

ANCE

ASSOCIAZIONE NAZIONALE COSTRUTTORI EDILI

Lavori all'Estero e Relazioni Internazionali

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N. 51 DEL 5 MAGGIO 2010

AUSTRALIA

Progetto per la costruzione della metropolitana di Perth - 420 milioni di Euro

Si desidera informare le imprese e le Associazioni che il 29 aprile scorso lo Stato di *Western Australia* ha lanciato un bando di gara per un progetto di costruzione della metropolitana della città di Perth, "The Perth City Link-Rail Project", tender N° 2010018.

Il costo stimato del progetto è pari a 600 milioni di Dollari australiani (circa **420,4 milioni di Euro**).

L'iter di pre-qualifica si chiuderà alle ore 11 di giovedì 24 giugno 2010, ora locale.

Di seguito il link da cui è possibile accedere alla scheda della gara ed ai relativi **documenti**, scaricabili solo una volta finalizzata l'iscrizione al sito del Governo dello Stato di Western Australia nel quale sono contenute, appunto, tutte le schede delle gare lanciate dallo stesso Governo:

<https://www.tenders.wa.gov.au/watenders/tender/display/tender-details.do?id=14645&action=display-tender-details>. Per comodità, si allegano alla presente i menzionati documenti relativi al Progetto per la metropolitana di Perth.

Nella scheda di gara al link indicato, nella sezione "*Responses*", è inoltre possibile **registrarsi** via internet all'iter di pre-qualifica cliccando sull'apposita icona. Altrimenti, si può inviare propria registrazione al seguente indirizzo: Head Office, 160 West Parade, Perth, WA 6000, Australia (Tel. +61 8 93262000; Fax. +61 8 93262000).

Autorità di gestione del progetto è la Public Transport Authority (PTA) dello Stato di *Western Australia*, che organizzerà un **briefing sul progetto martedì 11 maggio 2010 alle ore 10.00 presso la propria sede di Perth**. Le imprese interessate a parteciparvi sono invitate a registrarsi, indicando il numero di componenti, contattando il responsabile del Progetto: Mr. John Gould (Tel: +61 8 9326 2206; john.gould@pta.wa.gov.au).

Infine, le imprese che fossero interessate a partecipare al briefing o comunque a visitare lo Stato di *Western Australia* ed a tenere **incontri ulteriori** tesi ad approfondire le opportunità infrastrutturali esistenti a livello locale, sono invitate a contattare il Dr. Stuart Russell, Senior Trade & Investment Manager dell'Ufficio Europeo del Governo di *Western Australia*, basato a Londra, ai recapiti che seguono (informando contemporaneamente lo scrivente Ufficio all'indirizzo estero@ance.it):

Tel: +44 20 7395 0564; Fax: +44 20 7240 6637; Mob: +44 7802 260 723

Email: www.stuart@wago.co.uk; Web: www.wago.co.uk.

(AN/ci)

Allegati

ANCE - Via Guattani, 16 - 00161 Roma
Tel. 06/84567437-434 - Telefax 06/84567566
estero@ance.it

Quanto oggetto di questo foglio è parte della Newsletter Internazionale per lavori all'estero che rientra tra i servizi prestati dall'ANCE agli iscritti al Settore "Lavori all'Estero". Per ogni singola notizia vengono forniti numero progressivo, data e materia per consentire la tenuta, come è consigliabile, sotto forma di dossier



Government of Western Australia
Public Transport Authority

Perth City Link

Rail Project

Alliance Development Agreement

29th April 2010

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Operative provisions**1. Definitions and Interpretation****1.1 Definitions**

The meanings of the terms used in this document (including the Background) are set out below. Unless the context otherwise requires, words and expressions which are defined in clause 1.1 of the draft Project Alliance Agreement have the same meaning where used in this Agreement.

| Term | Meaning |
|---|---|
| ADA Scope Change | a change in the Services directed by the PTA. |
| ADA Stage | the Alliance Development Stage, being the second stage of the selection process as described in section 4.3 of the RFP and in this Agreement, culminating in the preparation and submission by the Proponent to the PTA of the Final Proposal in accordance with this Agreement. |
| Agreement | this Alliance Development Agreement. |
| Affected Member | as defined in <u>clause 14.14(b)</u> . |
| Alliance | the alliance to be formed between the Successful Proponent and the PTA in respect of the design, construction and commissioning of the Project, and which will be governed by the Project Alliance Agreement. |
| Alliance Development Principles | the principles set out in <u>clause 3.1</u> . |
| Basis of Design and Construction (BDC) | the document prepared by the PTA that describes its specific requirements for the design and construction, scope of works and technical criteria. |
| Best for Project | a determination, decision, outcome, solution or resolution taken by the Alliance that is consistent with the Alliance Development Principles and the Parties' undertaking and commitment to work together in a way that produces excellent outcomes in all aspects of the performance of the ADA Stage and to achieve the Project Objectives. |
| Business Days | a day on which banks are open for general banking in Perth, Western Australia excluding a Saturday, Sunday or public holiday. |
| Change in Control | a change in the persons who, directly or indirectly, ultimately Control the Proponent. |
| Commencement Date | the date of final execution of this Agreement by the PTA [or insert date]. |

