



**Power and Water Corporation**  
**Part B - Purchase and Removal of Goods -**  
**Conditions of Tendering/Quotation**

## Document version control

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## **CONDITIONS OF TENDERING/QUOTATION**

### **1. CONDITIONS OF TENDERING/QUOTATION**

#### **1.1 Familiarisation with Conditions**

Tenderers must read and ensure they are familiar with the Conditions of Tendering/Quotation, including the Annexure which details specific requirements applicable to this RFT/RFQ.

#### **1.2 No changes**

No changes are permitted to the Conditions of Tendering/Quotation. Any Tenderer who does not accept Conditions of Tendering/Quotation should not respond to this RFT/RFQ. PWC may reject any Response from a Tenderer proposing changes to the Conditions of Tendering/Quotation.

#### **1.3 Acceptance by Tenderer**

Tenderers acknowledge that by submitting a Response, they have accepted and are bound by the Conditions of Tendering/Quotation.

### **2. NATURE OF RFT/RFQ**

#### **2.1 Invitation to submit Responses**

- (a) This RFT/RFQ is not an offer. This RFT/RFQ is an invitation to Tenderers to make offers in the form of a Response to PWC.
- (b) This RFT/RFQ and any communications made or documents issued by or on behalf of PWC in any way connected with this RFT/RFQ and this RFT/RFQ process shall not be construed, interpreted or relied upon, whether expressly or impliedly, as an offer capable of acceptance by any person, or as the acceptance of an offer by PWC, or as creating any form of contractual (including a process contract), quasi-contractual, restitutionary, promissory estoppel rights, or rights based on similar legal or equitable grounds, whether in respect of this RFT/RFQ, the conduct of this RFT/RFQ process or otherwise.

#### **2.2 No Legal Relationship**

By lodging a Response, the Tenderer acknowledges that:

- (a) no contractual rights and obligations exist or will arise between PWC and any person in respect of this RFT/RFQ by reason of its Response or any stage of this RFT/RFQ process unless and until there has been an award by PWC as provided for in the Conditions of Tendering/Quotation;
- (b) the rights, powers and discretions given to PWC in this RFT/RFQ are not pursuant to any contract between PWC and the Tenderer, but rather are rights, powers and discretions which PWC has as part of this RFT/RFQ process; and
- (c) PWC has no contractual or other legal obligation to the Tenderer arising out of this RFT/RFQ with respect to the consideration, the assessment, the acceptance or the rejection of any Response or the failure to consider, assess or accept any Response.

#### **2.3 Amendments to this RFT/RFQ**

- (a) PWC may, at any time, in its absolute discretion, add to, vary or otherwise alter all or any aspect of this RFT/RFQ, the RFT/RFQ process or any information made available in connection with this RFT/RFQ.

- (b) No addition, variation or other alteration to this RFT/RFQ shall be recognised unless in the form of a written Addenda issued by PWC. Any Addenda issued under this clause 2.3 will become part of this RFT/RFQ. There is no requirement to issue Addenda to Tenderers who have had their Response rejected or held in reserve.
- (c) It is the sole responsibility of Tenderers to ensure that their contact details held by Quotations and Tenders Online are correct and up-to-date in order for them to receive any written Addenda issued by PWC.

#### **2.4 Inconsistencies**

Should a Tenderer find or reasonably believe it has found any discrepancy, error, ambiguity, inconsistency or omission in this RFT/RFQ or any other information given or made available by PWC, that Tenderer must notify the Project Officer in writing, setting forth in sufficient detail such discrepancy, error, ambiguity, inconsistency or omission prior to the Closing Date (or as soon thereafter as that Tenderer becomes aware of such discrepancy, error, ambiguity, inconsistency or omission) so that PWC may take whatever corrective action, if any, it deems appropriate.

#### **2.5 Points of Contact**

- (a) The point of contact within PWC for all queries or questions relating to PWC's requirements as set out in this RFT/RFQ or the RFT/RFQ process is the Project Officer. The contact details for the Project Officer are set out in Item 4 of the Annexure.
- (b) The point of contact within PWC for all queries or questions relating to the lodgement of Responses or the Response requirements is the Response Officer. The contact details for the Response Officer are set out in Item 3 of the Annexure.

### **3. PARTICIPATING IN RFT/RFQ PROCESS**

#### **3.1 Invitation**

In issuing this RFT/RFQ, PWC is inviting offers from Tenderers in relation to the Scope of Requirements in accordance with this RFT/RFQ.

#### **3.2 Timetable**

- (a) A timetable for the conduct of this RFT/RFQ process is set out in Item 8 of the Annexure.
- (b) The timetable is indicative only and PWC reserves the right to vary it at any time.
- (c) The Project Officer will keep Tenderers advised on a regular basis on the status of the RFT/RFQ process.

