



# Request

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**REQUEST TITLE:**

**Building Certification Services Panel 2016**

**REQUEST NUMBER:**

**2016/07967**

**CLOSING TIME:**

**2:30 PM on Tuesday 21<sup>st</sup> February 2017 Perth, Western Australia**

**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**

A number of clauses have been amended by the WA Government and differ from the corresponding clauses in AS 4122-2010. These amendments are fully detailed in clause **B.3.3 WA Government Amendments to AS4122-2010** of this document.

## 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.	C.11	Remove reference to Tender No: 2011/216223 and replace with 2016/07967.	January 2017
2.	C.3	Prequalification Requirements to reference both Level 1 and Level 2 Registered Building Surveying Contractors.	February 2017
3.	<i>Insert new A 6.14</i>	BMW Supplier Demerit Scheme clause inserted/added	October 2017

## A. PART A – REQUEST NO 2016/07967

### A.1 OVERVIEW

The Department of Finance - Building Management and Works (BMW) provides a wide range of services including delivery of the State Government's non-residential building program, asset management and maintenance planning.

BMW proposes to establish a pre-selected Panel of Consultants capable of undertaking building surveying services, including certifying projects in accordance with the *Building Act 2011* (WA), and advising on compliance with the National Construction Code (NCC). The panel will be used for engagement of Consultants for Services up to \$50,000 fee value (GST inclusive). (The pre-determined fee scale is detailed in Schedule 2.) For non-standard Services and Services with a fee value over \$50,000 and up to \$150,000 (GST inclusive) the Panel may serve as a pre-qualified list for inviting limited tenders. Building certification services beyond these limits, or with specialised requirements, will be advertised for open tender.

The Building Certification Services Panel 2016 will be the second Panel of this type and will include regional Respondents, where applicable. The 'Buy Local Policy' will apply. Where the capacity of regional Respondents aligns with Services required locally (as defined by the State Supply Commission's *Buy Local Policy*) priority consideration will be given to the engagement of those regional Respondents. Regional Respondents are therefore strongly encouraged to apply.

#### A.1.1 TERM

The Panel will operate for a minimum period of two (2) years, with BMW reserving the right to exercise up to three (3) extension options, each having a one (1) year duration.

## **A.1.2 SUBMISSION OF OFFER**

The Principal will establish and maintain a state wide register of firms appointed to the Panel.

A.1.2.1 The Respondent may submit the Offer by hand at: **BMW Tendering Services, Ground Floor Optima Centre, 16 Parkland Road, Osborne Park WA 6017**. The Respondent must provide six copies, with one copy marked "original", five unbound copies marked "copy", plus one copy saved on a compact disc.

A.1.2.2 The Respondent may submit the Offer by post at: **Building Management and Works, Locked Bag 11, Osborne Park BC WA 6916**. The Respondent must provide six copies, with one copy marked "original" five unbound copies marked "copy", plus one copy saved on a compact disc.

**Electronic and Facsimile proposals will not be accepted.**

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

## **A.1.3 CONTACT PERSONS**

The following BMW representative may be contacted for enquiries in relation to this Request:

### **Request Enquiries:**

Name: Richard Marshall  
Title: Building Compliance Manager  
Telephone: (08) 6551 1914  
E-mail: [bcspanel@finance.wa.gov.au](mailto:bcspanel@finance.wa.gov.au)

## **A.2 STRUCTURE OF THIS REQUEST**

The Building Certification Services Panel 2016 has been developed to ensure the Minister for Works meets the requirements of the *Building Act 2011* (WA).

The purpose of the Panel is to:

- a) provide rapid building certification for projects managed by State Government;
- b) streamline the process for certification of compliance; and
- c) provide some certainty with regard to certification costs.

Other benefits expected from the Panel are to:

- d) provide opportunities for Respondents new to government work; and
- e) provide opportunities for regional Respondents.

This Request asks for Respondents to demonstrate their experience, qualifications and capacity to certify government projects as required by the *Building Act 2011* (WA).

Respondents may apply at any time during the Term to join the Panel or to upgrade their Areas of Expertise. (Additional insurance may be required. Panel Members applying to upgrade their Areas of Expertise will need to include in their Offer evidence of the required level of professional indemnity insurance appropriate to the higher Area of Expertise applied for, in accordance with Schedule 2.) Respondents that apply to join the Panel after the initial closing time for this Request and accepted by the Minister for Works as Panel Members will be granted Panel Membership for the remainder of the Term commencing from the original Panel Commencement Date.

This Request document is constituted by:

- a) Part A Request – this part describes the Panel, the Panel terms and conditions, the evaluation process for inclusion on the Panel and how Services will be allocated to Panel Members.
- b) Part B Specification – this part describes the specification for the Services, including - General and Special Conditions of Contract for project-specific engagements for Services.
- c) Part C Respondent's Offer – this part includes the forms and declarations that must be submitted in the Respondent's Offer to provide Services through inclusion on the Panel.
- d) Schedule 1 – includes details of the different Areas of Expertise that Respondents may apply for.
- e) Schedule 2 – includes the predetermined fee scales for calculating Lump Sum Fees for Services valued up to \$50,000, the levels of professional indemnity insurance required to undertake Services for different Areas of Expertise and project values, and the timeframes required to provide certification of design and construction compliance for different Areas of Expertise.
- f) Schedule 3 – includes the Respondent's nominated Hourly Rates.

**Separate documents supplied by BMW:**

- g) Addenda (if any).

**Supporting documents not supplied by BMW are available from Standards Australia:**

<http://www.standards.org.au/>

- h) AS 4122 - 2010 General Conditions of Contract for Consultants;
- i) AS 4120 - 1994 Code of Tendering; and
- j) AS 4121 - 1994 Code of Ethics and Procedures for the Selection of Consultants.

**Supporting documents viewable at BMW tenders office:**

- k) The Code of Practice for the Building and Construction Industry in Western Australia.

### **A.3 BUILDING ACT 2011 (WA)**

The *Building Act 2011 (WA)* came into effect in April 2012, and governs the manner in which building approvals are managed in Western Australia

BMW procedures will require evidence of compliance to the National Construction Code (NCC) and will ensure delivery of the certification processes required under the new legislation and associated standards. All lead consultants and BMW Project Managers will be expected to ensure the delivery of certification processes required under the new legislation.

Building surveyors will be expected to work with BMW's project delivery managers, Lead Consultants and/or Superintendent's Representatives to ensure the timely delivery of certification required under the new legislative framework. BMW has received the required ministerial delegation to act as a permit authority, and will issue the permits required under the *Building Act 2011 (WA)* for the buildings it procures and manages.

BMW's role as a permit authority is independent of its project management function. The permit authority function will be managed by BMW's Policy and Practice directorate, which has a whole-of-Government focus and supports the operational directorates in BMW. The Policy and Practice directorate develops and manages the policy and procedural framework by which public works are procured and maintained. It provides independent expertise and strategic advice on matters relating to the delivery of the State Government's non-residential building program.

BMW's project managers will generally be responsible for submitting permit applications to the BMW Permit Authority. Respondents shall submit certification to the Principal of the Contract, including all necessary documentation and copies of relevant, related approvals e.g. Health Approvals, Development Applications, etc. Respondents will generally not be responsible for obtaining permits, but are required to familiarise themselves with the documentation required for permit applications.

For more information, please visit: <http://www.buildingcommission.wa.gov.au/>

## **A.4 SUMMARY OF SERVICE REQUIREMENTS**

Respondents shall nominate for the following distinct service deliverables detailed within the request as Areas of Expertise:

New buildings:

1. Certification of design and construction compliance.

Existing buildings:

2. Demolition permit application; and/or
3. Certificate of building compliance.

Consultancy services:

4. Third party audit; and/or
5. Specialist advice
6. Certification of compliance with Australian Standards specified in BMW documents

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

From time to time, the Principal may require building consultancy 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.5 ASSESSMENT PROCESS**

Respondents are invited to submit an Offer for consideration for inclusion on the Panel. Respondents to this Request must complete **Part C – Respondent's Offer** of this Request document.

To proceed to assessment, Respondents must meet the Prequalification Requirements described in clause **A.5.1** of this Request.

An evaluation committee will assess Offers using the weighted selection criteria described in clause **A.5.2**, to evaluate the Respondent's level of experience, capability and understanding. Respondents which meet the Selection Criteria, for each of the relevant service deliverables for the nominated Area(s) of Expertise, may be appointed to the Panel.

Lump Sum Fee scales for Contracts derived from membership of the Panel have been pre-determined by BMW and do not form part of the assessment process. See Schedule 2 for details of the Lump Sum Fee scales.

For Services where a Lump Sum Fee is not applicable, Hourly Rates will be nominated by the Respondent in accordance with Schedule 3. Consideration of the nominated Hourly Rates will form part of the assessment process, and may affect the Services the Respondent is engaged to provide under this Panel.

## **A.5.1 PREQUALIFICATION REQUIREMENTS**

The Minister for Works will not consider any Offer which does not meet the following prequalification requirements.

1. Respondents are required to accept the pre-determined fee scales included in Schedule 2 of this Request, and periodic adjustments made in accordance with **A.6.5**.
2. Given the requirements of Building Act 2011 (WA) and subsidiary legislation, Respondents are required to provide details on the number of building surveyors who are appropriately registered as a level 1 or 2 building surveyors under the Building Services (Registration) Act 2011 (WA) and subsidiary legislation. Respondents appointed to the Panel are required to submit evidence of contractor registration under legislation to the contact person named in clause A.1.3 as part of this request.

Offers that meet the prequalification requirements will then be evaluated against the weighted selection criteria specified in this Request.

Offers must conform to the Request. Respondents must demonstrate compliance with all the BMW requirements for assessing the Offers and appointing Respondents to the Panel. Offers that have not addressed all the compliance criteria and the weighted selection criteria may be ruled invalid and the Respondent making that invalid Offer will not be appointed to the Panel.

## **A.5.2 WEIGHTED CRITERIA**

Assessment of Offers will include evaluation of the weighted selection criteria below.

Respondents must demonstrate their ability against each criterion to be considered for inclusion in the Panel. The criteria are common for each of the Areas of Expertise, however, **a separate response to criterion 1 ‘Capability and experience’ is required for each of the Areas of Expertise for which the Respondent is nominating.**

The selection criteria and their weightings are:

1. Capability and experience (30% weighting);
2. Qualifications and registration (30% weighting);
3. Methodology (20% weighting);
4. Buy Local Policy (20% weighting);

**Full details of the Selection Criteria are shown in Part C.6. The Areas of Expertise are outlined in Schedule 1.**

### **A.5.3 FURTHER INFORMATION**

After the submission of an Offer, the Principal's Representative may:

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

If the Principal's Representative makes a request for further information, the Respondent must provide that information within 5 working days.

### **A.5.4 OFFER TO COMPLY WITH REQUEST**

Offers which do not comply with the provisions of this Request may not be considered.

### **A.5.5 DECLARATION BY RESPONDENT**

In submitting an Offer the Respondent declares that:

- (a) All information in its Offer is true and correct at the time of its submission;
- (b) Other than in respect of information provided by the Minister for Works to the Respondent in writing, the Respondent relies entirely on its own enquiries in relation to all matters in respect of the Request, the General Conditions and the Special Conditions;
- (c) It has examined and understood the Request, each addendum issued under the Request, the General Conditions, the Special Conditions and any other information available to the Respondent in respect of the Request;
- (d) It has obtained and examined all information relevant to the risks, contingencies and other circumstances affecting its Offer, which is obtainable by making reasonable enquiries;
- (e) Other than information provided by the Minister for Works to the Respondent in writing, the Respondent does not rely on any warranty or representation of the Minister for Works or any person actually or ostensibly acting on behalf of the Minister for Works.
- (f) Irrespective of whether its Offer is accepted or not, the Respondent will pay its own costs and expenses in connection with:
  - i. The preparation and submission of its Offer; and

- ii. Any discussions, enquiries or negotiations with, or provision or consideration of further information to the Minister for Works, whether before or after the submission of any Offer.