| Term | Meaning |
|---|---|
| Evaluation Team | the PTA's team that will evaluate the Final Proposal and final proposal submitted by the Other Proponent and recommend the Successful Proponent to the PTA. |
| Final Proposal | a proposal which complies with <u>Schedule 2</u> as to content. |
| Good Faith | for this Agreement means: (a) acting fairly and reasonably; (b) acting honestly in discharging obligations under this Agreement; and (c) doing all things reasonably expected of each of us to give effect to the spirit and intent of this Agreement. |
| Government | the State Government of Western Australia. |
| Government Agency | any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, Minister of the Crown, agency or entity, whether of the State of Western Australia or the Commonwealth of Australia. |
| GST | the goods and services tax imposed in Australia pursuant to the GST Act. |
| GST Act | the A New Tax System (Goods and Services Tax Act) 1999 (Cth). |
| GST law | as in the GST Act. |
| Information | as defined in <u>clause 6.5</u> . |
| Initial Proposal | the proposal submitted by the Proponent in response to the RFP dated 29 April 2010. |
| Intellectual Property Rights (IPR) | all intellectual property rights and interests (including common law rights and interests), including all: (a) patents, trademarks, service marks, copyrights, registered and unregistered designs, trade names, domain names, symbols and logos; (b) patent applications and applications to register trademarks, service marks and designs; (c) methods, plans, data, drawings, specifications, characteristics, inventions, improvements, know how, experience, trade secrets, confidential information or other information; and (d) licences or similar user rights in respect of any such rights and interests. |
| Liable Party | as defined in <u>clause 12.1</u> . |

| Term | Meaning |
|-----------------------------------|--|
| Risk/Reward Regime | the bonus/rebate regime and performance payment regime under the Project Alliance Agreement which will be finalised by the PTA and the Proponent during the ADA Stage and which must, as a minimum, fully reflect the principles set out in the Commercial Framework. |
| Services | those services identified in Schedule 1 to be performed by the Proponent, with the cooperation and assistance of the PTA, in accordance with this Agreement during the ADA Stage. |
| Specialist Consultants | the person(s) possessing the areas of specialty set out in section 3.11 of the RFP. |
| Statutory Requirements | <p>(a) acts, ordinances, regulations, rules, by-laws, orders, awards and proclamations of the Commonwealth of Australia and the Government; and</p> <p>(b) certificates, licences, consents, permits, approvals and requirements of government departments, agencies or other organisations having jurisdiction in connection with the performance of the Services under this Agreement and the performance of the Project Alliance Agreement.</p> |
| Submission Date | the date for submission of the Final Proposal, being 23 December 2010, or the date resulting from any extension of that date by the PTA. |
| Submission Time | 1430 hours on the Submission Date. |
| Successful Proponent | the proponent selected by the PTA to execute the Project Alliance Agreement. |
| Tax Invoices | any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit. |
| Termination Notice | as defined in <u>clause 13.2</u> . |
| Target Outturn Cost or TOC | the target outturn cost estimate by the Proponent in its Final Proposal as being the Proponent's best estimate of the Direct Costs, Margin and Contingencies for performing the work and services under the Project Alliance Agreement to achieve the Project Objectives. |
| Whole of Life Cost | the Present Value of the costs to design, construct, commission, operate and maintain an asset over its projected design life as set out in the Basis of Design and Construction. |

- (f) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death; and
- (g) no provision of this Agreement will be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of this Agreement or that provision.

1.3 Headings

Headings do not affect the interpretation of this Agreement.

3. Commitment to Alliance Development Principles

3.1 Alliance Development Principles

In performing the Services the Parties will at all times:

- (a) act openly and with integrity to build trust between the Parties;
- (b) co-operate with each other to achieve the purpose of this Agreement during the ADA Stage;
- (c) act openly and honestly, fairly and reasonably in everything they do; and
- (d) co-operate with each other to develop an alliance culture as envisaged by the Project Alliance Agreement.