#### **3.3 Inspection of Goods**

- (a) This clause 3.3 applies where an inspection of the Goods is made available by PWC.
- (b) Details of the inspection are set out in Item 5 of the Annexure.
- (c) Attendance at any inspections will be recorded by PWC and will be subject to any requirements notified to Tenderers by PWC from time to time.

#### **3.4 Tenderers to inform themselves**

- (a) PWC accepts no responsibility for any interpretation placed by a Tenderer on any information or material provided by PWC in connection with this RFT/RFQ.
- (b) Tenderers should make their own independent assessments of this RFT/RFQ and its requirements.
- (c) Tenderers are responsible for:

- (i) examining and understanding this RFT/RFQ, any documents referenced in or attached to this RFT/RFQ and any other information or material made available by PWC to Tenderers under or in connection with the RFT/RFQ process;
- (ii) obtaining, examining and understanding all information that is obtainable by the making of inquiries that are relevant to the risk, contingencies and other circumstances having an effect on their Responses;
- (iii) obtaining their own independent expert advice (as required);
- (iv) making their own judgement as to the Scope of Requirements and the Goods available for purchase and removal;
- (v) satisfying themselves as to the accuracy and completeness of their Responses, including pricing;
- (vi) satisfying themselves as to compliance with all Laws applicable to the purchase and removal of the Goods; and
- (vii) satisfying themselves as to the terms of this RFT/RFQ and their ability to comply.

### **3.5 Clarification Questions**

- (a) Requests for clarification in relation to the RFT/RFQ process (including lodgement of Responses) should be made in writing to the Response Officer by the Closing Date.
- (b) Requests for clarification in relation to the Scope of Requirements should be made in writing to the Project Officer by the Date for Clarification Questions.
- (c) PWC will determine what, if any, response should be given to a Tenderer's request.
- (d) PWC may circulate a Tenderer's request and PWC's response to such request, if any, to all other Tenderers without disclosing the source of the request.
- (e) Tenderers should expect that requests that provide additional substantive information will be provided to all other Tenderers.

### **3.6 Communications by Tenderers**

- (a) Other than as expressly provided for in this RFT/RFQ or through this RFT/RFQ process, a Tenderer must not communicate with any person within PWC or the Northern Territory Government (including any elected representative of the Northern Territory Government) to discuss this RFT/RFQ or the RFT/RFQ process, their preparation of a Response or any other element of their participation in this RFT/RFQ process in any way.
- (b) A Tenderer must not make any market, public or media statement in relation to or in connection with this RFT/RFQ without first, to the extent reasonably possible, discussing the content of such statement with PWC and complying with any requirements which PWC may stipulate in relation to such statement.

### **3.7 Notices to Tenderers**

PWC may deliver any written notification to a Tenderer by leaving it or causing it to be left at Tenderer's address specified in their Response.

### **3.8 Compliance with Laws**

Each Tenderer must comply with all applicable Laws and PWC policies in preparing and lodging its Response and taking part in the RFT/RFQ process.

### **3.9 Ethical Dealings**

- (a) Responses which, in the opinion of PWC, have been compiled with the improper assistance of current or former officers, employees, contractors, consultants, agents or advisors of PWC or with the utilisation of information obtained improperly or through the breach of an obligation of confidentiality may at any time be rejected.
- (b) Without limiting any other clause in the Conditions of Tendering/Quotation or in the Northern Territory Procurement Code, Tenderers and their officers, employees, contractors, consultants, agents and advisers must not:
  - (i) engage in misleading or deceptive conduct in relation to their Responses or this RFT/RFQ process;
  - (ii) engage in any collusive activity, anti-competitive conduct, or any other unlawful or unethical conduct with (or in relation to) any other Tenderer, or any other person in relation to the preparation of their Response or this RFT/RFQ process;
  - (iii) violate any applicable Laws or PWC policies regarding the offering of inducements in connection with the preparation of their Responses or this RFT/RFQ process; or
  - (iv) otherwise act in an unethical or improper manner or contrary to any law.
- (c) PWC may, in its sole and absolute discretion, at any time reject a Response where the Tenderer lodging that Response has engaged in activity contrary to this clause 3.9.
- (d) PWC reserves the right, at its sole and absolute discretion, to report suspected collusive, anti-competitive or unlawful conduct by Tenderers to the appropriate regulatory authority and to provide that authority with any relevant information in connection with such conduct.

