



**SYNERGY**

**ARIBA BIDDER AGREEMENT**

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## **B1 Definitions and Interpretation**

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### **B1.1 Definitions**

| <b>Term</b>               | <b>Meaning</b>   |
|---------------------------|--|
| <b>Bid</b>                | all the documents and information submitted by the Participant in response to the Bid Event.   |
| <b>Bidder Agreement</b>   | this agreement.  |
| <b>Bid Event</b>          | the competitive bid event for the supply of goods or services conducted through the Ariba site which may include a request for information, request for proposal or online auction.  |
| <b>Business Days</b>      | a day on which banks are open for general banking business in Western Australia excluding a Saturday, Sunday or public holiday.  |
| <b>Closing of Bids</b>    | the date and time specified in the Bid Event for when Bids must be received by.  |
| <b>Code</b>               | the Western Australian Building and Construction Industry Code of Conduct 2016. The Code can be downloaded from: <a href="http://www.commerce.wa.gov.au/publications/wa-building-and-construction-industry-code-conduct-2016">http://www.commerce.wa.gov.au/publications/wa-building-and-construction-industry-code-conduct-2016</a> . |
| <b>Conforming Bid</b>     | a Bid which conforms with the requirements of the Bid Event.   |
| <b>Contract</b>           | the contract to be executed between Synergy and the successful Participant as a result of the Bid Event.   |
| <b>ILAS</b>               | Industry Link Advisory Service.  |
| <b>Non-conforming Bid</b> | a Bid which does not conform with the requirements of the Bid Event as determined by Synergy, acting reasonably, or a Bid containing departures from or alternative options to a Conforming Bid.   |
| <b>Order</b>              | a purchase order or a statement of work issued to the Panel Member confirming the Requirements.  |
| <b>Panel</b>              | the panel of Panel Members selected to provide the Requirement.  |

| <b>Term</b>                        | <b>Meaning</b>   |
|------------------------------------|--|
| <b>Panel Members</b>               | the two or more Participants appointed to the Panel.   |
| <b>Participant</b>                 | the party or parties submitting a Bid.   |
| <b>Participation Objectives</b>    | the criteria or objectives against which Synergy will assess Section B of the Participation Plan, as outlined in the Requirement.    |
| <b>Participation Plan</b>          | as defined in clause B2.6(b).  |
| <b>Qualitative Requirement</b>     | a weighted qualitative evaluation criterion to be used by Synergy in evaluating a Bid.   |
| <b>Related Entity</b>              | as defined in paragraph 4.1 of the Code.   |
| <b>Requirement</b>                 | the supply of the goods or services as described in the Bid Event.   |
| <b>Scope of Work</b>               | the scope of work as set out in the Bid Event which describes the requirements that must be met under the Contract.                  |
| <b>Site</b>                        | the Ariba sourcing platform at <a href="http://synergy.supplier.ariba.com">http://synergy.supplier.ariba.com</a> owned by Ariba Inc. |
| <b>Template Participation Plan</b> | means the template participation plan set out in the Bid Event.  |
| <b>Validity Period</b>             | the validity period referred to in the Bid Event.  |
| <b>WAIPS</b>                       | the Western Australian Industry Participation Strategy.  |

## **B2 Preparation of Bid**

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### **B2.1 Whole of the Requirement**

- (a) Unless otherwise provided, the Bid must be for the execution and completion of the whole of the Requirement in accordance with the Bid Event.

- (b) The Participant must complete all components requested in the Bid Event.

## **B2.2 Non-conforming Bids**

- (a) Any purported variation of the:
  - (1) General Conditions of Contract; or
  - (2) Scope of Work,in a Bid is of no contractual force or effect unless the variation has been:
  - (i) listed as a departure in the Bid; and
  - (ii) accepted by Synergy by executing the Contract.
- (b) Any Participant submitting a Non-conforming Bid must at the same time submit a Conforming Bid and, if it is unable to do so, must inform Synergy in writing of the reason for its inability to conform.
- (c) A Non-conforming Bid not accompanied by a Conforming Bid or an acceptable explanation for its non-conformance may be rejected by Synergy at its absolute discretion.

## **B2.3 Language**

- (a) The Participant must complete the Bid in the English language. Any documents forming part of the Bid which are published in a language other than English must be accompanied by a translation.

## **B2.4 Units of measurement**

- (a) Measurements and quantities must be in units consistent with the *Weights and Measures (National Standards) Act 1960* or in the absence of any specification, must be in accordance with the *Australian Metric Tables* and *Australian Standard AS1000 The International System of Units (SI)* and its application.

## **B2.5 Application of the Code**

- (a) In submitting a Bid in response to the Bid Event, the Participant acknowledges and agrees that it may be subject to the Code, and must comply with each of the obligations described in the Code, for the duration of the process contemplated by this Bidder Agreement.
- (b) If the Participant is awarded the Contract as a result of the process contemplated by this Bidder Agreement, in accordance with clause B8, the Participant will additionally be subject to the Code, and obliged to comply with each of the obligations described in the Code, for the duration of the Contract.
- (c) Potential Participants should note that obligations under the Code are not confined to the Requirements the subject of this process, but also extend to Private Covered Building Work (as defined in the Code) undertaken by the Participant.
- (d) Potential Participants are strongly encouraged to review the Code before submitting a Bid.