3.2 Project Objectives

To ensure the Project is a success, the PTA expects that, and the Proponent acknowledge that, the following Project Objectives must be achieved:

- (a) ensure no interruption in passenger flow from rail to rail services or from bus to rail services within the Perth railway station and between the Perth railway station and the Wellington Street Bus Station;
- (b) limit passenger and pedestrian and vehicle traffic flow interruptions during construction in or near the work site;
- (c) maintain bus and rail service changes to a schedule that takes priority over optimising the construction work schedule;
- (d) provide a seamless transfer environment for passengers and pedestrians between rail and bus services on or near the work site;
- (e) not limit future growth in public transport capacity;
- (f) manage the Works to comply with the Basis of Design and Construction as a minimum and to fit the budget and funding timelines;
- (g) enable the PTA to provide passengers with safe and secure services and facilities in compliance with universal access requirements;
- (h) perform to operational standards as set out in the Basis of Design and Construction;
- (i) minimise Whole of Life Costs of the Project works to the PTA;
- (j) protect the PTA's existing infrastructure and other utility services (not belonging to the PTA) on or near the work site;
- (k) ensure the PTA's and EPRA's agreed joint objectives for the work site, as outlined in the Master Plan referred to in section 3.5 of the RFP, are achieved;
- (l) work with various approval agencies and stakeholders to achieve a common planning outcome;
- (m) win internal and external stakeholder endorsement within allowed timeframes, and specifically include the PTA's personnel at every stage of delivery; and

4. Resolution of Disputes

4.1 Representatives

- (a) The Parties believe that focusing on the Alliance Development Principles will reduce, if not eliminate, Disputes.
- (b) The Parties will promptly identify any Dispute or potential Dispute and it will be resolved, wherever possible, at the level where the Dispute initially arises.
- (c) If, within 15 Business Days of a Dispute arising, it has not been resolved, the Parties will elevate the Dispute to the nominated representative of each Party (**Representatives**) for resolution.
- (d) The Representatives must meet within 5 Business Days after the Dispute is referred to them, and attempt to resolve the Dispute. If they resolve the Dispute, the resolution must be reduced to writing and signed by both Representatives, and once signed, the Parties will adhere to their resolution. The Representatives will deal proactively with any Dispute on a 'Best for Project' basis in accordance with this Agreement and may determine whatever action in Good Faith they believe is necessary to achieve resolution.

4.2 Mediation

- (a) If the Representatives are unable to resolve the Dispute within 10 Business Days of their first meeting, the Dispute will be taken to a mediation process. If the Parties agree, they will appoint an independent mediator, or, if they fail to agree on an independent mediator within 15 Business Days of their first meeting, the Chairperson of the Western Australian Chapter of the Institute of Arbitrators and Mediators Australia for the time being or the Chairperson's nominee, at the request of either Party, may appoint an independent mediator and the costs of that mediator will be borne equally by the PTA and the Proponent. Except to the extent inconsistent with this clause, the mediation will be conducted in accordance with the then current mediation rules of the Law Society of Western Australia.
- (b) The Parties will hold the mediation in Perth, Western Australia and, subject to clause 4.2(a), must comply with any resolution facilitated between them by the independent mediator, which resolution must be reduced to writing and signed by the Parties, before being binding on the Parties.
- (c) Each Party must continue to perform its obligations under this Agreement, notwithstanding any Dispute, or the commencement of any proceedings under this clause 4.

4.3 Recourse to court proceedings

- (a) If a Party is dissatisfied with proceedings before the mediator, it may take what action as it considers appropriate, including commencing legal proceedings. For the avoidance of doubt, the right referred to in this clause 4.3(a) is not in any way dependent on or conditional upon the initiation or completion of the proceedings before the mediator.
- (b) Any act or omission by either of us under this Agreement which amounts to a Default will give rise to enforceable obligations either at law or in equity, or both.
- (c) To the greatest extent permitted by law, any act or omission by either Party under this Agreement which does not amount to a Default will not give rise to any

5. Term of Agreement

This Agreement commences on the Commencement Date and, subject to the termination rights set out in this Agreement, terminates:

- (a) if the Proponent becomes the Successful Proponent, on the date the Project Alliance Agreement is executed by the PTA; or
- (b) if the Proponent is not the Successful Proponent, on the earlier of the date the PTA notifies the Proponent in writing that this Agreement is terminated or on the first anniversary of the Submission Date.

otherwise have been established by benchmarking to current best practices of the Proponent.