### **3.10 Conflicts of Interest**

- (a) Tenderers must make full, frank and prompt disclosure in writing to PWC of any actual or potential Conflicts of Interest:
  - (i) that exists or may exist at the time of lodgement of their Response; and
  - (ii) which may arise after the time of lodgement of their Response.
- (b) PWC may, in its sole and absolute discretion, at any stage of this RFT/RFQ process, undertake investigations to satisfy itself that there are no Conflicts of Interest or potential Conflicts of Interest in relation to a Tenderer.
- (c) Tenderers must not place themselves in a position that gives rise or may give rise to any Conflicts of Interest during this RFT/RFQ process.
- (d) If at any time during this RFT/RFQ process, a Tenderer is aware that an actual, potential or perceived Conflicts of Interest has arisen or may arise, that Tenderer must immediately notify PWC in writing.
- (e) If a Conflicts of Interest has arisen or arises during the RFT/RFQ process, PWC may at any time:
  - (i) reject the Response from the relevant Tenderer;
  - (ii) enter into discussions to seek to resolve the Conflicts of Interest; or
  - (iii) take any other action it considers appropriate.



**3.11 Costs**

A Tenderer's participation in any stage of the RFT/RFQ process shall be at the Tenderer's sole risk, cost and expense. PWC will not be responsible in any circumstance for any losses, charges, fees, costs or expenses incurred or suffered by any Tenderer in connection with this RFT/RFQ or the RFT/RFQ process.

**3.12 Probity Advisor**

- (a) This clause 3.12 applies where PWC has appointed a Probity Advisor in respect of this RFT/RFQ process.
- (b) Tenderers may contact the Probity Advisor in circumstances where they have concerns as to probity or the conduct of this RFT/RFQ process. Any contact or communication with the Probity Advisor may be disclosed by the Probity Advisor to PWC.
- (c) The contact details for the Probity Advisor are set out in Item 6 of the Annexure.

**3.13 Other PWC Advisors**

- (a) This clause 3.13 applies where PWC engages external advisors to assist in this RFT/RFQ process.
- (b) The advisors listed in Item 7 of the Annexure have been engaged by PWC in connection with this RFT/RFQ. PWC may engage other advisors not listed in Item 7 of the Annexure in its sole and absolute discretion at any time during this RFT/RFQ process.
- (c) Any advisors engaged by PWC are not available to provide any service or information in respect of this RFT/RFQ to any Tenderer. Tenderers must ensure that any advisors they engage in connection with their Response are not (or have not previously been) engaged by PWC in connection with this RFT/RFQ.

**3.14 Publication of Contract Details**

In lodging a Response, a Tenderer accepts that PWC may publish (on the internet or otherwise):

- (a) the name of the successful Tenderer(s);
- (b) the purchase price to be paid by the successful Tenderer(s); and
- (c) a general description of the nature of the contract awarded to the successful Tenderer(s).

**4. SUBMISSION OF RESPONSES****4.1 Lodgement Method**

Tenderers must lodge their Responses using one of the selected methods set out in Item 9 of the Annexure.

**4.2 Form of Lodgement**

- (a) Tenderers must lodge their Responses in the following form if lodging by post or electronically:
  - (i) If lodged electronically:
    - (A) text documents must be in Microsoft Office 2003 (or later) Word format;

- (B) spreadsheet information must be in Microsoft Office 2003 (or later) Excel format; and
  - (C) in all other cases in Microsoft compatible format or as otherwise requested by PWC in the Scope of Requirements.
- (ii) If lodged by post:
- (A) one (1) original unbound hard copy marked “Original”; and
  - (B) one (1) electronic copy on a USB flash drive.
- (b) In the event of any inconsistency between the electronic copy and hard copy marked “Original”, the hard copy marked “Original” shall prevail.

#### **4.3 Lodgement Failure**

- (a) If, for any reason, a part of a Response (excluding the Pricing Schedule) becomes corrupt, illegible or incomplete as a result of transmission or storage, PWC may request an additional copy of the Response.
- (b) If, for any reason, the Pricing Schedule contained in a Response becomes corrupt, illegible or incomplete as a result of transmission or storage the Response may be rejected.

#### **4.4 Closing Date**

- (a) Responses must be received in full by the Closing Date.
- (b) PWC may, in its sole and absolute discretion, extend the Closing Date. If PWC extends the Closing Date, PWC will issue an Addendum notifying Tenderers of the decision to extend.
- (c) PWC may, in its sole and absolute discretion, reject a Response that is not lodged in full before the Closing Date.

#### **4.5 Corrections or Additions after Lodgement**

- (a) If a Tenderer becomes aware of an error or omission in its Response and wishes to lodge a correction or additional information, the material must be clearly marked as an addenda to the Response and lodged before the Closing Date in the same way as a Response under this RFT/RFQ.
- (b) PWC is not obliged to consider a correction or additional information received after the Closing Date.

