachment labelled " <b>Discounts</b> ".	<b>"Discounts"</b>	<b>Tick if attached</b> <input type="checkbox"/>

#### 3.4.2 PRICE BASIS

Are you prepared to offer a fixed price?	Yes / No	
If No, please indicate how your proposed price variation mechanism differs from the one outlined above. Supply details and label it " <b>Price Variation Mechanism</b> ".	<b>"Price Variation Mechanism"</b>	<b>Tick if attached</b> <input type="checkbox"/>

#### 3.4.3 PRICE SCHEDULE

Line No	Service Description	Tender Unit	Price Tendered (ex GST)	GST Component	Price Tendered (inc GST)
1	Year 1 - Season 2023/24				
2	Year 2 - Season 2024/25				
3	Year 3 - Season 2025/26				
4	Year 4 - Season 2026/27				
5	Year 5 - Season 2027/28				
6	Additional hours outside of contract (by agreement)	per hour			
7	Off-season turnovers	per time			

**4 APPENDIX A – SPECIAL CONDITIONS OF CONTRACT****4.1 PERIOD OF CONTRACT AND TERMINATION**

The Contract will be in force for the period of Five (5) years. However, in the event of the Contractor failing in any manner to carry out the Contract to the Principal's satisfaction, the Principal may forthwith terminate the Contract by written notice to the Contractor.

**4.2 INSURANCES**

The Contractor and its subcontractor(s) (if any) will be required to effect and maintain the insurance policies referred to in the General Conditions of Contract in the following sums:

- (a) Public liability insurance in the sum of at least ten million dollars (\$10,000,000) in respect of any one occurrence and for an unlimited number of claims.
- (b) Workers Compensation or Personal Accident Insurance cover as required by law (whichever may apply).



## 5 APPENDIX B – GENERAL CONDITIONS OF CONTRACT

### 5.1 GOVERNING LAW

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

### 5.2 DEFINITIONS

5.2.1 In the Contract, except where the context otherwise requires:

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

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

'**Contract Price**' means

(a) where payment is to be made on a Lump Sum Basis, the sum which is stated in the contract to be payable to the Contractor for the supply of the Services by the Contractor and the performance of the obligations of the Contractor under the Contract

(b) where payment is to be made on a Schedule of Rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the Schedule of Rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in the Schedule of Rates;

(c) where payment is to be made on a Lump Sum and a Schedule of Rates Basis, the aggregate of the sums referred to in paragraphs (a) and (b), but excluding any additions or deductions, which may be required to be made pursuant to the Contract.

'**Contractor**' means the person or persons, corporation or corporations, who contract to supply the Services the subject of the Contract.

'**Officer**' means any officer or person authorised by the Principal and notified to the Contractor as an authorised officer for the purpose of this Contract.

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

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

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

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

### 5.3 QUALITY OF SERVICES

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

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

5.3.3 If no standards are applicable, the Services shall be of the highest standard and carried out promptly with all due skill care and diligence.

- 5.3.4 The Contractor shall employ only such persons as are careful skilled and experienced in their respective professions trades and callings who hold all necessary licences permits and authorities required by law and whose standards of workmanship are entirely suitable for the performance of the Services and the requirements of the Contract.

## **5.4 PATENT RIGHTS**

- 5.4.1 The Contractor shall indemnify and at all times keep the Principal indemnified against any action, claim, demand, costs or expenses arising from or incurred by reason of any infringement or alleged infringement of any letters patent, design, trade mark or name, copyright or other protected right in respect of any goods, articles, services, equipment, machinery, plant or thing, system or method of performing, using, fixing, working or arrangement used, fixed, provided or supplied by the Contractor.
- 5.4.2 All payments and royalties payable in respect of any such letters patent or other protected right, shall be included by the Contractor in the Contract and shall be paid by itself to the person, persons, or body to whom they may be due or payable.
- 5.4.3 In the event of any claim being made or brought against the Principal in respect of any of the matters stated in this clause, the Contractor shall be immediately notified thereof. The Contractor shall, with the assistance if required of the Principal, but at the Contractor's sole expense, conduct all negotiations for the settlement of the same or any litigation that may arise therefrom and in the event of the failure by the Contractor so to do, the Principal shall have power to suspend payment of any money due to the Contractor under the Contract until such claim has been satisfied, settled, or withdrawn. Should any money due, or which may thereafter become due, to the Contractor, or which may have been deposited by the Contractor as security under the Contract, be insufficient to satisfy or settle any such claim and such claim has not been satisfied or withdrawn at the date when the Contract would otherwise have been completed, the balance outstanding in respect of the claim shall be a debt due by the Contractor to the Principal.