6.2 Proposal regarding Project Alliance Agreement

- (a) During the ADA Stage, the Proponent and the PTA must negotiate the Project Alliance Agreement, based on the draft which was provided as part of the RFP, in Good Faith and in a manner consistent with the Alliance Development Principles.
- (b) The Proponent must submit its proposed final form of the Project Alliance Agreement as part of the Final Proposal together with a statement, signed by the Proponent, confirming that the Project Alliance Agreement so submitted is in an executable form and, subject to clause 7.2(a)(1) and to the insertion of any information which the personnel of the Parties negotiating the Project Alliance Agreement have agreed, is ready for execution in accordance with clause 7.2(a)(2).

6.3 Format of Final Proposal

Font type and size must be Arial 11 with single line spacing and minimum 6 point spacing between paragraphs.

6.4 Submission of Final Proposal

- (a) The Final Proposal must be submitted (by hand) to the PTA by the Submission Time on the Submission Date:
 - (1) in a sealed package or container, endorsed with the title "Final Proposal for the Perth City Link Project"; and
 - (2) in quadruplicate (one original and three hard copies) and additionally in electronic format on CD,

addressed to:

Mr John Gould, Principal Contracts Coordinator
Public Transport Authority of Western Australia
Public Transport Centre
West Parade
Perth, Western Australia 6000

- (b) The PTA will not accept submission of the Final Proposal by facsimile, mail or email.

6.5 PTAship of Final Proposal

Subject to clause 10, PTAship of the Final Proposal and all documentation and information comprising the Final Proposal or prepared for the purposes of the Final Proposal (Information), upon its creation, immediately vests in the PTA and the Proponent has no right to use or disclose any part of the Final Proposal or Information without the PTA's prior written approval.

6.6 Validity Period of Final Proposal

The entire Final Proposal must remain valid for a minimum period of 6 months from the Submission Date and will remain binding on the Proponent and be capable of acceptance by the PTA at any time before the expiration of that period.

- execute the amended Project Alliance Agreement within 10 Business Days of the date of the notice given under clause 1.1(a)(4);
- (2) the PTA does not require any amendments to the form of the Project Alliance Agreement provided by the Successful Proponent in its Final Proposal, the Successful Proponent and the PTA must execute that form of the Project Alliance Agreement within 10 Business Days of the date of the notice given under clause 1.1(a)(4).
- (b) If, prior to the execution of the Project Alliance Agreement, the PTA elects, with the agreement of the Successful Proponent, to progress any works and services which would otherwise be work under the Project Alliance Agreement:
- (1) those works and services will be subject to the terms and conditions of this Agreement until the Project Alliance Agreement is executed, when those works and services will form part of the work under the Project Alliance Agreement, and the rights and obligations of the Parties in respect of that work and services (including the Intellectual Property Rights) will be governed retrospectively by the Project Alliance Agreement; and
 - (2) payment for those works and services will:
 - (A) be in addition to any payments made to the Proponent for the performance of the Services and the PTA will agree a reasonable alteration to the Contract Amount;
 - (B) unless otherwise agreed by the Parties before that work is progressed or until the Project Alliance Agreement is executed (when payment will then be made under the Project Alliance Agreement), be made:
 - 1) on a monthly basis; and
 - 2) on a Direct Cost basis plus Margin,
- in accordance with the terms of the Project Alliance Agreement submitted by the Proponent with the Final Proposal, subject to the PTA having received and being satisfied with the expected deliverables for those works or services. Payment for works or services performed by the Successful Proponent under this clause 7.2(b) will be deemed to be payments made against the Target Outturn Cost under the Project Alliance Agreement, once the Project Alliance Agreement is executed.

7.3 Acknowledgements

The Proponent acknowledges and agrees that:

- (a) there is no guarantee that the Proponent or the Other Proponent will be selected as the Successful Proponent;
- (b) there is no guarantee that the Project will proceed and, if it does not proceed, the PTA, subject to clause 7.2(b), will not be liable for any cost, Loss, expense or damage suffered by the Proponent arising from the fact that the Project will not proceed;
- (c) the process for selection of the Successful Proponent (if that occurs), outlined under this Agreement supplements the process contained in the RFP. If there is any inconsistency or ambiguity between this Agreement and the RFP, that inconsistency or ambiguity will be resolved by the PTA in its sole discretion; and

8. Payments

8.1 Payment to the Proponent

(a) If:

- (1) the Proponent submits its Final Proposal on or before the Submission Time on the Submission Date; and
- (2) the PTA is satisfied, acting reasonably, that the Proponent's Final Proposal has been submitted in accordance with this Agreement and the RFP (including incorporating the details, information and documentation required in Schedule 2),

the PTA will pay the Proponent the Contract Amount.