### **A.5.6 OFFER VALIDITY PERIOD**

An Offer submitted in response to this Request must remain valid and open for:

- (a) a period of six months from the date on which the Offer is submitted unless otherwise agreed in writing between the Minister for Works and the Respondent; or
- (b) until the Minister for Works advises the Respondent that it has been unsuccessful, whichever occurs first.

### **A.5.7 OWNERSHIP / INTELLECTUAL PROPERTY**

All documents, materials, articles and information by the Respondent as part of, or in support of an Offer 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.

Nothing in this section affects the intellectual property rights of the Respondent in the Offer, except that the Minister for Works may make such copies of the Offer as required for the proper evaluation of the Offer.

### **A.5.8 ADDENDA**

The Minister for Works reserves the right to issue addenda to further explain or vary this Request. Respondents are required to acknowledge all addenda in their Offer.

### **A.5.9 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.6 PANEL OPERATION**

The Minister for Works reserves the right to limit or increase the number of Panel Members it appoints to this Panel as it deems appropriate to meet its Services requirements.

Respondents may apply at any time to join the Panel or to upgrade their Area(s) of Expertise through submitting an Offer in accordance with this Request to the contact email listed in clause **A.1.3**. The Minister for Works will review Panel membership annually, or more often as deemed appropriate, and at its sole discretion may permit:

- a) additional Panel Members to be included in the Panel; and
- b) existing Panel Members to have their Area(s) of Expertise upgraded.

### **A.6.1 SELECTION AND ENGAGEMENT PROCESS**

Under the Panel, Panel Members may be engaged to provide Services in various ways, including:

1. Engaged directly as a Consultant by the Minister for Works, or
2. Engaged as a Sub consultant by the relevant separately-engaged Lead Consultant.

The Principal of a Contract can therefore be the Minister for Works, the Lead Consultant, or authorised third parties, depending on who has been specified in the Annexure for that Contract as the Principal.

The selection of Consultants from the Panel to provide Services will generally operate as outlined in clauses **A.6.2** and **A.6.3**. The Minister for Works reserves the right in its absolute discretion to modify the selection and award process from time to time; written notification will be provided to Panel Members in the event of changes being made to the process.

The Department of Finance will monitor the nature, value and distribution of Contracts awarded to the Panel Members.

### **A.6.2 USE OF PANEL FOR DIRECT CONSULTANT ENGAGEMENT BY principals representative**

Where the Panel Member is to be engaged as a Consultant directly by the Principals representative, the selection and engagement process will operate as follows:

1. The Principal's Representative will review the Panel and select a preferred Panel Member or Members. This may be done in conjunction with the relevant government agency and take into account any particular project or agency requirements. For projects outside of the Perth metropolitan area (situated within zone 1, in accordance with the State Supply Commission's *Buy Local Policy*) priority consideration shall be given to suitably-qualified Panel Members with the capability and expertise to provide the Services through their regional office (see clause **A.6.6**)
2. The number of Panel Members selected will vary depending on the estimated value of the Services, as follows:
  - a) For Services with an estimated total fee value to a maximum of \$50,000 (GST inclusive), one Panel Member will be selected to give a fee proposal.
  - b) For Services with an estimated fee value between \$50,001-\$150,000 (GST inclusive), three Panel Members will be selected to give fee proposals.

Where there are fewer than three Panel Members available and/or capable of undertaking the Services, fewer quotes may be sought, or the Services may be advertised for public tender.

**Note: a higher level of professional indemnity insurance is required for Panel Members to be considered for engagement to undertake Services with a fee value between \$50,001-150,000.**

- c) Services with an estimated fee value greater than \$150,000 will be advertised for open tender in accordance with the State Supply Commission's 'Open and Effective Competition' policy.
- d) The fee value is to be determined in accordance with Schedule 2, as follows:
  - i) For projects with an estimated construction cost of less than \$1 million (excluding GST), a single quote shall be obtained from a selected Panel Member.
  - ii) For projects with an estimated construction cost between \$1-50 million (excluding GST), a Lump Sum Fee shall be determined in accordance with Schedule 2, or the Hourly Rates nominated in Schedule 3 will apply if a Lump Sum Fee under Schedule 2 is unable to be determined. Services engaged at an Hourly Rate (rather than a Lump Sum Fee) shall be limited to not more than \$50,000.

- iii) For projects with an estimated construction cost between \$50-150 million (excluding GST), three quotes shall be sought from selected Panel Members, as outlined in point b) above.
  - iv) For projects with an estimated construction cost greater than \$150 million (excluding GST), the Services shall be advertised for open tender, as outlined in point c) above.
3. The Principal's Representative will contact the selected Panel Member(s) through the Panel Member's contact person named in clause **C.11** to discuss the nature of the Service, project budget and timelines, and the Lump Sum Fee (if the pre-determined fee scale in Schedule 2 applies), and seek information on the availability of the Specified Personnel to undertake the Service.
  4. If the Specified Personnel are available, the Principal's Representative will issue to the Panel Member(s) a Request for Quotation, nominating key stages and dates, and requesting a fee breakdown and schedule of payments, a disbursements proposal (for regional projects), a proposed schedule of meetings and site visits, and confirmation of the availability of Specified Personnel and commitment to required timelines.
  5. Panel Members issued a Request for Quotation are required to respond within 14 days. As part of the response to the Request for Quotation, the Panel Member will be required to provide a quote for the Services (if the pre-determined fee scale in Schedule 2 does not apply), a fee breakdown outlining the fee payable for each component of the Services, a proposed schedule of meetings and site inspections, and rates for additional work, including site inspections, should the Contract be varied to require additional certification services. Prior to engagement, the Principal's Representative will review the schedule for fee delivery (i.e. the value/percentage of fees applicable to agreed components and sub-components of the Services), the schedule of meetings and site inspections and the rates for additional work.

For projects that are outside of the Perth metropolitan area (outside of Zone 1, as defined in the State Supply Commission's *Buy Local Policy* <http://www.ssc.wa.gov.au/policies02.asp?id=19>) and that will involve travel distances greater than 80km, one way by road, from the Consultant's office nominated in clause **C.9** or **C.12**, all disbursements for site inspections, including travel costs, Hourly Rates for travel time, accommodation etc, are to be calculated and submitted with fee proposals, for assessment and acceptance prior to engagement. (Where the pre-determined fee scales in Schedule 2 apply, the fee for site inspections is already incorporated in the percentage fee, therefore the only additional costs should be disbursements.) Rates for any additional work, including site inspections, should the Contract be varied to require additional certification services, should also be included.

6. If the Panel Member(s) fails to respond to the Request for Quotation within 14 days, the process is repeated with the next preferred Panel Member(s) until the requisite number of responses to the Request for Quotation is received.

7. Assessment of the response to the Request for Quotation will vary depending upon the number of quotations sought:
  - a. Where a single quotation is obtained, the Principal's Representative will assess the schedules of payments, meetings and site inspections proposed. Dependant upon value for money considerations, the quotation may be subject to further negotiation, and/or rejection.
  - b. Where three quotations are obtained, the Principal's Representative will assess the quotations received and will identify the preferred Panel Member based on the quotation which delivers the best value for money. Dependant upon value for money considerations, the quotation(s) may be subject to further negotiation, and/or rejection.
8. If the Principal rejects all quotation(s), the process is repeated with the next preferred Panel Member(s).
9. If the Principal accepts a quotation, the Principal's Representative will issue a Letter of Engagement to the successful Panel Member. Letters of rejection will be issued to the unsuccessful Panel Members, if any.
10. Once a Contract is established, the Principal will record the details of the Contract on a database for consideration when awarding future Services under this Panel.

### **A.6.3 USE OF PANEL FOR SUBCONSULTANT ENGAGEMENT**

The Department of Finance's policies and procedures relating to the appointment of Sub consultants requires the Lead Consultant to demonstrate to the Minister for Works that the selection process used to select the Sub consultant has delivered a value for money outcome.

Additionally the selection process is required to comply with relevant government policies such as the Buy Local Policy, where applicable (see clause **A.6.6**.)

Where the Minister for Works separately engages a Lead Consultant for its various projects, the Lead Consultant, at its discretion and subject to the Minister for Works' approval of any appointment, may utilise the Panel to engage its building certification and code compliance Sub-consultants. Such engagement of Sub-consultants will be on a basis consistent with the arrangements outlined at clause **A.6.2**, and subject to the Lead Consultant's own terms of engagement.

Where Lead Consultants elect to utilise this Panel for the selection and engagement of Sub-consultants, the Minister for Works may in its absolute discretion provide access to the Offers of Panel Members, excluding those Panel Members who opted for non-disclosure of their Offer in accordance with clause **C.1(e)**.

When seeking approval from the Minister for Works for the appointment of any Sub-consultant, the Lead Consultant shall demonstrate that the process used to select the Sub-consultant has delivered a value for money outcome.

Upon engagement to undertake any Services, where the Principal is other than the Minister for Works, Panel Members shall complete the 'Consultant engagement notification' form (B.6) and forward the completed form to: [bcspanel@finance.wa.gov.au](mailto:bcspanel@finance.wa.gov.au)

## **A.6.4 HOURLY RATES**

For Services based on an Hourly Rate, the fees nominated by the Respondent in their Offer, in accordance with Schedule 3, will apply.

## **A.6.5 FEES AND PRICE VARIATION**

The pre-determined fee scales in Schedule 2 of this Request shall form the basis of any engagement. The Hourly Rates nominated by the Respondent in their Offer shall also form the basis of pricing of any fee adjustments. (Schedule 2 outlines the pre-determined fee scale for different Areas of Expertise and project value. Schedule 3 contains the Hourly Rates nominated for various Specified Personnel.)

The Hourly Rates nominated in Schedule 3 are fixed for the first year of the Term.

Panel Members may request revisions of the Hourly Rates nominated in their Offer in accordance with Schedule 3, on an annual basis during the term of the Panel. The Minister for Works will consider approval of any request for revision, based on comparison with the percentage change in the Consumer Price Index (Consumer Price Index, Australia (Cat No 6401.0): 1 All Groups, Index Numbers – Perth) for the quarter immediately preceding the relevant anniversary of the Panel Commencement Date and that of the corresponding period the year before.

## **A.6.6 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.

For the purposes of this Panel, the Perth metropolitan area is defined as being situated within zone 1, and 'regional' is defined as being situated within zones 2 or 3,

in accordance with the State Supply Commission's *Buy Local Policy*. (<http://www.ssc.wa.gov.au/policies02.asp?id=19>)

Refer to Clause **C.9** Respondent's Claim for Registration as a Regional Business. To receive consideration for a priority selection as a regional business under the selection criteria, Respondents must comply with clauses **A.6.7** and **A.6.8** related to the Buy Local Policy.

## **A.6.7 REGIONAL OFFICE**

For priority consideration for engagement on regional projects, the Respondent must have a permanent, operational, regional office, outside of the Perth metropolitan area, which may be the Respondent's *bona fide* principle place of business or may be a *bona fide* branch office of the Respondent's principle place of business.