### **5. RESPONSE REQUIREMENTS**

#### **5.1 General Requirements**

- (a) Tenderers respond to this RFT/RFQ by lodging a Response in accordance with the Conditions of Tendering/Quotation.
- (b) Responses must:
  - (i) be written in English;
  - (ii) be clear, legible and precise;
  - (iii) have all measurements expressed in Australian legal units of measurement; and
  - (iv) provide all information required by this RFT/RFQ and sufficient information to enable the Response to be assessed against the relevant assessment criteria, including all of the documents listed in Item 10 of the Annexure.

- (c) All information in the Response Schedules should be completed and Tenderers must not alter the format or order of any of the Response Schedules. Additional or supporting information should be cross-referenced and contained in separate attachments to the Response Schedules.
- (d) If a Response does not include all the information in the format required by this RFT/RFQ, is incomplete in any way or does not otherwise comply with any other requirement of the Conditions of Tendering/Quotation, PWC may, in its sole and absolute discretion, reject that Response.

## **5.2 Mandatory Requirements**

Item 13 of the Annexure sets out any requirements of this RFT/RFQ which must be adhered to by Tenderers. Tenderers who do not comply, or submit Responses which do not comply, with any such requirements will have their Responses rejected by PWC.

## **5.3 Response Validity**

- (a) Tenderers are required to keep their Responses open for acceptance by PWC and pricing firm for the period stated in Item 12 of the Annexure.
- (b) Where Tenderers are unable to meet PWC requirements due to a change in circumstances after the Closing Date they may withdraw their Response.
- (c) Where PWC seeks an extension of the period stated in Item 12 of the Annexure a request in writing will be forwarded to Tenderers. Tenderers must respond in writing to PWC's request for an extension to the period within the timeframe stated in PWC's request. Failure to respond within the stated timeframe may result in a Tenderer's Response being rejected by PWC.

## **5.4 Part Offers and Part Acceptance**

- (a) Tenderers are required to offer for the whole of the Goods unless it is stated in Item 14 of the Annexure that responding for any part or parts of the Goods is acceptable.
- (b) Where it is stated in Item 14 of the Annexure that part offers are allowed, PWC reserves the right to accept any Response in whole or in part for the Goods unless the Tenderer specifically states to the contrary in its Response.

## **5.5 Pricing**

- (a) Unless otherwise specified, all pricing submitted must:
  - (i) be expressed in Australian dollars;
  - (ii) be submitted for each item in the Pricing Schedule;
  - (iii) be inclusive of:
    - (A) all costs associated with the purchase and removal of the Goods and doing all things necessary for the implementation of the Tenderer's Response including labour, materials, transport, freight, overheads and charges;
    - (B) GST (as defined in clause 195-1 of the *A New Tax System (Goods and Services Tax Act 1999)* where applicable; and
    - (C) any other fees, taxes and duties;
  - (iv) remain unalterable for the validity period referred to in clause 5.3 of the Conditions of Tendering/Quotation;
  - (v) not vary according to mode of payment; and

- (vi) take into account the liability, indemnity and other relevant provisions regarding risk in the Contract.

## **5.6 Changes to Contract**

- (a) An initial draft of the Contract is set out in Part C of this RFT/RFQ.
- (b) If permitted in Item 15 of the Annexure, Tenderers may request changes to the Contract.
- (c) Where Tenderers request changes to the Contract, they must clearly specify in the relevant Response Schedule the changes to the Contract that are being requested and provide a marked up copy of the Contract showing each requested change. Failure to do so will result in the Tenderer being deemed to have accepted the terms set out in the Contract.
- (d) Where Tenderers request changes to the Contract, they do so at their own risk, as the changes will be deemed to have formed part of their offer and their Response will be assessed on that basis. If the requested changes are not acceptable to PWC, the Response may not be successful. PWC reserves the right, in its sole and absolute discretion, to reject or not consider any requested changes to the Contract.
- (e) Nothing in this clause 5.6 affects PWC's right to negotiate with one or more Tenderers as provided for in this RFT/RFQ.

## **5.7 Assumptions**

Responses should be accurate and based, to the extent possible, on factual information. Any critical assumptions which are made in a Response should be identified in the Response and justified by providing:

- (a) the underlying reasons for making the assumption or estimate; and
- (b) where possible, specific supporting information to justify the assumptions or estimates as being fair and accurate.

## **5.8 Reliance on Tenderer's Information**

By submitting a Response, a Tenderer:

- (a) warrants and undertakes to PWC that the information contained in its Response is true, accurate and complete as at the date on which it is lodged, and may be relied upon by PWC in its selection of the successful Tenderer(s); and
- (b) acknowledges that PWC will rely on the above warranty and undertaking when assessing its Response.

## **5.9 Confidential Information**

- (a) Tenderers should highlight in their Response those parts of the Response which they consider are confidential.
- (b) Tenderers should not identify information as being confidential unless there is a sound reason, informed by legal principle, to maintain the confidentiality of the information.
- (c) PWC will not treat information provided by a Tenderer in a Response as confidential unless each of the following is satisfied:
  - (i) the Tenderer requests that specific information should be kept confidential in its Response; and
  - (ii) the specific information is by its nature confidential.