(b) Subject to the requirements of this clause 8.1(b), the Parties agree that no matter what events, circumstances, contingencies, conditions or degree of difficulty is encountered by the Proponent in performing the Services or otherwise performing its obligations under this Agreement, the Proponent's only entitlement to payment under this Agreement is payment of the Contract Amount. The Contract Amount is fixed and will not be adjusted for any reason whatsoever except:

- (1) for an ADA Scope Change; or
- (2) in the circumstances contemplated in clause 7.2(b).

(c) If the Proponent satisfies both the requirements under clause 8.1(a), the PTA will promptly notify the Proponent of the fact and the Proponent must, following receipt of the notice, submit a Tax Invoice to the PTA for an amount calculated in accordance with clauses 8.1(a) and (b). If the Proponent is not a trading entity in its own right, each Member may, subject to having complied with clauses 8.1(a) and (b), submit a Tax Invoice for its proportion of the sum due which proportion must be agreed by all Members. The PTA will, subject to clauses 8.1(a) and (b), pay the amount set out in the Proponent's or each Member's Tax Invoice, as the case may be, by electronic funds transfer to the Proponent's or the Member's nominated bank account, within 21 days of the date of receipt of the Tax Invoice.

8.2 No entitlement to payment in certain circumstances

(a) If the Proponent does not satisfy both the requirements under clause 8.1(a) (**Inadequate Final Proposal**), the PTA will notify the Proponent of that fact and terminate this Agreement and the Proponent will have no entitlement to any payment under this Agreement and the Proponent must reimburse the PTA, on demand, all payments (if any) previously made by the PTA to the Proponent under this Agreement. For the avoidance of doubt, if the Proponent considers that it has satisfied the requirements set out in clause 8.1(a) and the PTA does not agree, that is a Dispute.

(b) If the Proponent commits a Default or is subject to a Change in Control which causes the PTA to terminate this Agreement then the Proponent is not entitled to any payment under this Agreement except for payments made or due to the Proponent for work or services performed under clause 7.2(b), and the Proponent must reimburse the PTA, on demand, all payments (if any) previously made by the PTA to the Proponent under this Agreement, except for any payments made in relation to services performed under clause 7.2(b).

9. GST

9.1 GST

- (a) Words used in this clause 9 which have a defined meaning in the GST law have the same meaning as in the GST law unless the context indicates otherwise.
- (b) Unless expressly included:
 - (1) the consideration for any supply under or in connection with this Agreement does not include GST; and
 - (2) the calculation, determination or estimation of any amount under this Agreement or arising out of or in connection with the performance of the Services does not include GST.
- (c) The Proponent and each Member is and will remain, registered for GST purposes and the Proponent and each Member will indemnify the PTA for any Loss the PTA suffers if the Proponent or any Member is not registered or does not remain registered.
- (d) Subject to clause 9.1(e), to the extent that any supply made under or in connection with this Agreement is a taxable supply for which the supplier is liable for GST, the recipient must pay, in addition to, and at the same time, as the consideration provided under this Agreement for that supply (unless it expressly includes GST) is paid, an additional amount equal to the GST for which the supplier is liable.
- (e) The recipient of a taxable supply does not have to pay any amount under clause 9.1(d) until such time as the supplier provides the recipient with a valid Tax Invoice.
- (f) Where the Proponent is making a taxable supply to the PTA covered by clause 8 of this Agreement, the Proponent or each Member, as applicable, must in issuing a Tax Invoice to the PTA under clause 8.1(c), set out in the Tax Invoice the amount of the GST payable by the PTA.

9.2 Input Tax Credits

If a Party is entitled under this Agreement to be reimbursed or indemnified by the other Party for a cost or expense incurred in connection with this Agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that an input tax credit may be claimed by the Party to be reimbursed or indemnified.

9.3 GST Adjustment Event

If an adjustment event results in the GST on a taxable supply being different from the GST recovered from the recipient, then the supplier:

- (a) must refund to the recipient any excess GST charged; and
- (b) may recover from the recipient any additional GST payable upon issuing a valid Adjustment Note.

11. Insurances

11.1 Insurances

- (a) Throughout the ADA Stage, each Member must take out and maintain public liability insurance (as specified in clause 11.2), employee insurance (as specified in clause 11.3) and professional indemnity insurance acceptable to the PTA.
- (b) Each Member must:
 - (1) continue to maintain professional indemnity insurance throughout the ADA Stage and for at least 12 months thereafter;
 - (2) ensure that the policy of insurance provides cover in respect of each and every occurrence to an amount of not less than \$20 million in any one claim and in the aggregate; and
 - (3) where possible ensure that the policy of professional indemnity insurance includes a Trade Practices Act extension.
- (c) It is acknowledged that each Member is free to use its existing insurance policies for the purposes of this clause 11.