BMW may request that the Respondent demonstrate the *bona fides* of the regional office. In doing so BMW may consider, but is not limited to, whether the regional office:

- a. Is a permanent fixed establishment (not a post office box or temporary facility such as a site office or caravan);
- b. Has been operational in the zone, as defined by the Buy Local Policy, and active in the local building and construction industry for a period of not less than (six) 6 months;
- c. Will continue to remain operational and active in the local building and construction industry after the completion of the term of the Panel;
- d. Has established communication facilities such as telephones, fax machines etc (as well as mobile phones);
- e. Is resourced by one or more persons who reside locally within the region of the permanent operational office, who is a permanent employee of the Respondent (not contract staff) and who has relevant building and construction qualifications and experience;
- f. Is marketed by the legal entity by way of corporate publications, letterheads, telephone directory listings or like materials.

## **A.6.8 MANAGE THE CONTRACT FROM THE REGIONAL OFFICE**

For regional Respondents to be given priority consideration for engagement to provide Services on regional projects, it must be demonstrated that the Services will be managed through the regional office by appropriately qualified and experienced staff. When considering whether the Contract will be managed from the Respondent's regional office, BMW may request that the Respondent demonstrate that the permanent employee(s) located in its regional office have the qualifications

and experience to undertake the Services required, will be actively involved in the day-to-day technical performance of the Services under the Contract, and will be available during ordinary working hours. This does not prohibit the Respondent from carrying out some of the Services under the Contract from another office or by employees from other offices.

## **A.6.9 INDIGENOUS ENTERPRISE AND EMPLOYMENT TENDERING PREFERENCE POLICY**

One of the key objectives in the State Government's Indigenous Economic Development 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, Indigenous residents of Western Australia. Any increased access to service contracts by Indigenous owned and operated enterprises or by enterprises with a strategy for employing Indigenous people provides increased employment and economic opportunities for Indigenous Western Australians.

To address this objective BMW's Indigenous 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 Indigenous Enterprise & Employment Preference Policy may be given priority for suitable projects.

Refer to Clause C.10 Claim for Indigenous 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 Indigenous Enterprise and Employment Tendering Preference Policy.

### **A.6.9.1 Definitions**

The term *Indigenous Person* means a person who is of Indigenous 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 *Indigenous Enterprise* means:

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

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

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

## **A.6.10 PERFORMANCE MANAGEMENT**

Throughout the term of the Panel, and at the completion of the term, BMW may assess the performance of the Panel Members in relation to the provision of Services, in accordance with clause **B.3.10**.

BMW reserves the right to suspend or remove Panel Members from the Panel, in accordance with clause **A.7.3**, in the event of unsatisfactory performance against criteria such as time performance, customer satisfaction, product outcome, cost control and similar considerations. BMW will also consider performance as unsatisfactory where a Panel Member accepts an engagement for Services and does not provide the nominated Specified Personnel to undertake the Services. Unsatisfactory performance can also be judged as being that which scores a rating of 40% or less of the available points on the Consultant Performance Report (see clause **B.5**) Panel Members that score 40% or less will be considered for suspension, and Panel Members that score 20% or less will be considered for cancellation, in accordance with clause **A 7.3**.

## **A.6.11 CHANGES IN SPECIFIED PERSONNEL**

A Panel Member will be required to notify BMW if there are any significant changes to their circumstances during the Term of the Panel. Significant changes could include, but are not limited to:

- a) changes in the number of Registered Building Surveying Practitioners Level 1 and 2;
- b) changes to Specified Personnel of the Panel Member, including associates and partners;
- c) changes in shareholdings and office-holders of companies; and
- d) changes to the legal entity or legal structure of the Panel Member.

## **A.6.12 PANEL MEMBERSHIP**

The Panel will operate for an initial term of 2 years. There are three, year-long extension options of that initial term that may be exercised at the sole discretion of the Minister for Works. All Respondents who's Offers are accepted will be informed in writing of the Panel Commencement Date, and also of any extension(s) to the initial term.

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.6.13 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.6.14 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 BWM's website which can be accessed through [www.finance.wa.gov.wa](http://www.finance.wa.gov.wa).

## **A.7 TERMS AND CONDITIONS OF THE PANEL**

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.7.1 DEFINITIONS**

In this Request, the terms defined in AS 4122 - 2010 General Conditions of Contract for Consultants will apply.

Additional definitions used in this Request are:

**Annexure** means the AS 4122 project-specific Annexure to the relevant Request for Quotation.

**Area of Expertise** means the different project categories that the Respondents can apply to provide Services for, as detailed in **B.1** and Schedule 1.

**BCA** means the Building Code of Australia which is volumes 1 and 2, as amended from time to time, of the National Construction Code series published by, or on behalf of, the Australian Building Codes Board.

**BMW** means Building Management and Works, Department of Finance.

**Building Commission** means the Building Commission division of the Department of Commerce, Western Australia.

**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 the 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 by the schedule of deliverables (see Part B).

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

**General Conditions** means AS 4122 - 2010 General Conditions of Contract for Consultants.

**Hourly Rates** means the Hourly Rates nominated by the Respondent in their Offer, for building consultancy services in Schedule 3.

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

**Letter of Appointment to Panel** 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 for Services, calculated by reference to the pre-determined fee scales in Schedule 2 of the Request.

**National Construction Code** means the latest published version of the National Construction Code (NCC) series, published by, or on behalf of, the Australian Building Codes Board.

**Offer** means the Offer submitted by the Respondent in response to this Request.

**Panel** means the Building Certification Services Panel 2016, including its constituent Panel Members.

**Panel Commencement Date** means the date the Panel comes into operation, and marks the commencement of the Term. Successful Respondents will be notified in writing of the Panel Commencement Date upon their appointment to the Panel.

**Panel Member** means a Respondent who has been appointed as a member of the Building Certification Services Panel 2011. A Panel Member may be engaged to undertake Services as a Consultant.

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

**Principal's Representative** means the individual authorised in writing by the Principal to represent the Principal.

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

**Project Brief** means all information describing the functional, operational, qualitative, quantitative, time and cost requirements in respect of the Services and other supporting information provided by the Principal from time to time.

**Principal** means the legal entity which is entering into the Contract to engage the Consultant. Any reference to 'Client' in the General Conditions is to be construed as being the Principal.

**Principal's Representative** means the person responsible for administering this Consultant Contract. This may or may not be a Department of Finance Officer. Any reference to 'Client's Representative' in the General Conditions is to be construed as being the Principal's Representative.

**Request** means this Request, number 2016/07967, Building Certification Services Panel 2016.

**Request for Quotation** means a request to a Panel Member to submit a quotation to undertake specific Services. It will include:

- a) A Project Brief;
- b) A project-specific schedule of deliverables (if required);
- c) A project-specific Annexure;
- d) Project team nomination and availability;
- e) Proposed fee breakdown and schedule of payments based on a Lump Sum Fee and/or Hourly Rates calculated in accordance with Schedules 2 and 3 (if applicable);
- f) Draft project timeframe, including any critical dates during design and construction, and the completion date; and
- g) Recipient Created Tax Invoice Agreement (if applicable).

**Respondent** means the party submitting an Offer under this Request.

**Special Conditions** means the Special Conditions of Contract contained in clause **B.3** of this Request

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

**Subconsultant** 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.

## **A.7.2 DISCRETION**

Where under this Panel the Minister for Works has a right, power, discretion or other function (including to accept, agree, approve, comment on or reject any matter), the Minister for Works will be entitled to exercise that right, power, discretion or other function in its absolute discretion, unless the Request or Contract otherwise expressly provides. Any exercise of the right, power, discretion or other function by the Minister for Works or its representative shall not relieve the Panel Member from any of the Panel Member's liabilities or obligations arising under the Request, while a Panel Member, or arising out of an engagement.

## **A.7.3 PRINCIPALS 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.7.4 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.7.5 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.7.6 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.7.7 SUBMISSION OF OFFER**

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

## **A.7.8 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.7.9 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.7.10 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.7.11 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:

- (a) Where necessary for the purpose of supplying the Services;
- (b) As authorised in writing by the Principal;
- (c) To the extent that the confidential information is public knowledge (other than because of a breach of this clause by the Panel Member);
- (d) As required by any law, judicial or parliamentary body or Government Agency; and
- (e) 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.7.12 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.7.13 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.7.14 GST/RECIPIENT CREATED TAX INVOICE AGREEMENT**

### **A.7.14.1 GOODS AND SERVICES TAX**

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

#### **A.7.14.2 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.7.15 NO GUARANTEE OF WORK**

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

#### **A.7.16 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.7.17 MONETARY VALUES**

Monetary values that appear in this Request document and any subsequent document, such as Project Budget, Estimated Construction Budget, Limit of Cost, are net values and do not include GST.

#### **A.7.18 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.7.**

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. 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 **\$5 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
- (iii) 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.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**

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.13 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 Customer (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.

# PART B - SPECIFICATION

Part B1 describes the nature of the Services that Panel Members may be engaged to undertake.

Parts B2 and B3 describe the general and special conditions that shall apply to any Contract derived from the Panel unless otherwise stated in the Letter of Engagement.

## B.1 SCOPE OF SERVICES

Within the Panel, Panel Members will be grouped into several Areas of Expertise. Selection of Panel Members for Services will be for distinct Areas of Expertise. Selection will not be transferable to additional Areas of Expertise without further application and evaluation by a further Offer submitted by the Panel Member in the same form and consistent with this Request.

Respondents may apply for any or all of the Areas of Expertise. The selection criteria are common for each of the Areas of Expertise, however, **a separate response to criterion 1, 'Capability and experience', is required for each Area of Expertise for which the Respondent is nominating.**

There are distinct service deliverables applicable to the Areas of Expertise outlined in Schedule 1. The Respondent is required to address all relevant distinct service deliverables for any Area of Expertise for which they nominate. The service deliverables are:

New buildings:

1. Certification of design and construction compliance, including the provision of any additional documentation required to support the certification of deemed-to-satisfy and alternative solutions (e.g. drawings, technical certification etc)
2. Certificate of Compliance, including the provision of any additional documentation required to support the certification of deemed-to-satisfy and alternative solutions (e.g. drawings, technical certification, etc)

Existing buildings:

3. Demolition permit application preparation, including the provision of any documentation required to support the application.
4. Certificate of building compliance, including the provision of any additional documentation required to support the certification of deemed-to-satisfy and alternative solutions (e.g. drawings, technical certification, etc)

5. Certification of design and construction compliance for alterations and additions to existing buildings, including auditing the existing building to identify compliance issues, undertaking any testing required to demonstrate compliance, and the provision of any documentation required to support the certification of deemed-to-satisfy and alternative solutions.

Consultancy services:

6. Third party audit, for example of certificates of compliance or alternative solutions.
7. Specialist advice, for example compliance advice for minor works or existing buildings.

Consultants engaged from this Panel may either be engaged directly by the Minister for Works reporting to the BMW project delivery manager(s), or may be engaged by the Minister for Works' Lead Consultant as a Sub-consultant reporting to the Lead Consultant.

Consultants will liaise with BMW's project delivery manager(s) and the appointed BMW design team, where applicable, to ensure advice on compliance issues is provided in a timely manner.

The Services to be provided by a Consultant engaged under this Panel will be defined at the time of engagement of the Consultant in the Letter of Engagement.

