



CONDITIONS OF TENDER

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1 Definitions

Unless otherwise defined, capitalised words in these Conditions of Tender have the following meanings:

Addenda means all addendum to the Request for Tender issued by Perth Airport in accordance with these Conditions of Tender.

Alternative Tender has the meaning given to it in clause 2.5.

Area of Operations means the area within Perth Airport's operational control where the Services are to be performed.

Business Day means a day that is not a Saturday, Sunday or public holiday at the Area of Operations.

Closing Date means the date and time by which Tenders must be submitted as specified in the Request for Tender, as varied in accordance with these Conditions of Tender.

Conditions of Tender means this document containing the conditions of the tender process.

Confidential Information means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, during or after the Tender Period relating to the business, technology or other affairs of Perth Airport.

Contract means the proposed contract between Perth Airport and the Successful Tenderer for the performance of the Services.

Costs includes costs, charges and expenses, fines, penalties, demands, losses, damages, outgoings, payments, or other expenditure (whether direct, indirect, special or consequential and whether accrued or paid) including those incurred in connection with advisers.

Informal Tender has the meaning given to it in clause 2.6.

Late Tender has the meaning given to it in clause 2.7.

Personal Information means any information or an opinion about a natural person that is reasonably identifiable, including personal information as defined in the *Privacy Act 1998* (Cth) obtained, generated or disclosed in connection with the tender process.

Personnel means a party's Related Bodies Corporate and each of their respective officers, employees, agents and contractors.

Perth Airport means Perth Airport Pty Ltd ABN 24 077 153 130.

Perth Airport's Representative means the person identified in the Request for Tender as Perth Airport's Representative or an authorised delegate.

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth);
- (b) any privacy code approved by the Australian Information Commissioner under the *Privacy Act 1988* (Cth); and
- (c) any other applicable laws relating to the handling of Personal Information.

Related Bodies Corporate has the meaning given to it by sections 9 and 50 of the *Corporations Act 2001* (Cth).

Request for Tender means the request by Perth Airport for the submission of Tenders in respect of the Services and in accordance with these Conditions of Tender.

Services means the services and works that Perth Airport requires be performed under the Contract, as described in the Request for Tender.

Successful Tenderer means the Tenderer that is selected by Perth Airport to enter into the Contract.

Tender means a tender / proposal / quotation submitted by a Tenderer in response to the Request for Tender and in accordance with these Conditions of Tender.

Tenderer means any contractor tendering for the Services through the tender process (together, the **Tenderers**).

Tender Documents means the Request for Tender and all schedules, attachments, annexures and any Addenda issued by Perth Airport, including the Contract and these Conditions of Tender.

Tender Period means the period beginning on the date that the Request for Tender is released by Perth Airport and ending on the Closing Date.

Tender Validity Period means the period of time specified in the Request for Tender, as varied in accordance with these Conditions of Tender.

2 Conditions

2.1 Content of Tenders

- (a) The Tender must:
 - (i) include all of the information required by the Tender Documents, including these Conditions of Tender, and any other information requested by Perth Airport; and
 - (ii) be executed by the Tenderer in accordance with s127 of the *Corporations Act 2001* (Cth).
- (b) The Tender must not be amended post-submission unless agreed in writing between the Tenderer and Perth Airport.

2.2 Submission of Tenders

- (a) Tenders must be submitted and received by Perth Airport by the Closing Date and Time, in accordance with these Conditions of Tender.
- (b) Tenders are to be submitted electronically by email to Perth Airport's Representative.
- (c) Perth Airport may request hard copies of any or all documents submitted as part of the Tender.
- (d) Perth Airport may evaluate Tenders not submitted by the Closing Date in its absolute discretion.
- (e) A Tenderer who submits a Tender will be deemed to have warranted to Perth Airport that:
 - (i) the Tenderer has the necessary resources, experience, expertise and capacity to perform the Services;
 - (ii) the content of the Tender, including any statements and representations made in the Tender, is true and correct; and
 - (iii) it accepts all of the terms and conditions contained in these Conditions of Tender and any other terms and conditions included in the Request for Tender.