- (d) Tenderers should note that PWC cannot provide an absolute guarantee of confidentiality because certain confidential information may be required to be disclosed by law, to PWC's relevant Minister, officers and advisors, to the NT Government, to the Legislative Assembly of the Northern Territory of Australia, the Auditor-General or any appropriate regulatory authority.

#### **5.10 Due Diligence**

- (a) It is each Tenderer's responsibility to obtain any information, in addition to the information contained in this RFT/RFQ, which it considers necessary in order to lodge their Response.
- (b) Any Tenderer who lodges a Response that is made subject to due diligence to be performed after the Response is lodged does so at their own risk. Any assessment of such Responses will take into account the inherent risk to PWC associated with the due diligence qualifications being made in the Response.

### **6. ASSESSMENT**

#### **6.1 Assessment Criteria**

- (a) Selection of the successful Tenderer(s) will be based on the Tenderer(s) who will best meet the requirements of PWC and represents best overall value for PWC. This will be based on, but not necessary limited to, an assessment of the Responses against the selected assessment criteria set out in Item 16 of the Annexure. Consideration will also be given to the associated benefits and any commercial and legal risks to PWC.
- (b) PWC may take into account information provided by a Tenderer in response to one assessment criterion in its assessment of another assessment criterion.

#### **6.2 Assessment Weightings**

The weighting for each assessment criteria are set out in Item 16 of the Annexure. PWC reserves the right apply sub-weightings to each of the requirements under any of the assessment criteria in its sole and absolute discretion.

#### **6.3 Conduct of Assessment**

- (a) Prior to the assessment of Responses, the Responses received will be reviewed by PWC for compliance with the requirements of the Conditions of Tendering/Quotation.
- (b) The assessment of Responses that have not been rejected on the grounds of non-compliance (including any that have been rejected but will be assessed following a successful appeal) will be conducted by PWC in accordance with an internal assessment plan developed for this RFT/RFQ process.
- (c) PWC may disclose information acquired or developed during this RFT/RFQ process (including a copy of the Response) to Ministers, PWC officers, employees, consultants, advisors, agencies and/or statutory authorities as required by PWC in connection with this RFT/RFQ process.

#### **6.4 Clarifications**

- (a) Tenderers may be called upon to clarify information contained in their Response.
- (b) The Tenderer must within the time specified comply with any such requests. Failure to submit any or all of the information required, in the time stipulated, may result in the Response being rejected by PWC.

- (c) PWC reserves the right to re-assess a Response against the assessment criteria having regard to any information which it obtains in accordance with this clause 6.4.

#### **6.5 PWC Checks and Investigations**

- (a) PWC may during any part of the assessment of Responses perform such security, probity and financial investigations and checks as PWC may determine are necessary in relation to Tenderers, their employees, officers, partners, associates, subcontractors or related entities and their employees, officers and subcontractors. These checks may include (without limitation) ascertaining in relation to each Tenderer:
  - (i) security;
  - (ii) financial viability and stability;
  - (iii) managerial and technical capacity;
  - (iv) corporate history;
  - (v) significant litigation (past, present or pending);
  - (vi) investigations into commercial structure, business and credit history;
  - (vii) prior contract compliance;
  - (viii) any criminal records or pending charges;
  - (ix) interviews with any nominated and non-nominated referees (if required);
  - (x) research into any relevant activity that is or might reasonably be expected to be the subject of regulatory investigation; and
  - (xi) any other matters PWC considers relevant.
- (b) Tenderers must, at their cost, promptly provide PWC with such approvals, consents, information or documentation that PWC requires in order to undertake such investigations or checks.
- (c) PWC may, in its sole and absolute discretion, at any time reject a Response if the relevant Tenderer does not promptly comply with clause 6.5(b) of the Conditions of Tendering/Quotation or based on the outcomes of the investigations or checks.

#### **6.6 Other Sources of Information for Assessment**

PWC will rely primarily on the content of each Response (and any clarification provided during the course of the RFT/RFQ process) for assessment purposes. PWC may (but is not obliged to) obtain further information to assist in the assessment from:

- (a) discussions with, and visits to, customers of a Tenderer and its subcontractors, whether or not those customers are listed as references by that Tenderer in their Response;
- (b) presentations and/or discussions held with a Tenderer and/or its subcontractors during the clarification and negotiation process;
- (c) information regarding a Tenderer within the possession of PWC or received from any source, including information about the past or current performance of that Tenderer under any other contract, arrangement or dealing between that Tenderer and PWC; and
- (d) other sources of publicly available information.