## **5.5 SETTLEMENT OF DISPUTES**

- 5.5.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.
- 5.5.2 Either party may refer to an appropriate independent expert, agreed to by the parties, any Services for examination and report as to their compliance with the Contract. The decision of the expert shall be final and binding upon both parties, and the expense of such reference shall be paid by the unsuccessful party.
- 5.5.3 Subject to the provisions of clause 5.2, any dispute or unresolved claim arising out of or relating to the Contract or the breach, termination or invalidity thereof ('the dispute') shall first be the subject of conciliation before a conciliator who is either agreed to by the parties or, failing agreement, who is appointed by the President of the Institute of Arbitrators and Mediators (WA Branch).
- 5.5.4 If the dispute has not been resolved within 28 days (or such other period agreed in writing between the parties) after the appointment of the conciliator, the dispute shall be referred to arbitration to be effected:
- (a) by an arbitrator mutually agreed upon between the parties; or
  - (b) in default of such mutual agreement, by an arbitrator appointed by the President of the Institute of Arbitrators and Mediators,

in accordance with the provisions of the Commercial Arbitration Act 2012.

## **5.6 TIME**

- 5.6.1 Services under the contract shall be supplied punctually at or within the time stated in the Order and in this respect time shall be of the essence of the Contract.
- 5.6.2 The Contractor shall be entitled only to such extensions of time for compliance with the Contract as the Principal, upon the written application of the Contractor, may in its absolute discretion grant in writing.

## **5.7 SUPPLY OF SERVICES BY ORDER**

- 5.7.1 The Contractor shall fulfil all orders for Services placed by the Principal during the term or currency of the Contract.

- 5.7.2 Where the Contract is for the supply of Services by reference to a list of Services and prices in a Schedule to the Specification, the Principal shall not be required to take or accept all or any of the Services listed **EXCEPT** such of the Services as may be ordered by the Principal from time to time during the period of the Contract.
- 5.7.3 Where the quantity or value set out in any Schedule to the Specification is described as 'approximate' it shall be regarded only as an estimate of the quantity or value which may be required under the Contract and the Principal shall not be required to take or accept the said nominated approximate quantity or value of Services.
- 5.7.4 The right is reserved for the Principal to order its requirements of any one type or item of the Services either at one time or in instalments or in such quantities as may be required from time to time.
- 5.7.5 Nothing herein contained shall oblige the Principal to take or accept all its needs or requirements of the Services solely from the Contractor nor shall be taken to confer any exclusive right upon the Contractor to provide the Services to the Principal. The Principal shall be free at all times to obtain the Services or any part of them from any other source provider or supplier thereof except Services the subject of an existing order to the Contractor.

## **5.8 STAMP DUTY**

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

## **5.9 GOODS AND SERVICES TAX**

- 5.9.1 For the purposes of this clause:
- (a) "GST" means goods and services tax applicable to any taxable supplies as determined under the GST Act.
  - (b) "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 and (where the context permits) includes the Regulations and the Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing with GST applying for the time being in the State of Western Australia.
  - (c) "Supply", "taxable supply" and "tax invoices" have the same meanings as in the GST Act.
- 5.9.2 Where the supply of the Services or any part thereof is a taxable supply under the GST Act:
- (a) The Contract Price shall be inclusive of all applicable GST at the rate in force or the time being.
  - (b) The obligation of the Principal to pay the Contract Price or any instalment thereof, and the right of the Contractor to recover the Contract Price or any instalment thereof, shall be subject to and conditional upon the prior issue by the Contractor and the prior receipt by the Principal of a tax invoice in respect of the Contract Price, or the relevant instalment thereof, which complies in all respects with the GST Act.
  - (c) This provision applies notwithstanding any other provision of the Contract or any legislation or rule of law to the contrary, but does not apply if the Contractor is not registered for GST, and is not required to be so registered, under the GST Act.
- 5.9.3 The Contractor shall at all times observe, perform and comply with all applicable provisions of the GST Act relative to the supply of the Services under the Contract.