2.3 Tender Documents

- (a) The Tender Documents are the property of Perth Airport and may only be used by the Tenderer for the purpose of preparing a Tender.
- (b) Perth Airport reserves the right to vary any or all of the Tender Documents, including these Conditions of Tender.

- (a) If Perth Airport varies any aspect of the Tender Documents prior to the Closing Date, it will simultaneously notify all Tenderers by way of an addendum to the Request for Tender.

2.4 Exceptions and Qualifications

- (a) In its Tender, the Tenderer must provide details of any proposed qualifications or amendments to the Contract.
- (b) Perth Airport may, in its absolute discretion, decline to evaluate any Tender that contains qualifications or proposed amendments to the Contract.

2.5 Alternative Tenders

- (a) Alternative Tenders may be submitted with the conforming Tender and must be clearly identified and labelled as an Alternative Tender.
- (b) The Alternative Tender must include:
 - (i) a detailed description of all non-conformances with the Tender Documents (including the Conditions of Tender), including the manner of non-conformance; and
 - (ii) detailed explanations of how each non-conformance meets Perth Airport's commercial and technical objectives.

2.6 Informal Tenders

- (a) Tenders that do not comply with the requirements of these Conditions of Tender, or contain information not required by the Tender Documents, will be deemed an Informal Tender.
- (b) Perth Airport may evaluate Informal Tenders in its absolute discretion.

2.7 Late Tenders

- (a) Tenders submitted after the Closing Date will be deemed a Late Tender.
- (b) Perth Airport may evaluate Late Tenders in its absolute discretion.

2.8 Tender Enquiries

- (a) Tenderers may request further information or clarification of any matter relating to the tender process.
- (b) Requests for further information or clarification must be addressed to Perth Airport's Representative in writing, no later than ten (10) Business Days prior to the Closing Date.
- (c) Responses to requests for information or clarification will be simultaneously issued in writing to all Tenderers in the form of an addendum to the Request to Tender.
- (d) All enquiries and communications in relation to the tender process must be through the Perth Airport Representative. No other employees or representatives of Perth Airport are to be contacted in relation to the tender process, unless the Tenderer is directed to do so in writing by Perth Airport's Representative.
- (e) Perth Airport is not bound by any verbal advice or information provided by any employee or agent of Perth Airport.
- (f) Perth Airport reserves the right to disqualify or reject a Tender if a Tenderer does not comply with this clause 2.8.

2.9 Addenda

Each addendum to the Request for Tender will:

- (a) be made in writing and numbered consecutively;

- (b) be issued by Perth Airport simultaneously to all Tenderers; and
- (c) form part of the Tender Documents.

2.10 Right to Seek Further Information

- (a) Perth Airport may, at any time, request further information from a Tenderer in relation to any matter and the Tenderer must respond to any such request within the time required by Perth Airport. All responses must be in writing and addressed to Perth Airport's Representative.
- (b) Failure to respond to requests from Perth Airport for further information within the time stipulated may result in Perth Airport rejecting a Tender.
- (c) The Tenderer may be required to attend an interview with Perth Airport's Representative.

2.11 Monetary Values

- (a) For the purposes of this clause:
 - (i) "GST" means goods and services tax applicable to any taxable supplies as determined under the GST Act;
 - (ii) "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* and (where the context permits) includes the Regulations and the Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing with GST applying for the time being in the State of Western Australia; and
 - (iii) "Supply" and "Taxable Supply" have the same meanings as in the GST Act.
- (b) Where the subject of the Tender or any part thereof is a taxable supply under the GST Act, the price, fee or rates tendered by the Tenderer must be inclusive of all applicable GST at the rate in force for the time being.
- (c) Monetary values that appear in the Tender Documents are exclusive of GST.