11.2 Public liability insurance

For the purposes of clause 11.1, public liability insurance means insurance in respect of:

- (a) injury to or illness or death of any person (other than liability which is required by law to be insured under a workers compensation policy of insurance);
- (b) physical loss, damage or destruction to any property (including that of the PTA);
- (c) the loss of use of tangible property whether it has been physically lost, destroyed or damaged or not; and
- (d) sudden and accidental (or either) pollution,

which insurance must provide cover in respect of each and every occurrence to an amount of not less than \$20 million, limited in aggregate to not less than \$20 million in respect of all Losses occurring during each period of insurance.

11.3 Employee insurance

- (a) For the purposes of clause 11.1, employee insurance means employers' indemnity insurance and workers' compensation insurance for death, disability or injury to any person employed by a Member on or in connection with this Agreement including liability arising:
 - (1) under any Statutory Requirement;
 - (2) at common law; or
 - (3) otherwise,including, if applicable, insurance required under the Workers' Compensation and Injury Management Act 1981 (WA), the common law component of which must be not less than \$10 million in respect of each and every occurrence.

12. Limit on Liability

12.1 Liability for consequential loss

Except as expressly provided in this Agreement, each Party's (**Liable Party**) liability to the other for special, consequential, or punitive Losses, howsoever caused (including by negligence) is limited to the amount for those Losses recoverable by the **Liable Party** under a policy of insurance taken out under this Agreement or otherwise taken out or maintained by the PTA or each Member (as the case may be). Losses of that type include any or all of a loss of actual or anticipated profits, lost opportunities (including opportunities to enter into or complete arrangements with third parties), a failure to realise anticipated savings and loss of reputation. The amount recoverable under a policy of insurance includes amounts which should have been recovered but for the **Liable Party's** or any Member's (if the **Liable Party** is the Proponent) act or omission.

12.2 Limit of Liability

- (a) A **Liable Party** will only be liable to the other Party for a Loss arising in relation to, or in connection with, this Agreement for an amount in the aggregate of the greater of:
 - (1) the Contract Amount; and
 - (2) the amount which the **Liable Party** or any Member (if the **Liable Party** is the Proponent) is able to recover under a policy of insurance taken out under this Agreement or otherwise taken out or maintained by the PTA or any Member, (**Limit of Liability**).
- (b) The **Limit of Liability** is an aggregate limit of liability for all Losses arising in relation to, or in connection with this Agreement. The **Limit of Liability** does not apply if the Loss arises out of fraud or wilful misconduct by the **Liable Party** or its officers, agents, contractors or employees or any Member (if the **Liable Party** is the Proponent).

13.5 Indemnity

Subject to clause 12, and notwithstanding any other provision of this Agreement in the event of a termination in accordance with clause 13.2(a), the Proponent and each Member:

- (a) is liable for, and must indemnify the PTA for any cost, Loss, expense or damage incurred or suffered by the PTA arising out of or in connection with any Default or Change in Control by the Proponent or any Member; and
- (b) must immediately reimburse to the PTA the total amount of all payments (if any) previously made by the PTA under this Agreement to either the Proponent or each Member except for any payments made under clause 8 for works or services performed under clause 7.2(b).

13.6 Indemnity by PTA for Default

Subject to clause 12, the PTA is liable for, and must indemnify the Proponent for any cost, Loss, expense or damage incurred or suffered by the Proponent arising out of or in connection with any Default by the PTA.

13.7 Consequences of Termination

On termination of this Agreement (other than by reason of the PTA and the Proponent as the chosen Successful Proponent executing the Project Alliance Agreement):

- (a) the Proponent must promptly return to the PTA all copies of information and documentation provided by the PTA for the purposes of this Agreement; and
- (b) the PTA may, at no cost, use any of the work, documentation or Information developed by the Proponent under this Agreement for any purpose whatsoever, and the Proponent must provide any such documentation or Information to the PTA within 10 Business Days of the PTA's request for it to do so.

13.8 Survival

This clause 13 survives the termination of this Agreement.

- (c) can be read in a way that creates any ambiguity or inconsistency, the Parties agree it must be read in such a way as to make it consistent with, and ensure the integrity of, the Alliance Development Principles.

14.7 Variation of Agreement

The terms of this Agreement can only be varied by the written agreement of the Parties expressly acknowledged as a variation of this Agreement.