## **5.10 PRICE VARIATIONS**

- 5.10.1 Contract prices shall be firm unless otherwise stated in the Contract.
- 5.10.2 Where Contract prices are variable, and the Contractor wishes to claim for a variation in price during the term of the Contract, then the Contractor shall give the Principal full details of the make-up of the claim, including all applicable information as to the cost of materials, direct labour, overheads, profit and such other cost components as the Principal may require to verify any claim for variation. All applications for variation must show in statement form the existing approved Contract prices, the proposed price increase and proposed new Contract price on an item by item basis and shall be accompanied by all relevant determinations and documents in support of the claim.
- 5.10.3 Where the Contract price is the price ruling at date of performance of the Services the Contractor shall produce to the Principal evidence to verify each claim for payment.
- 5.10.4 Where trade list prices form the basis of the Contract the Contractor shall identify the trade list referred to by date, number or other suitable reference.

- 5.10.5 Reductions affecting the Contract rates shall be notified by the Contractor to the Principal immediately they occur and the Contractor shall repay to the Principal the full amount of any overpayment made by the Principal within fourteen (14) days of the reduction being authorised by the Principal.
- 5.10.6 Applications for variation of variable Contract prices or rates by the Contractor shall be submitted in writing to the Principal as far in advance as practicable of the date from which the variation is sought to commence.
- (a) All variations approved by the Principal shall operate from a date determined by the Principal, which shall not be earlier than the date of the formal application for variation.
  - (b) The onus shall be upon the Contractor to prove to the satisfaction of the Principal all details of any variation claimed.
- 5.10.7 In all matters of price variations (up or down) the Contractor shall make available to the Principal within the time specified by the Principal such information, records, facts and figures as the Principal shall require. Failure to supply the required information, records, facts and figures shall entitle the Principal to refuse the variation.
- 5.10.8 Where the variation is to be determined on the basis of decisions by the Australian Competition and Consumer Commission such variations will be effective on the date nominated by the Australian Competition and Consumer Commission and will be binding on all parties. Should the Australian Competition and Consumer Commission cease to operate during the period of the Contract, a new variation arrangement will be negotiated by mutual agreement. If agreement cannot be reached, the Contract may forthwith be determined by either party by written notice to the other.

## **5.11 SECURITY DEPOSIT**

- 5.11.1 Within the time limited in the Special Conditions of Contract the Contractor shall deposit with the Principal the Security in the amount and in the form (if any) set out in the Special Conditions of Contract. The Principal shall hold such Security as security for the due and proper performance and completion of the Contract, or until the Contract has been terminated in which event the Security shall become forfeited to the Principal.
- 5.11.2 If the Contract has not been terminated and Orders are not completed in accordance with the terms of the Contract, then the amount of loss and damage (if any) to the Principal caused thereby may be deducted from the Security and appropriated by the Principal.
- 5.11.3 Where the Contractor fails to deposit the Security within the said period the Principal may give to the Contractor notice in writing terminating the Contract and the Contract shall thereupon be deemed to be discharged.

## **5.12 ASSIGNING OR SUBLETTING**

The Contractor shall not without the previous consent of the Principal in writing, assign transfer mortgage charge encumber sublet or sub contract the Contract, or any part thereof. The Contractor shall not assign transfer mortgage, charge, or encumber, all or any of the moneys payable or to become payable or any other interest or benefit under the Contract without the consent in writing of the Principal being first obtained. Any consent shall not discharge the Contractor from any liability in respect of the Contract, and shall extend only to the assignment or other transaction actually consented to and shall not be deemed a consent to any other assignment of transaction nor to prevent any proceedings for any subsequent breach of this condition any may be granted or withheld or made subject to conditions in the absolute discretion of the Principal.