2.12 Tenderer to Inform Themselves

- (a) By submitting a Tender, the Tenderer represents and warrants that it has:
 - (i) satisfied itself by its own investigations as to the content of the Tender Documents, any other information made available by Perth Airport to Tenderers as part of the tender process and the Area of Operations and its surroundings, conditions and characteristics (**Site Conditions**);
 - (ii) made appropriate allowance in the Tender for any effect of the Site Conditions;
 - (iii) examined all information relevant to, and made its own reasonable enquiries to fully inform itself of all, risks, contingencies and other circumstances that may affect its Tender and the proper performance of its obligations under the Contract and it will be deemed that adequate provision for these risks and contingencies have been accounted for in the Tender;
 - (iv) satisfied itself as to the correctness and sufficiency of its Tender, including the requirements of these Conditions of Tender and any rates or lump sums specified in the Tender (which will be deemed to cover the cost of complying with all obligations under the Contract and of all matters and things necessary for the due and proper performance of the Services as described in the Contract);
 - (v) informed itself of all matters relevant to the employment of labour and all industrial relations matters at the Area of Operations; and
 - (vi) otherwise undertaken all other due enquiries and investigations.

- (b) The Tenderer will, by submitting its Tender, be taken to have fully informed itself of all matters concerning the tender process.

2.13 Discrepancies, Errors and Omissions

- (a) Perth Airport makes no representations or warranties as to the correctness or completeness of the Tender Documents.
- (b) Perth Airport and its Personnel are not liable to a Tenderer with respect to any information provided by Perth Airport that is not accurate or complete.
- (c) If the Tenderer becomes aware of any discrepancy, error, ambiguity or omission in the Tender Documents, it must immediately notify Perth Airport's Representative in writing.
- (d) Perth Airport may, in its absolute discretion, issue an addendum to the Request for Tender as a result of a notification under this clause 2.13.

2.14 Tender Validity Period

- (a) Tenders must remain open for evaluation by Perth Airport for the Tender Validity Period, or such period as agreed in writing between the Tenderer and Perth Airport and will remain binding and be capable of acceptance at any time up to the expiration of that period.
- (b) A Tenderer may only withdraw its Tender prior to the expiration of the Tender Validity Period with the prior written consent of Perth Airport.

2.15 Site Visit

There is no site visit.

2.16 Evaluation Criteria

- (a) Tenders will be assessed against evaluation criteria set by Perth Airport in its absolute discretion.
- (b) Perth Airport may apply weightings to evaluation criteria.
- (c) Evaluation and comparison of Tenders is confidential to Perth Airport and will not be disclosed to Tenderers.

2.17 Acceptance or Rejection of Tender

- (a) Perth Airport is not bound to accept any Tender, including Informal Tenders, Late Tenders and Alternative Tenders.
- (b) The Successful Tenderer (if any) will be notified of the acceptance of its Tender by Perth Airport in writing.
- (c) All unsuccessful Tenderers will be notified of the rejection of their Tender by Perth Airport in writing.
- (d) Perth Airport may at any time, in its absolute discretion:
 - (i) accept or reject any Tender (in full or in part) without providing reasons;
 - (ii) change the structure or timing of the tender process;
 - (iii) invite any other contractor to participate as a Tenderer; or
 - (iv) award the Contract to multiple Tenderers or one Tenderer.
- (e) Any condition of quotation, offer or proposal of any nature appearing on any documents submitted with, or within a Tender, which constitutes a variation of, or omission from, or addition to the Tender Documents will be deemed to be excluded from the acceptance of a Tender to which such condition relates unless that same condition was submitted as part of an Alternative Proposal or has been specifically referred to and accepted by Perth Airport in writing.

2.18 Termination of the tender process

- (a) Perth Airport may, at any time, terminate the tender process.
- (b) Perth Airport will notify all Tenderers of any termination in writing.

2.19 Costs

- (a) Each Tenderer is liable for its own Costs, charges or expenses associated with any part of the tender process.
- (b) Perth Airport is not liable for any Costs, charges or expenses incurred by the Tenderer in connection with the tender process, including (but not limited to) providing any further information required by Perth Airport, information or presentations to Perth Airport or attendance for negotiations, site visits or interviews.