The Areas of Expertise for which Respondents may apply are:

- a) **Very complex:** Class 9a and 9c, prisons and mental health institutions, Class 9b assembly buildings (BCA definition) >2000 people (based on seats or occupancy);
- b) **Complex:** Class 9b assembly buildings (BCA definition) Type A Construction <2000 people; Class 2 or 3 buildings;
- c) **Moderately complex:** Class 9b buildings other than those listed at a), b) and d), e.g. TAFE facilities, high schools;
- d) **Conventional:** Class 5 and 6 >500m<sup>2</sup><sup>1</sup>, Class 9b primary schools<sup>2</sup>;

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*GUIDENOTES*

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<sup>1</sup> Areas refer to the floor area in relation to a fire compartment (refer to BCA for full definition)

<sup>2</sup> 'Class 9b primary schools' constructed for the Department of Education are based on a 'Standard Pattern' design. Given the repetitive and prescriptive nature of the buildings, this 'Area of Expertise' is

- e) **Simple:** Class 7 and 8, Class 5 and 6 <500m<sup>2</sup>;
- f) **Very simple:** Class 10 and 1;
- g) **Demolition:** preparing permit application, including arranging all associated approvals e.g. health approvals.
- h) **Certificate of building compliance s57:** as defined in the *Building Act 2011* (WA)
- i) **Building consultancy services:** third party audit, existing building compliance report, specialist advice, etc.

See Schedule 1 for more information on the Areas of Expertise.

## **B.1.1 DELIVERABLES**

Providing certification in accordance with the *Building Act 2011* (WA) and subsidiary legislation.

### **B.1.1.1 PRELIMINARY BCA ADVICE, STRATEGY REPORT AND CERTIFICATE OF DESIGN COMPLIANCE**

A preliminary Building Code of Australia (BCA) strategy report may be required after schematic design (as applicable). It is anticipated that the Consultant engaged to provide Services in relation to a building project will advise the project design team on BCA compliance issues at regular intervals as required throughout the design and documentation stages of the project, as part of the design compliance process. This is included in the applicable fee for this component. The Consultant will not be responsible for designing any aspect of the project, only advising on whether the design produced by the design team complies.

For large and/or complex projects, schedules of meetings and site inspections may be negotiated as part of the fee breakdown e.g. attendance at periodic site meetings which involve relevant consultants and sub-consultants.

A Certificate of Design Compliance as defined by the *Building Act 2011* (WA) and *Building Regulations 2011* (WA) in accordance with the timeframes specified in the Act and Schedule 2.

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classified as being 'Conventional'. To address this criteria, experience in any primary school, or equivalent, would be directly applicable.

### **B.1.1.2 CERTIFICATE OF CONSTRUCTION COMPLIANCE**

A Certificate of Construction Compliance as defined by the *Building Act 2011 (WA)* and *Building Regulations 2011 (WA)* in accordance with the timeframes specified in the Act and Schedule 2. The on-going provision of advice on BCA compliance issues during construction forms part of the Services required of Consultants, and may involve periodic meetings as noted under B.1.1.1.

### **B.1.1.3 EXISTING BUILDINGS**

Deliverables for Services relating to existing buildings will be defined on a project-specific basis. Deliverables could include, but are not limited to:

1. Certificate of Building Compliance as defined by the *Building Act 2011 (WA)* and *Building Regulations 2011 (WA)*
2. Certificates of design and construction compliance for alterations and additions to existing buildings, as defined by the *Building Act 2011 (WA)* and *Building Regulations 2011 (WA)*.
3. Preparing documentation required to obtain a Demolition Permit as defined by the *Building Act 2011 (WA)* and *Building Regulations 2011 (WA)*

### **B.1.1.4 CONSULTANCY SERVICES**

Deliverables for building consultancy Services will be defined on a project-specific basis. Deliverables could include, but are not limited to, reports advising on compliance issues relating to alterations and additions to existing buildings, and third party audit reports.

## **B.1.2 SITE INSPECTIONS**

For the purposes of this Panel 'metropolitan' is defined as being situated within zone 1 and 'regional' is defined as being situated within zones 2 or 3, in accordance with the State Supply Commission's *Buy Local Policy*: (<http://www.ssc.wa.gov.au/policies02.asp?id=19>)

Note that, for some projects, photographic evidence may be utilised where appropriate to reduce the number of site visits required, for example when relocating transportable buildings.

### **B.1.2.1 SITES LOCATED IN THE METROPOLITAN AREA, OR WITHIN 80KM OF THE CONSULTANT'S OFFICE**

In the Request for Quotation the Principal will propose a schedule of site inspections, included in the Lump Sum Fee. The agreed number and proposed schedule of site inspections, and the schedule of payments, will be detailed in the Letter of Engagement. Unless otherwise specified in the Letter of Engagement, the minimum notice to be provided to the Consultant prior to a metropolitan or local site inspection being undertaken is 2 days.

Where the site is located within either the metropolitan area, or 80 kilometres of the Consultant's office (as measured by road, one way) site inspections are included in the Lump Sum Fee, and the Consultant shall not be entitled to additional payments for staff travel time or other disbursements.

The Consultant will liaise with the Principal's Representative regarding the timing required for each of the site visits identified in the Letter of Engagement. The Principal may vary the schedule of inspections proposed in the Letter of Engagement to suit the progress of the works; the Consultant will seek prior approval from the Principal's Representative before each site inspection.

If the Principal approves a variation to the number of site inspections from that scheduled in the Letter of Engagement, then the Contract shall be varied in accordance with the rate agreed for additional site inspections through the Request for Quotation process.

### **B.1.2.2 SITES LOCATED OUTSIDE THE METROPOLITAN AREA OR GREATER THAN 80KM FROM THE CONSULTANT'S OFFICE**

In the Request for Quotation the Principal will propose a schedule of site inspections to be included in the Lump Sum Fee. Disbursements for staff travel time and costs, accommodation etc, will be negotiated through the Request for Quotation process. The agreed number and proposed schedule of site inspections, and the schedule of

payments, will be detailed in the Letter of Engagement. Unless otherwise specified in the Letter of Engagement, the minimum notice to be provided to the Consultant prior to a regional site inspection being undertaken is 5 days.

The Consultant will liaise with the Principal's Representative regarding the timing required for each of the site visits identified in the Letter of Engagement. The Principal may vary the schedule of site inspections proposed in the Letter of Engagement to suit the progress of the works; the Consultant will seek prior approval from the Principal's Representative before each site inspection.

For site inspections greater than 80 km from the Consultant's office (as measured by road, one way) all reasonable direct disbursement costs for travel, meals and accommodation will be recouped at cost upon the provision of receipts. The incurrence of any claimable disbursements is to be agreed with the Principal's Representative BEFORE the expenses are incurred.

If the Principal approves a variation to the number of site inspections from that scheduled in the Letter of Engagement, then the Contract shall be varied in accordance with the rate agreed for additional site inspections through the Request for Quotation process.

### **B.1.3 ONLINE SYSTEMS**

Some engagements under this Panel will require the Consultant to use the Department of Finance's online contract administration and management system.

The online system operates via the web at an address provided by the Minister for Works. *Pro forma* for electronic transfer of information will be available on this web page.

The information to be provided by electronic, online means shall include, but not necessarily be limited to:

#### **1. Project Details**

- a) Datasheets; and
- b) Project progress reports.

#### **2. Consultant (AS 4122) Contract details**

- a) Fee variations;
- b) Fee and disbursement records; and

- c) Scheduled fee claim details.

The Minister for Works will provide onsite training, as required, for individual Consultants on the use of the online contract administration and management system. A maximum of one-hour training time is anticipated to be required.

## **B.2 GENERAL CONDITIONS**

AS 4122 - 2010 General Conditions of Contract for Consultants and amendments (“the General Conditions”) as referred to in this Request are the General Conditions. The Lump Sum Fees for Consultants allow for the cost of complying with the terms of the General Conditions, all amendments and the Special Conditions.

A project-specific Annexure will be prepared and provided to the Consultant for any engagement derived from membership of the Panel as part of the Letter of Engagement. The project-specific Annexure shall include the following options under the General Conditions:

1. Pursuant to clause 9 of the General Conditions, title to intellectual property, patents and documents shall vest upon their creation in the Minister for Works.
2. Pursuant to clause 10(c) of the General Conditions, the limits of liability shall be as limited by a scheme established under the Professional Standards Act 1997 and to which the Consultant is a member or where such a scheme does not exist or where the Consultant is not a member of such a scheme then “Not Limited”.
3. Pursuant to clause 18.1 of the General Conditions professional indemnity insurance cover shall be not less than \$5 million. A higher level of cover may be required for some Services derived from the Panel and this is listed in Schedule 2. Respondents are required to identify in their Offer the level of professional indemnity insurance cover that they hold.

Professional indemnity insurance must cover the legal liability of the Consultant and the Consultant’s employees under the Contract, if awarded, arising out of any act, negligence, error or omission made or done by or on behalf of the Consultant in connection with the Contract for a sum stated against the Area of Expertise detailed in Schedule 2, for any one claim and in the annual aggregate, with a provision of one automatic reinstatement of the full sum insured annually.

Professional indemnity insurance required under this clause must be extended to include:

- a) fraud, dishonesty, defamation, breach of confidentiality, infringement of patent, copyright, design, trade mark or circuit layout rights;
  - b) loss of or damage to documents and data;
  - c) liability the Minister for Works may have under the *Building Act 2011* (WA) for any action or inaction done by or on behalf of the Consultant; and
  - d) breach of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the Fair Trading Act 1987.
4. Pursuant to clause 18.2 of the General Conditions on-site public liability insurance cover shall be not less than \$5 million.
  5. Pursuant to clause 18.4 of the General Conditions, workers' compensation insurance shall be 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 occurrence in respect of workers of the Consultant. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under section 175(2) of the *Workers' Compensation and Injury Management Act 1981*.

## **B.3. SPECIAL CONDITIONS**

### **B.3.1 GENERAL**

Where there is any inconsistency between the General Conditions and the Special Conditions, the Special Conditions shall take precedence over the General Conditions.

### **B.3.2. MONETARY VALUES**

Monetary values that appear in this Request document and any subsequent document, such as project budget, estimated construction budget, limit of cost, are inclusive of GST, unless otherwise specified.

Any Lump Sum Fee derived from the pre-determined fee scale in Schedule 2, or Hourly Rates nominated in accordance with Schedule 3, shall be deemed to be GST inclusive.

## **B.3.3 W.A. 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.*

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**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, sub-consultants and subcontractors with appropriate qualifications and experience to perform the Services.*

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**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.*

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**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.*

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**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.*

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**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 sub-consultants 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, sub-consultant 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 sub-consultants.*

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**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, sub-consultants 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, sub-consultants 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.*

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**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.*

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**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.*

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**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.*

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**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,*

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**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 sub-consultant 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 commencement 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, sub-consultants 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, sub-consultants 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.*

**B 3.4     DISCLOSURE OF CONTRACT INFORMATION  
AND DOCUMENTS**

The Consultant's name and Contract value for all Contracts for which the Minister for Works is the Principal will be made publicly available and published on the Tenders WA website after the Contract is legally established.

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

**B 3.5     ACCESS BY THE AUDITOR GENERAL**

Panel Members acknowledge and agree that, notwithstanding any provisions of this Request to the contrary, the powers and responsibilities of the Auditor General for

the State of Western Australia under the *Financial Management Act 2006* (WA) are not limited or affected by the terms of the Request.