14.8 Confidentiality

- (a) Each Party must not, and must ensure that those for whom it is responsible, do not:

- (1) disclose to any person any information; or
- (2) publish any documentation or information,

relating to this Agreement, the Project, the Services or the Final Proposal without the other Party's prior written consent. The Proponent, if requested by the PTA, must execute a confidentiality agreement in relation to any information provided by the PTA to the Proponent for the purposes of this Agreement, the Project, the Services or the Final Proposal.

- (b) The obligation in clause 14.8(a) does not extend to:

- (1) information already in the public domain other than due to a breach of this Agreement;
- (2) any disclosure required by law or by the rules of a stock exchange on which the Proponent or any Member's shares are listed;
- (3) any disclosure to a Party's auditors, legal advisers or third parties necessary for, or incidental to, the performance of that Party's obligations under this Agreement; or
- (4) any disclosure by the PTA necessary for the assessment of the Final Proposal, the selection of the Successful Proponent, including without limitation, any disclosure to the Minister having responsibility for the PTA, or the Auditor General of Western Australia (or his delegate) exercising powers under the *Financial Management Act 2006 (WA)*.

- (c) The Proponent must immediately inform the PTA if it or any Member is or becomes required by law or by the rules of a stock exchange, to disclose any documentation or information relating to this Agreement, the Project or the Services.

14.9 Publicity or media statements

- (a) The Proponent and each Member acknowledges and accepts that it must not issue any information, publication, document or article relating to the Agreement, the Project or the Services without the prior written approval of the PTA's Representative.
- (b) The Proponent and each Member must immediately refer to the PTA any media enquiries relating to this Agreement, the Project or the Services.

14.10 Currency

All sums of money referred to in or paid under this Agreement will be in Australian dollars.

parent company undertaking or guarantee substantially in the form of schedule 10 to the draft Project Alliance Agreement.

14.15 Language

All Information and documentation prepared or delivered by us under this Agreement will be in English.

14.16 Notices

(a) A notice given under this Agreement may only be delivered in writing and:

- (1) delivered to that Party at its address set out below; or
- (2) faxed to that Party at its facsimile number set out below.

We will immediately notify each other of any amendments made to any of our address or facsimile details.

PTA

Attn: Mr John Gould, Principal Contracts Coordinator
Public Transport Authority of Western Australia
Public Transport Centre
West Parade, Perth, WA 6000

Fax: +61 8 9326 2192

Proponent

Attn: [Insert]
Fax: [Insert]

(b) A notice is to be treated as given at the following time:

- (1) if it is delivered, when it is received at the relevant address; or
- (2) if it is sent by facsimile, as soon as the sender receives from the sender's facsimile machine a report of an error free transmission to the correct facsimile number.

(c) If a notice is delivered after 5:00pm on a Business Day, it is to be treated as having been delivered at the beginning of the next Business Day.

14.17 Survival

This clause 14 survives termination of this Agreement.

5. Commercial Alignment Workshop (duration – 1 day initially plus subsequent meetings as may be required)

Note: the agenda for this workshop, set out below, may be varied by the PTA at its discretion and will be advised to the Proponent prior to the workshop.

The primary purpose of the Commercial Alignment Workshop is to align the Parties on the principles on which the Commercial Framework will be developed, and to agree the:

- precise definition of Direct Costs;
- definition of Margin, the principles under which it will be applied;
- structure of the Risk/Reward Regime;
- terms and conditions of the Project Alliance Agreement, including amongst other things:
 - insurances;
 - limits of liability;
 - security requirements; and
 - payment procedures; and
- the Scope Variation hypothetical scenarios for inclusion in schedule 12 of the Project Alliance Agreement.

Subsequent meetings will be convened as necessary to finalise the terms of the Project Alliance Agreement so that the Project Alliance Agreement is agreed by the Parties and is in an executable form for submission with the Final Proposal. The PTA and the Proponent must each nominate their personnel who will be involved in the finalisation of the terms of the Project Alliance Agreement at this workshop.

6. Risk and Opportunity Presentation (duration – 1 day)

The Proponent is required to undertake a detailed risk and opportunity workshop with the Core Team, Evaluation Team and other key personnel to identify the risks and approximate values of their best, worst and most likely outcomes. At the risk and opportunity presentation, the Proponent will present the outcomes of its risk and opportunity analysis to the Core Team, and other key PTA personnel.

7. Presentation of Final Proposal

This presentation provides the final opportunity for the Proponent to explain its Final Proposal to the PTA's personnel who will review the Final Proposal, and for those personnel to be able to seek clarification from the Proponent. Members of the Core Team will be present at this presentation.