2.20 Conflict of Interest

- (a) The Tenderer must immediately notify Perth Airport if it becomes aware of any conflict of interest or any matter that may give rise to a conflict of interest, including issues which may impact on Perth Airport or the integrity of the tender process.
- (b) If the Tenderer fails to comply with this section, Perth Airport may in its absolute discretion:
 - (i) disqualify the Tenderer from the tender process;
 - (ii) if a Tender has already been submitted by the Tenderer, reject that Tender;
or
 - (iii) take the Tenderer's failure into account when evaluating its Tender.

2.21 Collusive Tendering

- (a) Joint Tenders must be disclosed in writing to Perth Airport and submitted in accordance with these Conditions of Tender.
- (b) With the exception of joint Tenders, the Tenderer must not enter into any agreement or arrangement with any other person or entity in relation to the preparation and submission of any Tender.
- (c) Without limitation, the pricing of a Tender must not take account of any amount to be paid to any unsuccessful Tenderer.
- (d) If Perth Airport becomes aware of any form of collusive tendering or other improper practice by any Tenderer in relation to the tender process, Perth Airport may:
 - (i) reject any Tender in its absolute discretion;
 - (ii) terminate the tender process; or
 - (iii) if a Successful Tenderer has already been selected, revoke its acceptance of that Tender.
- (e) Tenderers found by Perth Airport to be involved in collusive tendering or other improper practice may be barred by Perth Airport from tendering for future contracts for a period to be determined by Perth Airport.

2.22 Confidential Information and Privacy

- (a) The Tenderer may only use the Confidential Information for the purpose of preparing the Tender in accordance with these Conditions of Tender.
- (b) The Tenderer must ensure that its employees, advisers and consultants do not disclose or give to any person Confidential Information except:
 - (i) with Perth Airport's written consent, which consent may be given or withheld in its absolute discretion;

- (ii) if the Tenderer is required to do so by law;
 - (iii) if the information is in the public domain other than by reason of breach of this clause;
 - (iv) where it is reasonably necessary for the Tenderer to seek professional advice or to defend itself from any suit or claims.
- (c) The Tenderer must securely destroy or return to Perth Airport all documents provided by Perth Airport during the course of the tender process:
- (i) by the Closing Date, if a Tender is not submitted; or
 - (ii) immediately following notification by Perth Airport under clause 2.17(c), if a Tenderer is not successful.
- (d) To the extent permitted by law, Perth Airport will treat the Tender (including all supporting documents and materials) and all correspondence with the Tenderer as strictly confidential. Despite this, Perth Airport reserves the right to disclose some or all of the contents of a Tender:
- (i) if required to do so by law or court order;
 - (ii) if the information is in the public domain other than by reason of breach of this clause; or
 - (iii) where it is reasonably necessary for Perth Airport to seek professional advice or to defend itself from any suit or claims.
- (e) In respect of any Personal Information that the Tenderer collects, holds, uses and otherwise handles, or which is disclosed to the Tenderer, under or in connection with the Request for Tender, the Tenderer must comply with all provisions of the Privacy Laws and take all necessary steps to ensure that such Personal Information is protected against misuse, loss and unauthorised access.

2.23 Intellectual Property

- (a) All Tender and any accompanying documents become the property of Perth Airport and will not be returned to the Tenderer regardless of the outcome of the Tender.
- (b) The Tenderer must ensure that Perth Airport is lawfully able to use, copy, adapt and modify any material, document, information or thing comprised in any Tender, for any purpose relating to the Services, including without limitation for the purposes of any evaluation under these Conditions of Tender, and the Tenderer grants Perth Airport an unconditional irrevocable, royalty-free licence for these purposes.

2.24 Liability

To the maximum extent permitted by law, Perth Airport and its Personnel will have no liability to any Tenderer (whether based in contract, promissory estoppel, restitution, quantum meruit, quasi-contract, tort, statute or otherwise) in connection with or in relation to the Tender Documents, the Tenderer's participation in the tender process or any negotiations with a Tenderer. Without limiting the foregoing, Perth Airport will not be liable or responsible to any Tenderer in circumstances where Perth Airport:

- (a) terminates the tender process;
- (b) varies or amends the tender process;
- (c) does not select a Successful Tenderer; or
- (d) otherwise exercises any of its rights under these Conditions of Tender.