### **B 3.6 PAYMENT SCHEDULE**

The schedule of payments will be agreed with the Consultant through the Request for Quotation process, and the agreed schedule of payments will be detailed in Item 8 of the Annexure to the Australian Standard General Conditions of Contract for Consultants AS 4122—2010.

### **B 3.7 NOTICE OF CLAIMS**

The Consultant shall notify the Principal, in writing, within seven (7) days of notification of any claim or potential claim made against the Consultant, which arises wholly or in part from provisions of a Contract the Consultant has been awarded under this Panel.

### **B 3.8 INSPECTION AND PROVISION OF INSURANCE POLICIES**

Before commencing any Services, the Consultant shall provide evidence to the satisfaction and approval in writing of the Principal of the insurances having been taken out in accordance with this Request and clause 30 of the General Conditions.

### **B 3.9 CONTROL OF SPECIFIED PERSONNEL**

The Consultant shall not change any member of its Specified Personnel that formed part of the Consultant's response to the Request for Quotation or has been subsequently approved by the Principal without prior written approval of the Principal; such approval shall not be unreasonably withheld.

### **B 3.10 CONSULTANT PERFORMANCE REPORTING**

BMW's project delivery manager, and/or the Principal's Representative will, at the completion of the Contract, prepare a report for the sole use of the Minister for Works in respect to aspects of the Consultant's performance. A sample report can be viewed at **B.5**. The completed report is to be sent to the contact person listed in clause **A.1.3**. The Consultant is to be aware that these performance reports may be used in performance management under clause **A.6.10**.

## **B 3.11 RESTRICTIONS ON ACCESS TO SCHOOL SITES**

The *School Education Regulations 2000* (WA) empower the school principal to regulate persons who enter or are on school premises. Accordingly, overall control of occupied school premises is the responsibility of the school principal. For the purposes of this clause, occupied school premises includes a new school on a greenfield site that is being constructed in stages, where earlier stages are occupied while later stages are under construction. The regulations enable the school principal to direct the Consultant, its employees, sub-consultants, suppliers and the like in respect to school access.

In determining access to the school premises, the school principal is guided by the *School Education Regulations 2000* (WA) and other Department of Education policies. Persons admitted onto school premises must be of good character and conduct. The following conduct is prohibited on school premises and any offending person may be directed to leave the premises:

- a) Causing disruption to or likely to cause disruption to the good order on the school premises;
- b) Using threatening or insulting language;
- c) Using threatening or violent behaviour;
- d) Adversely affecting the safety and welfare of persons on the school premises;
- e) Causing damage to property that comprises or is located at the school premises;
- f) Smoking;
- g) Defacing school premises;
- h) Lighting fires or bringing explosives onto school premises;
- i) Bringing animals onto school premises;
- j) Having intoxicating liquor;
- k) Driving vehicles off roadways and parking areas;
- l) Exceeding speed limits or driving in a dangerous or inconsiderate manner; or
- m) Disobeying traffic signs.

## **B 3.12 SCREENING FOR ACCESS**

### **B 3.12.1 EDUCATION PROJECTS**

Department of Education policy requires that all persons working on occupied school premises be screened for previous convictions for certain types of offences. All access to an occupied school must be via either the school office, or the building or demolition contractor's point of control for the building site.

The following screening provisions apply to the Consultant's team, including the Consultant's employees and Subconsultants:

1. Where a person gains access to the school via the school office, the person will be required to complete a "Confidential Declaration" form. A person need only complete a "Confidential Declaration" form once for entry to a particular school in relation to a specific contract. A copy of this form can be obtained from the school principal.
2. Where a person gains access via the contractor's site, screening will be through the contractor's process.

In relation to item 2 above, the contractor's screening process is as follows:

*The contractor shall screen all employees, subcontractors, suppliers and other persons entering the building site for previous criminal convictions by ensuring that they:*

- a) *are the holder of a federal police criminal record check that is no more than 2 years old; or*
- b) *have completed the relevant Department of Education and Training "Confidential Declaration" form. A person need only complete a "Confidential Declaration" form once for entry to a particular school in relation to a specific contract. A copy of this form can be obtained from the school principal.*

*The contractor shall maintain a register of employees, subcontractors, suppliers and other persons accessing the contractor's site. On a weekly basis the contractor shall provide to the school principal the following information:*

- c) *A list of persons who have entered the site, sorted by:*
  - i. *Those with a federal police certificate;*
  - ii. *Those who have already provided a "Confidential Declaration" form to the school;*
  - iii. *Those who have completed a "Confidential Declaration" form for the contractor.*
- d) *A copy of all federal police criminal record certificates and "Confidential Declaration" forms completed for the contractor,*

*Once the contractor ceases to maintain a controlled building site, or where the nature of the work makes a controlled site impractical, all access to the school/site shall be through the school office.*

### **B3.12.2 ACCESS TO OTHER GOVERNMENT SITES**

Consultants seeking access to other government sites (prisons, hospitals, government buildings etc) may be subject to the individual agency policy on security and other clearances.

### **B.3.14 UNIVERSAL ACCESS**

The Building Code of Australia (BCA) has been amended for compliance with the Commonwealth *Disability Discrimination Act 1992* (Cth) (DDA). The Consultant is deemed to be conversant with the intent and contents of the current BCA.

Where Services are related to alterations and additions to existing buildings, and compliance with the DDA and the BCA will affect other buildings or parts of buildings on the site but previously not included in the Project Brief, the Consultant shall, as soon as practicable, advise the Principal. Such advice shall include details of the extent of the affected areas.

Similarly, when the Project Brief conflicts with the DDA and the amendments to the BCA the Consultant shall, as soon as practicable, advise the Principal. Such advice shall include details of the extent of conflict.

### **B.3.15 STATUTORY REQUIREMENTS**

The new WA legislative framework for building requires the State Government to demonstrate that its buildings comply with all legislative requirements for WA, are designed and constructed in accordance with the Building Code of Australia, constructed in accordance with building permits, occupied in accordance with occupancy permits and demolished in accordance with demolition permits.

Registered independent building surveyors, engaged through this Panel as Consultants to undertake Services, will, depending on the Services contracted for, be responsible for:

- a) Assessing whether building projects comply with all relevant, applicable legislation, codes and standards, and providing independent certification in accordance with the requirements of:
  - i. *Building Act 2011* (WA);
  - ii. *Building Services (Complaint Resolution and Administration) Act 2011* (WA);
  - iii. *Building Services (Registration) Act 2011* (WA);
  - iv. *Building Services Levy Act 2011* (WA);
  - v. all subsidiary legislation to the Acts referred to above; and
  - vi. relevant BMW policies and procedures.
  
- b) Providing the certificate of design compliance in a timely manner. Certification must be submitted to the Principal's Representative (either BMW's project delivery manager or Lead Consultant) in accordance with the timeframes outlined in Schedule 2;

- c) Ensuring appropriately qualified people carry out and document any inspections and tests that are required during construction by the *Building Act 2011* (WA), subsidiary regulations and the building permit;
- d) Providing the certificate of construction compliance and submitting certificate to BMW's project delivery manager(s) or Lead Consultant, including documentation of all inspections and tests, in accordance with the timeframes outlined in Schedule 2;
- e) Providing the documentation required to apply for a demolition permit.
- f) Assessing existing buildings, reporting on their level of compliance with relevant codes and standards and/or providing the certificate of building compliance.
- g) Providing third-party reviews, for example reviewing certificates of compliance, alternative solutions, etc.

## B.4 SAMPLE ANNEXURE

Sample copy of the Annexure to AS 4122 - 2010 General Conditions of Contract for Consultants

The Annexure to the General Conditions has been reproduced with permission of Standards Australia, 1 The Crescent, Homebush NSW 2140

The Parties are encouraged to review AS 4121-1994, Code of ethics and procedures for the selection of consultants, prior this Annexure

Item

Item 1  
(clause 1.1)

The Client is:

3

Item 2  
(clause 1.1)

The Consultant is:

(Refer to Consultant Guide-note 1)

Item 3  
(clause 1.1)

The Contract Documents are:

1. The General Conditions of Contract;
2. The Scope;
3. 4

Item 4  
(Clause 1.1)

The Scope is described in the following Documents, or the Scope is:

5

Item 5

The purpose(s) for which

6

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### GUIDENOTES

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<sup>3</sup> Insert the name of the legal entity which is entering into the contract as the Principal. Any reference to 'Client' or 'Client's Representative' in the General Conditions is to be construed as being the Principal and the Principal's Representative.

<sup>4</sup> Insert other relevant Documents forming this Contract.

<sup>5</sup> The 'Scope', within the context of AS 4122-2010, is intended to describe the Scope of the Services that are required to be performed and their relationship to the project being undertaken by the Client. Either identify the Documents that describe the Scope or include a statement of the Scope in this item.

(clause 5.1) the Services will be suitable is/are:

Item 6 (clause 6.1) The Client's representative is: <sup>7</sup>

Item 7 (clause 6.2) The Consultant's representative is: (Refer to Consultant Guide-note 2)

Item 8 (clause 10.1) Claims for payment must be made on the following basis:

§ Lump sum: \$.....

And/or

Percentage.....% of.....

And/or

Rates Yes No

(Strike through as appropriate)

GST Inclusive Yes No

(Strike through as appropriate)

Role / Task: Rate \$/per

Stage / Task \$ / % of Fee

<sup>6</sup> Insert the purpose(s) for which the Consultant's Services have been engaged

<sup>7</sup> Insert the name, address, email address, facsimile number and phone number of the person responsible for administering this Consultant Contract. This may or may not be a Department of Finance Officer.

§ Enter delivery stages of the services to be provided by which fee is required to be broken down (for example: Certificate of Design Compliance, Construction – site inspection 1, Certificate of Construction Compliance, as applicable).

Item 9 (clause 10.2)	Disbursements for which the Consultant may claim payment:	9
Item 10 (clause 10.3)	Time to claim payment is not later than:	10
Item 11 (clause 10.6)	Time for payment is no later than:	28 calendar days
Item 12 (clause 10.9)	The rate of interest for overdue payment is:	Supreme Court Rates
Item 13 (clause 12.1)	Alternative 1: The date or the period after commencement of this Contract, by which the Services must be completed is:	Alternative 1: 11
	Alternative 2: Under the program attached.	Alternative 2:
Item 14 (clause 12.3(c))	Other causes of delay for which the Consultant may notify an extension	NA

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9 Specify, if any, the type and number of disbursements for which the Consultant is entitled to be reimbursement.

10 If left blank, the time for making a claim is the last business day of each month. Only one claim may be made each month.