## **6.7 Shortlisting**

PWC may, at any time (and from time to time) during the assessment of Responses, in its sole and absolute discretion decide to shortlist Tenderers and continue with more detailed assessment of those Responses received from shortlisted Tenderers or the negotiations and award part of the RFT/RFQ process. Tenderers not shortlisted will be held in reserve. Tenderers with a Response that is not shortlisted will not be given a debrief until such time as there has been an award to the successful Tenderer(s).

## **7. NEGOTIATIONS AND AWARD**

### **7.1 Negotiations**

- (a) PWC may select all or only some Tenderers to proceed to negotiations or may decline to select any Tenderers to proceed to negotiations.
- (b) The selection of Tenderers to proceed to negotiations under this clause 7.1 does not bind PWC to a contractual relationship and is not an indication that a Tenderer will be successful.
- (c) As part of the negotiation process, selected Tenderers may be asked to clarify, improve or consolidate any of the financial, commercial, business, removal and/or legal aspects of their Responses.
- (d) Tenderers should be aware that PWC is not prepared to enter into a protracted negotiation process.
- (e) Notwithstanding any of the foregoing, PWC may select one or more Tenderers and enter into contract finalisation without first conducting any negotiations.
- (f) Tenderers not selected to proceed to the negotiations will be held in reserve. Tenderers with a Response that is not selected to proceed to negotiations or contract finalisation will not be given a debrief until such time as there has been an award to the successful Tenderer(s).

### **7.2 Best and Final Offer**

- (a) PWC may at any time after shortlisting or negotiations undertake a best and final offer process in order to select the Tenderer(s) to proceed to the contract finalisation part of the RFT/RFQ process.
- (b) PWC may select all or only some Tenderers to participate in the best and final offer process.
- (c) The best and final offer process will involve those Tenderers invited to participate being asked to make improvements in their Responses, including (without limitation) in relation to matters such as time and price. PWC will in its sole and absolute discretion determine the matters requiring improved responses from Tenderers as part of the best and final offer process.
- (d) Responses from Tenderers to the best and final offer process will form a part of their Response and will be taken into account by PWC in the assessment and the final selection of Tenderers to proceed to the contract finalisation part of the RFT/RFQ process.

### **7.3 Contract Finalisation**

- (a) PWC will finalise the Contract with any Tenderer(s) selected to proceed to this part of the RFT/RFQ process. PWC may, in its sole and absolute discretion, undertake contract finalisation as part of the negotiation process and negotiations as part of the contract finalisation process.

- (b) Any agreements reached with a Tenderer during the contract finalisation process, the negotiations and/or the best and final offer process will be documented in the final Contract based on the draft documentation provided to Tenderers in Part C.
- (c) PWC's expectation is that the final Contract will predominantly be formed based on the draft documentation provided to Tenderers in Part C and any amendments deemed necessary by PWC due to the content of a Tenderer's Response.
- (d) Without limitation, in the event that PWC in its sole and absolute discretion concludes that during this stage any Tenderer has retracted, or attempts to retract, from its Response or agreements reached in relation to material pricing, commercial, business, removal and legal issues during the contract finalisation, the negotiations and/or the best and final offer process, PWC may, in its sole and absolute discretion, set aside that preferred Tenderer's Response, terminate this RFT/RFQ process, re-enter negotiations with other Tenderers (including or excluding that Tenderer), select other Tenderers to participate in the contract finalisation process, or exercise any other right reserved to PWC under law or elsewhere in this RFT/RFQ.

#### **7.4 Award**

- (a) PWC will not be bound to accept the Response with the highest purchase price or any Response.
- (b) All Tenderers who lodge a Response will be informed in writing of the outcome of their Response at the conclusion of this RFT/RFQ process.
- (c) In most cases award will occur through the successful Tenderer(s) being notified in writing that they have been successful via PWC issuing them with a Notice of Acceptance. In such case, a Tenderer's Response is not taken to have been accepted until a Notice of Acceptance has been issued by PWC to that Tenderer.
- (d) In the case of an RFQ, award will occur through the successful Tenderer(s) being notified in writing that they have been successful via PWC issuing them with a Notice of Acceptance. In such case, a Tenderer's Response is not taken to have been accepted until a Notice of Acceptance has been issued by PWC to that Tenderer.
- (e) Where the Contract provides for execution by the parties, award will occur through execution of the Contract by PWC and the successful Tenderer(s). In such case, a Tenderer's Response is not taken to have been accepted until the final Contract has been executed by PWC and that Tenderer.
- (f) A Tenderer should not act on any representations or statements made by PWC, its employees or agents prior to the issue of the Notice of Acceptance/purchase order/order or execution of the Contract (as applicable).

#### **7.5 Unsuccessful Tenderer Debrief**

Unsuccessful Tenderers will be informed in writing of the outcome of their Response at the conclusion of this RFT/RFQ process.