## **5.13 TERMINATION OF CONTRACT**

- 5.13.1 Where the Contractor
- (a) fails to supply and provide the Services on the due date or dates or at the location or locations specified in the Contract or in any order or to duly and punctually observe and perform all or any of the terms or conditions set out in the Contract; or
  - (b) assigns subcontracts or sublets the Contract, or any part thereof, or assigns, mortgages, charges, or encumbers, or attempts to assign, mortgage, charge, or encumber, all or any of the moneys payable or to become payable under the Contract, or any other interest or benefit whatsoever arising, or which may arise, under the Contract without the consent in writing of the Principal being first obtained; or
  - (c) (if an individual) becomes bankrupt; or

- (d) (if a corporation) goes into voluntary or compulsory liquidation or goes into receivership or enters into voluntary administration; or
- (e) makes an assignment of its estate for the benefit of its creditors, or makes an arrangement or composition with its creditors; or
- (f) includes any statement fact information representation or material in its Tender which is false untrue or incorrect; or
- (g) fails in any manner to perform the Contract to the complete satisfaction of the Principal;

then, and in every such case, the Principal may give notice in writing to the Contractor terminating the Contract, whether there are any orders remaining to be filled or not and engage or contract with any person or corporation other than the Contractor to perform and complete the same.

- 5.13.2 All damages and expenses incurred by the Principal under or by virtue of the provisions of sub-clause 13.1 shall be ascertained and certified to by the Officer, and shall be deducted from any money that may be then due, or may thereafter become due to the Contractor, or that may have been deposited by itself as security in respect of the Contract. If the money then due, or thereafter becoming due to the Contractor, or deposited by itself as aforesaid, shall be not sufficient for that purpose, the balance remaining unpaid shall be a debt due by the Contractor to the Principal, and may be recovered from the Contractor in any Court of competent jurisdiction.
- 5.13.3 If the Contract is terminated the moneys which have been previously paid to the Contractor on account of the orders filled shall be taken by the Contractor as full payment and satisfaction for all orders executed under the Contract. All sums of money that may be due to the Contractor and unpaid, and all sums of money (if any) held as security, shall be forfeited and may be retained by the Principal.
- 5.13.4 Upon termination of the Contract all moneys previously paid to the Contractor shall be deemed to be in full satisfaction of all claims of the Contractor of any kind or description whatsoever under or in respect of the Contract.

## **5.14 FAILURE TO SUPPLY**

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

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

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

## **5.16 VARIATION OF CONTRACT TERMS**

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

## **5.17 SUSPENSION OF PAYMENTS**

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

## **5.18 DEDUCTION OF CHARGES OR DEBTS**

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

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

## **5.19 PAYMENT**

- 5.19.1 The Principal shall pay or cause to pay to the Contractor, upon the certificate of the Officer, all sums of money due or to become due to the Contractor under the Contract, in the amounts and at the times set forth in the Contract, and shall pay or hand over the Security (if any) deposited to the Contractor within fourteen days after the Officer has certified that the Contract has been satisfactorily completed. Failure by the Principal to pay the amount payable at the due time will not be grounds to vitiate or avoid the Contract.
- 5.19.2 Where the Contract is a schedule of prices Contract to be executed at the rates or prices given in the Contract, then the Services shall be paid for at their schedule rates and not at the total amount of the Contractor's tender.
- 5.19.3 The Contractor shall not be entitled to any interest, credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment of money becoming due for the provision of Services unless expressly provided for in the Contract.
- 5.19.4 The Principal shall not be obliged to pay accounts of the Contractor unless received by the paying officer nominated on the Order.
- 5.19.5 All periods for payment of invoices shall be calculated from the date of preparation of the invoice.

## **5.20 SERVICE OF NOTICES**

Any notice, order, instruction or communication required to be, or that may be served on or given to the Contractor by the Principal or the Officer shall be deemed to have been sufficiently issued or given to or served upon the Contractor if it is handed to the Contractor or is sent by prepaid cost to or is left at the address of the Contractor stated in its Tender or at such other address as is notified in writing by the Contractor to the Principal.