11 If alternative 1 is applicable specify the period. If alternative 2 is applicable, reference the attached program. Against the alternative that is not used, insert NA.

	of time:	
Item 15 (clause 13.2)	The Approvals to be obtained by the Consultant are:	As required by the terms of the Contract.
Item 16 (clause 18)	The Key personnel are:	(Refer to Consultant Guide-note 3)
Item 17 (clause 19.2)	Existing conflicts of interest:	(Refer to Consultant Guide-note 4)
Item 18 (clause 21.3)	Copyright and other Intellectual Property Rights, the Alternative is:	Alternative 2
Item 19 (clause 21.4 alternative 2)	List of excluded Intellectual Property Rights:	None
Item 20 (clause 21.4 alternative 2)	The additional amount payable to the Consultant for the granting of Intellectual Property Rights is:	NA
Item 21 (clause 22.1)	Does clause 22 (Moral Rights) apply?	Yes
Item 22 (clause 23.1)	The following Documents are confidential:	All materials provided to the Consultant by the Client or any other party for the purpose(s) of this project.
Item 23 (clause 24.4)	Maximum period for which the Client may suspend the Services at	NA

any one time, after which the Consultant may terminate:

Item 24 (clause 29.1)	The Consultant's Liability is limited to:	The Consultant's liability is unlimited.
Item 25 (clause 30.2)	The amount of public liability insurance is:	\$5 Million
Item 26 (clause 30.4)	The amount of professional indemnity insurance is:	<i>12</i>
Item 27 (clause 30.4)	The professional indemnity insurance must be maintained for the following period	6 years
Item 28 (clause 30.7)	The Client must effect the following insurances and maintain them for the following periods:	NA
Item 29 (clause 33.1)	The address for service of notice is:	<b>The Client</b> All notices, other than notices served under clause 31 or 32 of the General Conditions of Contract:  <i>13</i>  Notices served under clause 31 or 32 of

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GUIDENOTES

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*12* The level of Professional Indemnity Insurance should reflect the risks in the project and sufficiently protect the Principal against possible loss.

*13* Insert the name, postal address, email address and facsimile number of the Client's representative

the General Conditions of Contract:

The Minister for Works

C/- Assistant Director  
Building Contracting Services  
Building Management and Work

6<sup>th</sup> Floor, the Optima Building  
16 Parkland Road  
Osborne Park WA 6017

**The Consultant**  
(Refer to Consultant Guide-note 5)

Item 30  
(clause 35)

The law governing this  
Contract is:

The law of Western Australia

Item 31

Has this Contract been  
amended from its original  
form?

Yes

## CONSULTANT'S GUIDE-NOTES

Complete the blank sections of the Annexure to the General Conditions.

1. The Consultant: Enter the Name of your Firm, your Firm's ACN (or if your firm is not incorporated, it's ABN) and your Firms Address
2. The Consultant's representative: Enter the name, address, email address, facsimile number and phone number of the person responsible for administering this Contract.
3. Key Personnel: Insert the names of the key personnel with as description of the work they will perform.
4. Conflicts of interest: List any potential or actual conflicts of interest
5. Address for Service: Enter the postal address, email address and facsimile number of the Consultant's representative.

**MORAL RIGHTS CONSENT FORM 1 – FOR EMPLOYEES OF THE CONSULTANT – CLAUSE 22**

Pursuant to clause 22 of the General Conditions of Contract the Consultant is required to supply the Client with a completed moral rights consent form for every officer or employee of the Consultant contributing work under this Contract

To: [INSERT CONSULTANT]

ABN: [INSERT ABN]

In relation to any work that I perform for [Consultant's name] ('you') in the course of my employment, I agree as follows:

- (a) Unless you and I agree other wise in writing, I will not be attributed personally as the author of my work and you will be described as the author of any work I perform and as the author of any product that results from my work.
- (b) Alternatively you and your client may agree on the form of attribution to be given to any specific product of my work.
- (c) Without notifying or consulting me, you may alter my work in any way that you consider desirable, or necessary.
- (d) You need not advise me if you are notified of any intended alteration to or demolition of any project, building or structure related to my work.
- (e) You may provide a copy of this consent to any client.
- (f) This consent also applies to all work that I have already performed for you.

Signed by the holder of Moral Rights:

\_\_\_\_\_

.....

Print name of signatory

Date

.....

.....

**MORAL RIGHTS CONSENT FORM 1 – FOR USE BY CONSULTANT WITH ITS SUBCONSULTANTS AND SUBCONTRACTORS – CLAUSE 22**

Pursuant to clause 22 of the General Conditions of Contract the Consultant is required to supply the Client with a completed moral rights consent form for subconsultant and subcontractor engaged by the Consultant that for the purpose of contributing work under this Contract.

To: [INSERT CONSULTANT]

ABN: [INSERT ABN]

Project Name: [INSERT NAME OF PROJECT]

In relation to any services that we supply to [Consultant's name] ('you') in the course of [project name], we agree that, given the nature of the work, and the purpose, manner and context of its intended use:

- (a) Nothing in this consent prevents you describing yourself as an author or the author of [project name] or as the project comes to be known from time to time.
- (b) We will also be attributed as an author in circumstances that you consider reasonable and practicable, or as otherwise agreed with you in writing.
- (c) You will not advise us if you are notified of any intended alteration to or demolition of any project, building or structure related to our works.
- (d) You may provide a copy of this consent form to any of your clients.
- (e) We have the right to give this consent on behalf of our employees and our own subconsultants and subcontractors (if any).
- (f) We will provide you with copies of such consents within a reasonable time if you request them.

Signed by the subconsultant on behalf of the holder of Moral Rights: \_\_\_\_\_

.....

Print name and ABN of  
subconsultant/subcontractor

Date

.....

.....

SAMPLE

## B.5. CONSULTANT PERFORMANCE REPORT

### General Information

Consultant name: \_\_\_\_\_

Consultant representative: \_\_\_\_\_

Service type: \_\_\_\_\_

Project description: \_\_\_\_\_

Final completion date (as specified in Contract Annexure): \_\_\_\_\_

Actual completion date: \_\_\_\_\_ Contract value: \$ \_\_\_\_\_

### Consultant's Performance Rating

CRITERIA	<b>RATING</b> Above Average = 9 - 10 points Average = 6 - 8 points Below Average = 3 - 5 points Well Below Average = 0 - 2 points
Standard of service	
Management and suitability of project personnel	
Management of Subconsultants (if applicable)	
Time management	
Contract administration	
Quality management and systems	
Use of policies procedures and initiatives	
Co-operative relationships	
<b>TOTAL (Out of a maximum possible of 80)</b>	

**Comments** (Attach additional pages if necessary. If the total rating achieved is 40% or less of the available points, the Consultant's Panel Membership may be suspended or cancelled, therefore full documentation is required to justify the rating awarded.)

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### Required Actions

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Principal's Representative: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Send completed form to: [bcspanel@bmw.wa.gov.au](mailto:bcspanel@bmw.wa.gov.au)

## B.6. CONSULTANT NOTIFICATION OF ENGAGEMENT

*To be used by Panel Members engaged as Consultants to undertake Services, where the Principal is other than the Minister for Works.*

Consultant: *14* \_\_\_\_\_

Project: *15* \_\_\_\_\_

Services: *16* \_\_\_\_\_

Lead Consultant: *17* \_\_\_\_\_

Contract value: *18* \_\_\_\_\_

Date of engagement: \_\_\_\_\_

Final completion date: \_\_\_\_\_

Send completed form to:

\_\_\_\_\_ GUIDENOTES \_\_\_\_\_

*14* Name of legal entity, as identified in clause C.11.

*15* The project for which you have been engaged to provide Services.

*16* The Services you have been engaged to provide.

*17* The name of the Lead Consultant, responsible for engaging you.

*18* The value of the Contract for Services, inclusive of GST.

[bcspanel@finance.wa.gov.au](mailto:bcspanel@finance.wa.gov.au)

## **PART C – RESPONDENT’S OFFER**

### **C.1. NOTE TO RESPONDENT**

Part C should be completed by the Respondent and returned to BMW.

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 and General and Special Conditions. The Respondent must read these in conjunction with AS 4122 - 2010 General Conditions of Contract for Consultants;
- c). in respect of the Selection Criteria in Clause **C.5** in this Part C, provide full details of any claims, statements or examples;
- d). assume that the BMW has no knowledge of the Respondent, its activities, experience or any previous work undertaken by the Respondent for the BMW or any other Public Authority; and
- e). nominate any part of its Offer that the Respondent wishes to expressly and reasonably nominate as confidential for the purposes of the Panel.

### **C.2. IDENTITY OF RESPONDENT**

**The Respondent’s Offer must include a cover sheet with identification details required as per clause C.11.**

### **C.3. PREQUALIFICATION REQUIREMENTS**

The Minister for Works will not consider any Offer that does not meet all of the following prequalification requirements:

1. Acceptance of the pre-determined fee scales included in Schedule 2 of this Request
2. Given the requirements of Building Act 2011 (WA) and subsidiary legislation, Respondents are required to provide details on the number of building surveyors who are appropriately registered as a level 1 or 2 building surveyors under the Building Services (Registration) Act 2011 (WA) and subsidiary legislation. Respondents appointed to the Panel are required to submit evidence of contractor registration under legislation to the contact person named in clause A.1.3 as part of this request.

Offers that meet the prequalification requirements will then be evaluated against the four selection criteria specified in this Request.

**RESPONDENT TO COMPLETE:**

Respondent to confirm acceptance of the pre-determined fee scales specified in Schedule 2.

Respondent to provide details of building surveyors in accordance with the template provided in clause **C.8**

## **C.4 NOMINATE AREA(S) OF EXPERTISE**

Nominate the building certification Area(s) of Expertise that you are applying for by completing the Area of Expertise Schedule (Schedule 1) in full.

## **C.5 WEIGHTED SELECTION CRITERIA**

BMW will, in its value for money assessment, consider the extent to which the Offer satisfies the following selection criteria. BMW reserves the right to reject any Offer that does not properly address and satisfy any of the selection criteria.

The selection criteria are not weighted equally. Refer to the percentage weighting for each of the criteria listed below.

In addressing the selection criteria, where a Respondent wishes to cite experience gained by Specified Personnel while not employed by the Respondent, they must ensure that this experience is detailed in their personal resume and an appropriate referee is nominated.

To be eligible for appointment to the Panel, Respondents must address the four qualitative selection criteria below. **A separate response is required to criterion 1 'Capability and Experience' for each Area of Expertise (Schedule 1) for which the Respondent is nominating.**

### **1. CAPABILITY AND EXPERIENCE (30%)**

Using the table provided in Schedule 1, and using the most recent applicable examples to provide evidence of the Respondent's experience, nominate the Area(s) of Expertise for which the Respondent is seeking panel membership. Choosing a minimum of three (3) projects for each Area of Expertise, describe the project including the project cost, class of building (as defined in BCA), type of construction (as defined in BCA), size of building, compliance issues (deemed-to-satisfy and alternative solutions), date of project and key personnel and their roles.

Outline the Respondent's management structure, identifying the number of staff, whether permanent or contract, their roles in the Respondent and their level of involvement in each Area of Expertise.

Depending on the Area of Expertise, projects chosen can include buildings in construction, completed buildings, third party audits, building compliance audits, preliminary assessments and reports, alternative solutions, and professional advice reports. Respondents should demonstrate experience in a wide range of projects, giving preference to projects undertaken in the last five (5) years, whilst keeping the number of pages to a reasonable limit. Discussion can include reference to projects that demonstrate:

- Experience in certifying both deemed-to-satisfy and alternative solutions;
- Experience in certifying compliance of alterations and additions to existing buildings;
- Standing and recognition in the industry, including roles as an expert witness, examples of peer review, third party audits, and contributions to education and industry bodies;
- Where the Respondent has dual qualifications or expertise provide details of work performed in a dual capacity, for example:
  - fire engineering and building surveying;
  - specialist access consultancy and building surveying;
  - sustainability/energy assessment and building surveying; or
  - structural engineering and building surveying.
- An understanding of sustainability issues associated with complying with, and exceeding, code requirements (BCA Section J);
- Experience in certifying universal access requirements;
- Knowledge and understanding of buildings design and construction practices, including risk management, construction economics, building engineering principles, building services and fire engineering principles, etc;
- Demonstrated experience accommodating new building forms in relation to existing buildings on constrained sites;
- Evidence of lateral thinking and innovation, for example in terms of cost mitigation, sustainable building lifecycle costs, and/or adherence to difficult construction timeframes;
- Consultation skills: including consultation with architects/designers, specialists, clients/end users, project managers and cost planners;

- Experience in checking and certifying the work of other building surveyors, fire engineers, access consultants and the like, including the assessment of performance based solutions;
- Demonstrated understanding of relevant statutory requirements and processes, for example associated with planning, heritage, environment and health;
- Experience in inspecting, evaluating and certifying construction work.