### **8. SITE SPECIFIC CONDITIONS**

Where selected in Item 17 of the Annexure, the applicable conditions set out in Attachment 1 apply to this RFT/RFQ and the Goods.



## **9. OTHER MATTERS**

### **9.1 Termination of RFT/RFQ Process**

At any time during this RFT/RFQ process, PWC may for any reason terminate this RFT/RFQ. Such termination does not preclude PWC from seeking to separately advance the sale and removal of the Goods sought with one or more Tenderers. If PWC terminates this RFT/RFQ, Tenderers shall not have any recourse whatsoever against PWC including claims for any costs, expenses, losses or liabilities incurred by the Tenderer in preparing and submitting its Response or otherwise in connection with or in relation to this RFT/RFQ or the RFT/RFQ process.

### **9.2 Termination of Dealings with a Tenderer**

If PWC considers that communications or dealings with any Tenderer are proving or are likely to prove fruitless, or if PWC simply declares for whatever reason to discontinue dealings with that Tenderer, PWC may do so and that Tenderer shall have no recourse whatsoever against PWC.

### **9.3 Other PWC Rights**

Without limiting its other rights and notwithstanding any provision of this RFT/RFQ to the contrary, PWC reserves the right, in its sole and absolute discretion, at any time during this RFT/RFQ process to:

- (a) exercise any power, right or discretion contained in this RFT/RFQ;
- (b) repeat any aspect of this RFT/RFQ process;
- (c) accept or reject any or all submitted Responses at any time for any reason;
- (d) allow the withdrawal by any Tenderer from this RFT/RFQ process;
- (e) change any timetable or sequence for this RFT/RFQ process;
- (f) change the content, structure or timing of this RFT/RFQ process;
- (g) change the Scope of Requirements (including the Goods for purchase under this RFT/RFQ);
- (h) withdraw, suspend, reinstate, cancel or modify this RFT/RFQ or this RFT/RFQ process;
- (i) capture and transcribe the proceedings of any Tenderer meetings with one or more Tenderers and circulate that material as it thinks fit;
- (j) publish the names of any Tenderers or the successful Tenderer(s);
- (k) provide details of any Response to PWC's relevant Minister, officers, agencies and advisors;
- (l) enter into a contract with or issue an order to any person for the purchase and removal of some or all of the Goods;
- (m) agree to terms for the purchase and removal of the Goods that are different from those contained in this RFT/RFQ;
- (n) take into account any information from its own and other sources in assessing any Response;
- (o) conduct due diligence investigations in respect of any Tenderer (including any Tenderer's officers, agents, subcontractors or guarantors);
- (p) require Tenderers to substantiate any claims, assumptions or commitments contained in a Response;

- (q) not provide Tenderers with any reasons for any actions or decisions it may take, including in respect of the exercise by PWC of any or all of the rights in the Conditions of Tendering/Quotation in relation to assessment of Responses or final selections; and/or
- (r) take such other action as it considers, in its sole and absolute discretion, appropriate or necessary in relation to this RFT/RFQ or this RFT/RFQ process.

#### **9.4 Complaints**

- (a) Unless otherwise provided in the Conditions of Tendering/Quotation, all issues or complaints arising out of the RFT/RFQ process should be directed in writing to the Project Officer.
- (b) A written issue or complaint to the Project Officer must set out:
  - (i) the basis for the issue or complaint (specifying the details involved);
  - (ii) how the subject of the issue or complaint (and the specific details) affects the person or organisation making the issue or complaint;
  - (iii) any relevant background information; and
  - (iv) the outcome desired by the person or organisation identifying the issue or making the complaint.

#### **9.5 Appeals**

- (a) Tenderers will not have a right to appeal to PWC against any decisions made or rights exercised by PWC in connection with this RFT/RFQ or this RFT/RFQ process except where a Response has been rejected prior to the commencement of the assessment process on the grounds of non-compliance with the requirements of the Conditions of Tendering/Quotation.
- (b) Where a Response has been rejected, the relevant Tenderer will be advised in writing of the reasons why their Response has been rejected and whether the Tenderer may appeal the decision to PWC.

### **10. DEFINITIONS AND INTERPRETATION**

#### **10.1 Definitions**

- (a) In this RFT/RFQ the following abbreviations, words and phrases have the following meanings, unless the context requires otherwise:
  - (i) "ABN" means Australian Business Number.
  - (ii) "ACN" means Australian Company Number.
  - (iii) "ACST" means Australian Central Standard Time.
  - (iv) "Addenda" or "Addendum" means any document expressly stated to be an Addenda or Addendum, which is issued by PWC varying, updating or clarifying this RFT/RFQ.
  - (v) "Annexure" means the document titled "Annexure" and contained in Part A of this RFT/RFQ.
  - (vi) "Closing Date" means the final date and time for lodgement of Responses set out in Item 11 of the Annexure, as may be extended in accordance with clause 4.4(b) of the Conditions of Tendering/Quotation.