## **5.21 CONTRACTOR TO INFORM ITSELF**

- 5.21.1 The Contractor shall be deemed to have:
- (a) examined carefully and to have acquired actual knowledge of the contents of the Drawings, Specification, Schedules, Bills of Quantities (if any), Conditions of Tendering, these General Conditions of Contract and the Special Conditions of Contract (if any) and any other information made available in writing by the Principal to the Contractor for the purpose of tendering; and
  - (b) examined the site and its surroundings; and
  - (c) satisfied itself as to the correctness and sufficiency of its tender and that its price covers the cost of complying with all its obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the contract.

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

## **5.22 COMPLYING WITH STATUTORY REQUIREMENTS**

- 5.22.1 The Contractor shall comply with the requirements of all Acts of the Parliament of the Commonwealth and with the requirements of the provisions of all Acts of the Parliament of the State of Western Australia and with the requirements of all ordinances, rules, regulations, by-laws, orders, codes of practice and proclamations made or issued under any such Act and with the lawful requirements of public and other authorities in any way affecting or applicable to the Services or the performance of the Contract.
- 5.22.2 Without limiting in any way the generality of the foregoing, the Contractor shall duly and punctually observe, perform and comply with the provisions of the Work Health and Safety Act 2020 and all improvement notices, prohibition notices and codes of practice (if any) issued thereunder and having application to this Contract.

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

## **5.23 PROPERTY DAMAGE AND PUBLIC RISK**

- 5.23.1 Subject to the next succeeding paragraph of this clause, the Contractor shall indemnify and keep indemnified the Principal against all loss of or damage to the property of the Principal and from and against any claim, demand, action, suit or proceeding that may be made or brought by any person against the Principal, or the employees, professional consultants or agents of the Principal or any of them in respect of personal injury to or the death of any person whomsoever or loss of or damage to any property whatsoever arising out of or as a consequence of the supply or provision of the Services by the Contractor or its employees, agents or sub-contractors and also from any costs and expense that may be incurred in connection with any such claim, demand, action, suit or proceeding.
- 5.23.2 The Contractor shall not, under the last preceding paragraph of this clause, be rendered liable for or in respect of personal injury to or the death of any person or loss of or damage to property resulting from any breach by the Principal of any provision of the Contract or any negligent act or omission of the Principal, or the employees, professional consultants or agents of the Principal or for or in respect of any claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto.

## **5.24 ACCIDENT OR INJURY TO EMPLOYEES**

The Contractor shall indemnify and keep indemnified the Principal against liability for all loss or damage resulting from personal injury to or the death of (other than such injury or death resulting from any breach by the Principal of any of the provisions of the Contract or any negligent act or omission of the Principal, or the employees, professional consultants or agents of the Principal), the Contractor or of any sub-contractor occurring during the currency of the Contract and arising out of or in connection with the supply or provision of the Services under the Contract or the performance of the Contract and against all claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto, whether at Common Law or under any statute.

## **5.25 INSURANCE**

- 5.25.1 Without limiting its obligations and responsibilities the Contractor, in the joint names of itself and the Principal for their respective rights interests and liabilities, shall effect and keep in effect during the currency of the Contract insurance policies covering all matters referred to in clauses 22 and 23.
- 5.25.2 The insurance policies shall contain a cross-liability clause and otherwise be in terms, and effected with an insurance company, approved by the Principal which approval shall not be unreasonably withheld.
- 5.25.3 The Contractor shall lodge certificates of proof the required insurance policies with the Principal before the commencement of the Services provision and at such other times as the Principal may require.

## **5.26 WARRANTIES**

The Contractor shall obtain warranties as specified in the Contract and shall ensure that the Principal will have the benefit of the warranties. The Contractor shall ensure that the Principal will have the benefit of any warranties specified in the Contract that are obtained by the sub-contractors of the Contractor.

## **5.27 INDUSTRIAL AWARDS**

- 5.27.1 With respect to all work done in Western Australia under the Contract, the Contractor shall observe, perform and comply in all material respects with all relevant Industrial Awards, Industrial Agreements and orders of Competent Courts or Industrial Tribunals applicable to the Services and the work to be done under the Contract.
- 5.27.2 Failure by the Contractor to comply with sub clause 27.1 hereof shall entitle the Principal by notice in writing to the Contractor to forthwith terminate the Contract, but without prejudice to any other rights or remedies of the Principal.