**RESPONDENT TO COMPLETE:**

Respondent to provide the demonstrated capability and experience information required under this clause.

**2. QUALIFICATIONS AND REGISTRATION (30%)**

Nominate the Specified Personnel and provide a full list of their professional qualifications, including the date each qualification was attained, their level of qualification e.g. Registered Building Surveying Practitioner Level 1 (WA), membership to relevant associations and the dates and details of any significant recent professional development. Consideration should be given to addressing the National Accreditation Framework provided by the AIBS, regardless of level of qualification.

- Director(s);
- Senior assessing officers; and
- Associate assessing officers, if applicable.

Attach a one-page resume for each of the Respondent's Specified Personnel that will provide Services under this Panel. Resumes should provide examples of work directly applicable to the Area(s) of Expertise nominated (see Schedule 1).

**RESPONDENT TO COMPLETE:**

Respondent to provide the details of qualification, including level of building surveyor's certificate and eligibility for registration, for Specified Personnel nominated under this clause.

**3. METHODOLOGY (20%)**

In a maximum of two (2) pages, list and describe your approach to delivery of the certification requirements associated with government works under the new Building Act. Demonstrate your informed understanding of the critical issues associated with the management of these projects.

### **Time management / reporting requirements**

Respondents should seek to demonstrate an appreciation of risk management, cost management, resourcing and delivering projects on time and on budget.

Government documentation and reporting requirements are precise and comprehensive. Services engaged through the Panel may require a range of tasks, and when fee proposals are required they must clearly address separable stages and fees to allow for appropriate cash flows and payments. Demonstrate applicable experience in meeting these requirements through the submission of a diagram or flow chart showing the indicative stages and fee costing for Services related to a project exhibiting the complexity of the Area of Expertise you are seeking selection for.

### **Nomination of capacity to undertake regional work**

The Department of Finance undertakes the planning, delivery and maintenance of government building works over the entire state of WA on behalf of the Minister for Works. Where applicable, nominate your capacity to undertake works in regional areas and clearly delineate the areas you will service (travel costs and disbursements are additional to fees described and outlined in this Request).

### **Capacity to engage with electronic approval processes**

The capacity of a Respondent to engage with electronic certification processes in conjunction with BMW's Lead Consultant, nominated subcontractors and the Department of Finance will greatly enhance the level of service the Respondent is able to provide.

### **RESPONDENT TO COMPLETE:**

Respondent to provide the Methodology information required under this clause.

### **4. LOCAL CONTENT (20%)**

Details regarding the regional price preferences and how they are applied are documented in the Western Australian Government's Buy Local Policy. This policy can be viewed and downloaded at <http://www.ssc.wa.gov.au/policies02.asp?id=19> or copies of this policy are available from the State Supply Commission (telephone (08) 6551 1500).

When an Offer is received from a Respondent that is located in:

- **Another state or territory of Australia, or in New Zealand under the Australia New Zealand – Government Procurement Agreement (ANZGPA); or**
- **The United States of America (when the procurement is a “covered procurement” under the Australia United States Free Trade Agreement (AUSFTA)); or**
- **Chile (when the procurement is a “covered procurement” under the Australia Chile Free Trade Agreement (ACI-FTA)),**

the Buy-Local weighted selection criterion will not be evaluated during the qualitative assessment. Should the local content criterion not be applicable, the 20% weighting will be divided proportionately across the remaining criteria.

The Respondent must otherwise address the following:

- (i) the Respondent must specify the location where the following activities will be performed:
  - (A). Where the proposed Services will be provided from;
  - (B). How on-site Services are proposed to be undertaken; and
  - (C). Where contract management will be undertaken;
- (ii) the Respondent must provide details of how the Respondent supports other Western Australian businesses through subcontracting arrangements;
- (iii) the Respondent must provide details of how the Respondent supports Indigenous Enterprises or Indigenous Persons whether as an Indigenous sole trader, partnership, firm, corporation or joint venture or as an Indigenous Employer;
- (iv) the Respondent must estimate the percentage of the total offered service as to the amount which represents contract activities performed in Western Australia, in other Australian States or Territories, New Zealand, the United States and overseas, in accordance with the following table:

<b>Western Australian Content</b>	<b>Other Australian States, New Zealand, United States and Chile</b>	<b>Imported Overseas Content</b>	<b>TOTAL</b>
%	%	%	100%

- (v) the Respondent must estimate the employment creation and retention and industry and skills development initiatives which may arise if a Contract is awarded to the Respondent; and

- (vi) the Respondent must provide details of any other economic, social or environmental benefits to Western Australia.

## C.6 COMPLIANCE AND DISCLOSURE REQUIREMENTS

The Minister for Works will consider the extent to which the Offer satisfies the following compliance and disclosure requirements. The Minister for Works reserves the right to reject any Offer that does not properly address any of the compliance and disclosure requirements.

### (a) Compliance

#### (i) Request

The Respondent must confirm that it will comply with all the clauses of the Request.

**RESPONDENT TO COMPLETE:**

Confirmation that the Respondent agrees to the Request.

#### (ii) General and Special Conditions

The Respondent must confirm that it will comply with the General and Special Conditions.

**RESPONDENT TO COMPLETE:**

Confirmation that the Respondent agrees to the General Conditions and Special Conditions.

### (b) Disclosures

#### (i) Criminal Convictions

The Respondent must confirm whether or not the Respondent or any person included in the Specified Personnel has been convicted of a criminal offence that is punishable by imprisonment or detention. The Minister for Works reserves the right to reject the Respondent's Offer where the Respondent possesses a conviction that the Minister for Works considers to be in conflict with this panel arrangement.

**RESPONDENT TO COMPLETE:**

Has the Respondent or any person included in the Specified Personnel been convicted of a criminal offence that is punishable by imprisonment or detention?

(Yes / No) If yes, provide details.

**(ii) 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 a Contract (if awarded) by the Respondent?

**C.7 INSURANCE REQUIREMENTS**

(Yes / No) If yes, provide details.

**RESPONDENT TO COMPLETE:**

Does the Respondent have the insurance required under clause **B.3.8** and **Schedule 2**?

(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						

OR

If no, confirmation that the Respondent will obtain the insurance policies specified prior to the Panel Commencement Date, if it is appointed to the Panel.

**The level of professional indemnity insurance held must be in accordance with that required in Schedule 2 for the Area(s) of Expertise the Respondent is applying for.**

**Insurance Certificates of Currency are required to be maintained on an annual basis and forwarded to BMW for recording in the project management system.**

## C.8 RESPONDENT COMPOSITION

This Respondent currently comprises the following number of qualified building surveyors registered, or to be registered with the introduction of applicable legislation, with the relevant professional organisation (add another sheet if required):

Name	Professional body (AIBS, ABSA etc.)	Registration No.

## C.9 RESPONDENT'S CLAIM FOR REGISTRATION AS A REGIONAL BUSINESS

Does the Respondent operate from regional premises, outside of the Perth metropolitan area?

Yes  No

(PLEASE TICK APPROPRIATE BOX)

Address of regional office:.....

.....

.....

Town: .....

*(THE RESPONDENT IS TO ENTER NAME OF TOWN IN WHICH IT HAS A PERMANENT OPERATIONAL OFFICE)*

## C.10 CLAIM FOR REGISTRATION FOR ABORIGINAL ENTERPRISE AND EMPLOYMENT TENDERING PREFERENCE

For the purpose of registration for Indigenous 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 *Indigenous Person*: Yes  No
- (b) A partnership or firm, where not less than 50% of the partners are *Indigenous Persons*: Yes  No
- (c) A corporation that has its registered and head offices in Western Australia, where *Indigenous Persons* own not less than 50% of the legal entity submitting the tender: Yes  No
- (d) A legal entity that employs an *Indigenous Person*, including an apprentice or a trainee: Yes  No
- (e) A *Joint Venture with Indigenous Participation* that is a joint venture between any *Indigenous Enterprise* and non-Indigenous Enterprise where not less than 50% of the equity in the joint venture is owned by the *Indigenous 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 *Indigenous Person(s)* engaged on work under contracts derived from membership of the Panel. ....%

---

Name of Respondent: .....  
(IN BLOCK LETTERS)

This Claim for Registration for Indigenous 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 Interior Fitout and Workplace Design Consultancy Services Panel 2015.

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

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

**C.11 RECIPIENT CREATED TAX INVOICE AGREEMENT**

This Agreement is submitted in relation to any Contracts derived from membership of the Building Certification Services Panel 2011, Tender No: 2016/07967

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 Minister for Works will issue tax invoices to the Consultant in respect of the payments by the Principal under this Contract;
- 2. The Consultant shall not issue tax invoices in respect of claims for payment issued by the Consultant under this Contract;
- 3. The Consultant is registered for the GST at the time of this agreement and that it will notify the Minister for Works 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 Minister for Works 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 OFFER IDENTIFICATION FORM

### ATTACH AS COVER PAGE ON TOP OF YOUR SUBMISSION

#### IDENTITY OF RESPONDENT

The Respondent must provide the following details:

(a) Name of legal entity:

.....

(b) Legal entity details:

Please nominate, by ticking one of the boxes below, your corporate status.

- 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 of companies (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) ACN (if a company)

.....

(d) Registered address or address of principal place of business:

.....

(e) Business name:

.....

(f) ABN:

.....  
(g) Contact person:  
.....

(h) Contact person position title:  
.....

(i) Email:  
.....

(j) Telephone:  
.....

(k) Facsimile:  
.....

(l) Address and facsimile number for service of contractual notices  
.....  
.....

## C.13 CONFIRMATION OF ATTACHMENTS

Please confirm the contents of your Offer by ticking the boxes below and entering the page numbers in your Offer where these can be found.

<b>Offer identification form</b>	<input type="checkbox"/>	<b>Page: 1</b>
<b>Confirmation of attachments</b>	<input type="checkbox"/>	<b>Page: 2</b>
<b>Nominated Hourly Rates (Schedule 3)</b>	<input type="checkbox"/>	<b>Page: 3</b>
<b>Prequalification requirements</b>	<input type="checkbox"/>	<b>Page:</b>
<b>Nominated Area(s) of Expertise (selection criterion 1)</b>	<input type="checkbox"/>	<b>Page:</b>
<b>Response to selection criteria 2-4</b>	<input type="checkbox"/>	<b>Page:</b>
<b>Compliance and disclosure requirements</b>	<input type="checkbox"/>	<b>Page:</b>
<b>Insurance requirements</b>	<input type="checkbox"/>	<b>Page:</b>
<b>Respondent composition</b>	<input type="checkbox"/>	<b>Page:</b>
<b>Claim for registration as a regional business</b>	<input type="checkbox"/>	<b>Page:</b>
<b>Claim for Registration for Aboriginal Enterprise &amp; Employment Tendering Preference</b>	<input type="checkbox"/>	<b>Page:</b>
<b>Recipient Created Tax Invoice agreement</b>	<input type="checkbox"/>	<b>Page:</b>
<b>Respondent's Certification of the Offer</b>	<input type="checkbox"/>	<b>Page:</b>
<b>Acknowledgment of addenda</b>	<input type="checkbox"/>	<b>Page:</b>

### C.14 RESPONDENT’S CERTIFICATION OF THE OFFER

This completed Offer form and the Schedules nominated under Part C 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: ..... Witness Full Name: .....