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- (vii) “Conditions of Tendering/Quotation” means the terms and conditions set out in clauses 1 to 10 (inclusive) of this Part B of this RFT/RFQ including the Annexure.
- (viii) “Conflicts of Interest” means any matter, circumstance, interest, or activity affecting a Tenderer (including their officers, employees, agents and subcontractors) which may or may appear to impair the ability of that Tenderer to participate in this RFT/RFQ process or purchase any Goods resulting from this RFT/RFQ.
- (ix) “Contract” means the draft contract as set out in Part C of this RFT/RFQ.
- (x) “Date for Clarification Questions” means the relevant date for clarification questions set out in Item 8 of the Annexure.
- (xi) “Goods” means the goods available for purchase from PWC described in the Scope of Requirements.
- (xii) “Item” means an item of the Annexure.
- (xiii) “Law” includes:
- (A) any treaty, statute, regulation, by-law, ordinance or subordinate legislation in force from time to time;
  - (B) the common law and the law of equity;
  - (C) any binding court order, judgement or decree;
  - (D) any applicable industry code, policy or standard, whether or not enforceable by law; and
  - (E) any applicable direction, policy, rule or order that is given in writing by a regulator, whether or not enforceable by law.
- (xiv) “Notice of Acceptance” means the written notification and any accompanying documentation sent to the successful Tenderer by PWC advising of acceptance of the successful Tenderer’s Response.
- (xv) “PWC” or “Power and Water” or “PowerWater” or “Principal” means the Power and Water Corporation ABN 15 947 352 360, and includes where applicable any “subsidiary” (as that term is defined in the *Government Owned Corporations Act 2001* (NT)) of PWC.
- (xvi) “Pricing Schedule” means the Response Schedule of that name in Part D and includes any separate pricing spreadsheet required to be submitted with that Response Schedule.
- (xvii) “Probity Advisor” means the person or firm nominated as the Probity Advisor (if any) as set out in Item 6 of the Annexure.
- (xviii) “Project Officer” means the person nominated as the Project Officer as set out in Item 4 of the Annexure.
- (xix) “Response” means all documents lodged by a Tenderer in response to this RFT/RFQ whether or not it complies with the Conditions of Tendering/Quotation, and includes an Alternative Response, where the context permits.
- (xx) “Response Officer” means the person nominated as the Response Officer as set out in Item 3 of the Annexure.

- (xxi) "Response Schedules" means the documents contained in Part D of this RFT/RFQ and includes any other documents to be lodged as set out in Item 10 of the Annexure.
  - (xxii) "RFT/RFQ" means the Request for Tender (RFT) or Request for Quotation (RFQ) (as applicable) referred to in Items 1 and 2 of the Annexure, including all parts, annexures, schedules, attachments and Addenda made in writing and issued to Tenderers.
  - (xxiii) "Scope of Requirements" means the requirements as set out and referred to in Part A of this RFT/RFQ or where otherwise described in this RFT/RFQ.
  - (xxiv) "Tenderer" means an entity that lodges or is invited to lodge a Response, and includes each consortium member of the Tenderer (if any).
- (b) Terms defined elsewhere in this RFT/RFQ shall be construed accordingly, wherever they appear in this RFT/RFQ.

## 10.2 Interpretation

- (a) In this RFT/RFQ, unless the context requires otherwise:
- (i) any reference to a 'person' or 'entity' includes any individual, company, corporation, firm partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and references to any of the same includes a reference to the others;
  - (ii) references to any legislation, statute or statutory provisions include a reference to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and any reference to a statutory provision includes any subordinate legislation made from time to time under that provision;
  - (iii) any phrase introduced by the words 'including', 'include', 'in particular', 'for example' or any similar expression must be construed as illustrative only and must not be construed as limiting the generality of any preceding words;
  - (iv) references to the singular include the plural and vice versa;
  - (v) a reference to time is to Northern Territory time and any references to day mean a period of 24 hours running from midnight to midnight; and
  - (vi) a reference to '\$' or 'dollars' is a reference to Australian dollars.
- (b) The headings and sub headings in this RFT/RFQ are inserted for convenience only and do not affect the meaning of this RFT/RFQ.
- (c) Where an Item is provided for as being "not applicable" then the matter relating to that Item will not apply and be excluded from this RFT/RFQ.
- (d) Where an Item is not completed then that Item will be completed as directed by PWC.

**ATTACHMENT 1 – SITE SPECIFIC CONDITIONS**

[insert any site specific conditions relevant to the RFT/RFQ].