8. Timetable

The timetable for the ADA Stage and the various meetings, workshops and presentations described in this Schedule is set out in the following table (**Note:** the timetable may be subject to change at the PTA's discretion):

Schedule 2 - Content of the Final Proposal

The Final Proposal must contain:

- (a) a covering letter signed by each Member of the Proponent, which includes the names and contact details of at least three senior personnel (one of which must be the Proponent's Commercial Manager) who will be available to answer any queries on the Final Proposal raised by the Evaluation Team or the PTA during the review of the Final Proposal.
- (b) in respect of the Project Alliance Agreement:
 - (1) the Proponent's proposed Target Outturn Cost for the Project (in Australian dollars), must include:
 - (A) a full breakdown of the Target Outturn Cost, in the format agreed with the Principal Estimator during the ADA Stage;
 - (B) a full breakdown of the Contingencies included in the Target Outturn Cost including a risk probability analysis underlying those contingency allowances;
 - (C) an amount for Total Defects Cost Estimate as defined in the Project Alliance Agreement contained in the RFP; and
 - (D) full details of the Margin included in the Target Outturn Cost.

The Final Proposal must also:

- (A) contain a clear definition of the scope of work on which the Target Outturn Cost has been based; and
- (B) confirm that the amount of the 'Building and Construction Industry Training Fund levy', that will be payable by the Proponent in respect of the Project, is included in the Target Outturn Cost.

[Note: The proposed Target Outturn Cost must be valid for acceptance for 6 months from the Submission Date, i.e. it must include allowance such that if the Project Alliance Agreement is entered into within a period of 6 months after the Submission Date the Target Outturn Cost will not be subject to adjustment.]

- (1) the design documentation for the Project, undertaken to a level of detail necessary to support the development of the Proponent's proposed Target Outturn Cost, and a design report identifying:
 - (A) the status of design;
 - (B) the extent of value management and value engineering studies undertaken and the outcomes of those value management and value engineering studies incorporated, or to be incorporated, into the detailed design of the Project; and
 - (C) the value of all significant improvements, developments and innovations of the design forming the basis of the Final Proposal;

- 1) a draft of the 'Training Plan' that must be provided to the Department of Training under the Government's 'Priority Start – Building Policy', within 4 weeks of the execution of the Project Alliance Agreement by the PTA; and
 - 2) the name of the Member that will act as the 'Head Contractor' for the purposes of the Priority Start – Building Policy and that Member's Priority Start – Building registration number;
- (L) a plan which is consistent with the PTA's Drug and Alcohol Policy as set out in section 9.7 of the RFP;
- (M) an industrial relations plan;
- (N) a quality plan which will include inspection, testing, commissioning and certification procedures;
- (O) a completion and commissioning plan, including for phased completions, where applicable; and
- (P) a Statutory Requirements management and compliance plan identifying key Statutory Approvals to be obtained for and the key Statutory Requirements to be satisfied by the Proponents in undertaking the Project works and the methodology (including resourcing requirements) by which key Statutory Approvals will be obtained and the key Statutory Requirements will be satisfied; and
- (Q) a disability access and inclusion plan consistent with the PTA's Disability Access and Inclusion Plan, available from www.pta.wa.gov.au under "Publications and Policies";
- (R) an implementation reporting plan which during the Term requires:
- 1) procurement to be monitored against the "Industry Participation Plan" which formed part of the Final Proposal; and
 - 2) the PTA to be provided with an "Implementation Report", in the form and containing the information required by the Government's "Building Local Industry Policy – Procedural Guidelines" available from http://www.commerce.wa.gov.au/ScienceInnovation/PDF/Publications/publications_industrydevelopment.html ;
- (S) an emergency plan, consistent with the PTA's Emergency Management Manual, available from www.pta.wa.gov.au under "Publications and Policies", "Emergency Management";
- (T) a plan which incorporates the requirements of the PTA's Security Policy and Procedures as set out in section 9.5 of the RFP;
- (U) an asset management plan, including maintenance requirements and "whole of life" requirements for the future operation of the Project works;
- (V) a finance and administration plan including value assurance and audit activities;
- (W) a ground settlement building and underground structures protection and repair plan for pre-existing building and structures;

Executed as an agreement

THE COMMON SEAL of the Public
Transport Authority of Western Australia
ABN 61 850 109 576 is affixed in the
presence of:

Chief Executive Officer

Print

Executed by [Insert Proponent name]
[insert ABN/ACN] in accordance with
section 127 of the Corporations Act 2001
(Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

[Note: a separate execution clause will be required for each legal entity involved.]