(Please print)

(Please print)

Position With

Relationship To

Respondent:.....

Respondent: .....

Date: .....

Date: .....

## **SCHEDULE 1 – AREAS OF EXPERTISE**

### **AREAS OF EXPERTISE: DEMONSTRATION OF ‘CAPABILITY AND EXPERIENCE’**

The following table should be filled out to demonstrate the appropriate level of experience. A minimum of three examples should be cited for each Area of Expertise nominated for. Respondents should include sufficient details of the complexity of each project included to demonstrate their capability and experience.

Additional categories within the Areas of Expertise may be included by Respondents to demonstrate specialist experience, for example *large isolated buildings* or buildings with an *effective height* of more than 25m (BCA definition), in which case the example should be included adjacent to the applicable class/es and will be assessed in relation to closest Area of Expertise. Areas of Expertise are generally aligned with typical areas of BMW project delivery and are not intended to be inclusive of all specialist areas.

Examples of a higher complexity may be included against a lower Area of Expertise and this should be noted e.g. the same example can be used for an Assembly Building under ‘Very Complex’ and ‘Complex’ if it demonstrates the applicable characteristics for the higher ‘Area of Expertise’. However, other examples should align with the same, or similar, classes.

Respondents may include additional examples if this serves to demonstrate broader experience in an Area of Expertise.

<b>a) VERY COMPLEX</b>	
• Class 9a and 9c	
• Prisons and mental health institutions	
• 9b assembly buildings (BCA Definition) >2,000 people (based on seats or occupancy)	
<b>b) COMPLEX</b>	
• Class 9b Assembly Buildings (BCA Definition) Type A Construction <2000 people	
• Class 2 or 3 buildings	

**SCHEDULE 1 – AREAS OF EXPERTISE**

<b>c) MODERATELY COMPLEX</b>	
<ul style="list-style-type: none"> <li>Class 9b other than a), b) or d) e.g. TAFE facilities; high schools</li> </ul>	
<b>d) CONVENTIONAL</b>	
<ul style="list-style-type: none"> <li>Class 5 and 6 &gt;500m<sup>2</sup></li> </ul>	
<ul style="list-style-type: none"> <li>Class 9b primary schools</li> </ul>	
<b>e) SIMPLE</b>	
<ul style="list-style-type: none"> <li>Class 7 and 8</li> </ul>	
<ul style="list-style-type: none"> <li>Class 5 and 6 &lt;500m<sup>2</sup>, including fitouts</li> </ul>	
<b>f) VERY SIMPLE</b>	
<ul style="list-style-type: none"> <li>Class 10, Class 1</li> </ul>	
<b>g) DEMOLITION</b>	
<ul style="list-style-type: none"> <li>Demolition permit application</li> </ul>	
<b>h) EXISTING BUILDINGS</b>	
<ul style="list-style-type: none"> <li>Certificate of building compliance s57</li> </ul>	
<b>i) BUILDING CONSULTANCY SERVICES</b>	
<ul style="list-style-type: none"> <li>Third party audit: certificate of design/construction compliance</li> </ul>	
<ul style="list-style-type: none"> <li>Third party audit: alternative solution</li> </ul>	
<ul style="list-style-type: none"> <li>Specialist advice (eg project definition, compliance advice for minor works, technical input into policy development, etc)</li> </ul>	

## SCHEDULE 1 – AREAS OF EXPERTISE

Notes: 'Class 9b primary schools' constructed for the Department of Education are based on a standard pattern design. Given the repetitive and prescriptive nature of the buildings, this Area of Expertise is classified as being 'Conventional'. To address this criteria, experience in any primary school, or equivalent, would be directly applicable.

Areas, as specified, are *floor area* in relation to a *fire compartment* (refer to BCA for full definition).

## **SCHEDULE 2 – PRE-DETERMINED FEE SCALES**

### **FEES: CERTIFICATION OF PROJECTS RESULTING IN APPLICATION FOR BUILDING PERMIT AND/OR OCCUPANCY PERMIT**

**Percentage (%) fee is based on the Perth-based estimated total cost of construction, GST exclusive, less all fees and disbursements.**

Notes:

1. For the purposes of this Panel 'metropolitan' is defined as being situated within zone 1 and 'regional' is defined as being situated within zones 2 or 3, in accordance with the State Supply Commission's *Buy Local Policy*.  
(<http://www.ssc.wa.gov.au/policies02.asp?id=19>)
2. Where a Panel Member with a regional office (nominated in clause C.9) is engaged to undertake Services relating to a site that's located within 80km, one way by road, of the Panel Member's regional office, disbursements will not be applicable and the relevant Lump Sum Fee for metropolitan sites in this schedule will apply.
3. A higher level of professional indemnity insurance is required for Panel Members to be considered for engagement to undertake Services with higher fee values, as detailed in the table below.
4. 'Class 9b primary schools' constructed for the Department of Education are based on a standard pattern design. Given the repetitive and prescriptive nature of the buildings, this Area of Expertise is classified as being 'Conventional'.
5. Areas specified are based on *floor area* in relation to a *fire compartment* (refer to BCA for full definition).

### **TIMEFRAMES**

Certificate of Design Compliance: Timeframe is measured from receipt of design documentation for assessment to issue of Certificate of Design Compliance or letter/report outlining outstanding items

## SCHEDULE 2 – PRE-DETERMINED FEE SCALES

Certificate of Construction Compliance: Timeframe is measured from the date of either the last inspection OR receipt of final technical/contractor certification (whichever is later)

Notes: All timeframes specified in Schedule 2 are working days.

Documentation for building and occupancy permit applications will be submitted to BMW's project delivery manager who will forward it to the relevant permit authority.

CATEGORY AND VALUE	SERVICES	PI INSURANCE	TIMEFRAMES	FEE
<b>All Areas of Expertise</b> Projects with a construction budget valued >\$150 million (GST exc) <b>Fee value greater than \$150,000 (GST inc)</b>	Certifying design and construction compliance, or as defined in scope of Services	\$10 million	Subject to open tender	Subject to open tender
<b>All Areas of Expertise</b> Projects with a construction budget valued between \$50-150 million (GST exc) <b>Fee value \$50,001-150,000 (GST inc)</b>	Certifying design and construction compliance, or as defined in scope of Services	\$10 million	To be negotiated through Request for Quotation process	Subject to Request for Quotation from three Panel Members
<b>a) VERY COMPLEX</b> Class 9a and 9c, prisons and mental health institutions, Class 9b assembly buildings >2000 people (based on seats or occupancy) Projects with a construction budget valued between \$5-50 million (GST exc)	Certifying design and construction compliance (including site inspections)	\$5 million	Certificate of Design Compliance: 20 days	0.1% of estimated construction value (excluding GST)
			Certificate of Construction Compliance: 15 days	

**SCHEDULE 2 – PRE-DETERMINED FEE SCALES**

CATEGORY AND VALUE	SERVICES	PI INSURANCE	TIMEFRAMES	FEE
<b>b) COMPLEX</b> Class 9b assembly buildings Type A Construction <2000 people; Class 2 or 3 buildings Projects with a construction budget valued between \$5-50 million (GST exc)	Certifying design and construction compliance (including site inspections)	\$5 million	Certificate of Design Compliance: 15 days	<b>0.1%</b> of estimated construction value (excluding GST)
			Certificate of Construction Compliance: 15 days	

**SCHEDULE 2 – PRE-DETERMINED FEE SCALES**

<b>CATEGORY AND VALUE</b>	<b>SERVICES</b>	<b>PI INSURANCE</b>	<b>TIMEFRAMES</b>	<b>FEE</b>
<b>c) MODERATELY COMPLEX</b> Class 9b other than a), b) and d) e.g. TAFE facilities, high schools Projects with a construction budget valued between \$5-50 million (GST exc)	Certifying design and construction compliance (including site inspections)	\$5 million	Certificate of Design Compliance: 15 days	<b>0.1%</b> of estimated construction value (excluding GST)
			Certificate of Construction Compliance: 5 days	
<b>d) CONVENTIONAL</b> Class 5 and 6 >500m <sup>2</sup> ; Class 9b primary schools Projects with a construction budget valued between \$5-50 million (GST exc)	Certifying design and construction compliance (including site inspections)	\$2 million	Certificate of Design Compliance: 10 days	<b>0.08%</b> of estimated construction value (excluding GST)
			Certificate of Construction Compliance: 5 days	
<b>e) SIMPLE</b> Class 7 and 8; Class 5 and 6 <500m <sup>2</sup> Projects with a construction budget valued between \$5-50 million (GST exc)	Certifying design and construction compliance (including site inspections)	\$2 million	Certificate of Design Compliance: 5 days	<b>0.08%</b> of estimated construction value (excluding GST)
			Certificate of Construction Compliance: 5 days	

**SCHEDULE 2 – PRE-DETERMINED FEE SCALES**

<b>CATEGORY AND VALUE</b>	<b>SERVICES</b>	<b>PI INSURANCE</b>	<b>TIMEFRAMES</b>	<b>FEE</b>
<b>All Areas of Expertise except ‘VERY SIMPLE’</b> Projects with a construction budget valued between \$1-5 million (GST exc)	Certifying design and construction compliance (including site inspections)	\$1 million	Certificate of Design Compliance 5 days	<b>0.2%</b> of estimated construction value (excluding GST)
			Certificate of Construction Compliance: 5 days	
<b>All Areas of Expertise except ‘VERY SIMPLE’</b> Projects with a construction budget valued up to \$1 million (GST exc)	As defined in scope of Services	\$1 million	Certificate of Design Compliance: 5 days	Subject to Request for Quotation from one Panel Member
			Certificate of Construction Compliance: 5 days	
<b>f) VERY SIMPLE</b> Class 1, Class 10 All project budgets	Certifying design and construction compliance, or as defined in scope of Services	\$1 million	Certificate of Design Compliance: 5 days	Subject to Request for Quotation from one Panel Member
			Certificate of Construction Compliance: 5 days	

**SCHEDULE 2 – PRE-DETERMINED FEE SCALES**

<b>CATEGORY AND VALUE</b>	<b>SERVICES</b>	<b>PI INSURANCE</b>	<b>TIMEFRAMES</b>	<b>FEE</b>
<b>g) Demolition permit application</b>	Preparing permit application documentation	\$1 million	10 days from engagement	As per Hourly Rates
<b>h) Certificate of building compliance s57</b>	Certifying existing building	\$1 million	To be negotiated through Request for Quotation process	As per Hourly Rates
<b>i) Building consultancy services</b>	As defined in scope of Services	\$1 million	To be negotiated through Request for Quotation process	As per Hourly Rates

## **SCHEDULE 3 – HOURLY RATES**

### **NOMINATION OF HOURLY RATES**

The Respondent is required to nominate an Hourly Rate, inclusive of GST, for the provision of Services where a Lump Sum Fee is not applicable. Respondents may nominate a range of Hourly Rates as appropriate, eg for directors, senior assessing officers and associate assessing officers.

<b>Specified Personnel</b>	<b>Hourly Rate (including GST)</b>
<b>Director</b>	
<b>Senior assessing officer</b>	
<b>Associate assessing officer</b>	