## **B2.6 Participation Plan**

- (a) The *Western Australian Jobs Act 2017 (WA)* and the WAIPS made under it contain obligations for agencies to require from prospective suppliers, and to assess, participation plans in connection with the supply of goods or services to or for agencies or the State of Western Australia.
- (b) The Participant must submit to Synergy a participation plan with or as part of its Bid which addresses each of the matters outlined in the Template Participation Plan (**Participation Plan**).
- (c) ILAS is part of the Industry Development division of the Department of Jobs, Tourism, Science and Innovation and is located at Level 6, 1 Adelaide Terrace, East Perth, Western Australia 6004. ILAS plays a key role in liaising with agencies and bidders in WAIPS applicable projects and procurements. ILAS is able to provide advice to Participants on preparation of a Participation Plan and on maximising the opportunities for local industry and workers. More information on ILAS can be found at <https://industrylink.wa.gov.au/advisory-services/services-to-state-government-agencies/industry-link-advisory-service>
- (d) All requests for assistance from ILAS need to be made not later than 5 Business Days prior to the Closing of Bids in order to allow ILAS sufficient time to respond.
- (e) Synergy will, in its value for money assessment, consider as a Qualitative Requirement the extent to which Section B of the Participation Plan meets the Participation Objectives.
- (f) Synergy reserves the right to reject any Bid that does not contain a Participation Plan which properly addresses the matters outlined in the Template Participation Plan.
- (g) The Participation Plan Qualitative Requirement will be weighted at either ten (10) percent or twenty (20) percentage of the qualitative evaluation of the Bid, as determined by Synergy at its absolute discretion.
- (h) Synergy may at its absolute discretion reduce the score allocated to the Participation Plan Qualitative Requirement by an amount determined by Synergy, if Section A of the Participation Plan is not completed to the satisfaction of Synergy.

## **B3 Bid Event process issues**

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### **B3.1 Discrepancies, errors and omissions in the Bid Event**

- (a) If the Participant finds any discrepancy, error or omission in the Bid Event, it must immediately notify Synergy in writing on or before the Closing of Bids.
- (b) If a Participant has any doubt as to the meaning of any portion of the Bid Event, the Participant must ask Synergy in writing for clarification. The clarification provided is only valid if issued by Synergy in writing.
- (c) Synergy may issue any clarification given under this clause B3.1 to all other prospective Participants.

### **B3.2 Communications with Synergy**

- (a) All communications between the Participant and Synergy upon which the Participant intends to rely for the purposes of its Bid must be in writing through the Site.

### **B3.3 Addenda and further information**

- (a) Synergy reserves the right at any time and from time to time to issue variations, additions to, or deletions from all or any part of the Bid Event.
- (b) At any time after the lodging of a Bid, Synergy is entitled to request further information from the Participant about its Bid and the Participant must promptly provide the information in writing through the Site.
- (c) If Synergy amends any part of the Bid Event and requires that the Participant comply with the amended Bid Event, Synergy will notify the Participant, and may, in its absolute discretion, extend the Closing of Bids.

### **B3.4 Joint Bids**

- (a) Synergy will not accept a Bid lodged on behalf of two or more persons or corporations unless Synergy has granted prior written approval to the lodgement of that Bid.

### **B3.5 Participant's financiers**

- (a) If:
  - (1) the Participant requires financing in order to undertake the Requirements; and
  - (2) Synergy chooses to enter into negotiations with the Participant,the Participant must ensure that a representative of the financier attends those negotiations to agree the final form of the Contract with Synergy unless Synergy advises otherwise. Synergy will not enter into separate negotiations with the Participant and its financiers.

### **B3.6 Regulated and hazardous substances and dangerous goods**

- (a) A Bid which involves the use of material containing the regulated or hazardous substances or dangerous goods will not be accepted where suitable alternative material is available which does not contain those substances nor must they be taken onto Synergy's site.

## **B4 Lodgement of Bids**

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### **B4.1 Bids through Site only**

- (a) Participants agree to submit Bids only through the Site and not to submit Bids via any other mechanism including, but not limited to, email, post, courier, fax, or verbally unless specifically requested by Synergy.

## **B4.2 Time for lodgement**

- (a) Bids must be received by Synergy on or before the Closing of Bids or as otherwise directed by Synergy.

## **B4.3 Extension of time**

- (a) If an extension of time to the Closing of Bids is granted by Synergy the extension of time will apply to all Participants and the Closing of Bids will be extended accordingly.
- (b) In the event of an extension under clause B4.3(a) being granted, Bids already submitted may be withdrawn and may be amended and resubmitted in accordance with the Bid Event.

## **B4.4 Bid validity**

- (a) Any Bid lodged in accordance with, and not rejected by Synergy as not complying with the Bid Event, remains valid and binding upon the Participant for the Validity Period and must not be withdrawn or amended prior to the expiration of the Validity Period without the prior written consent of Synergy.
- (b) The Validity Period may be extended by written agreement between Synergy and the Participant.

## **B5 Subcontracts**

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### **B5.1 Conditions of subcontracts**

- (a) The Participant must not submit to Synergy separate sub-Bids or separate comments on the Bid Event emanating from manufacturers or suppliers, or conditions which are restricted to the guarantees obtained from a subcontractor or supplier, except where proprietary brands are specified by Synergy.

### **B5.2 Subcontractors**

- (a) Synergy's acceptance of the Bid does not mean that Synergy accepts the proposed subcontractors and does not diminish the contractor's or consultant's obligations nor Synergy's rights to subsequently approve or not approve those subcontractors under the Contract.

## **B6 Participant's warranties, acknowledgments and obligations**

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### **B6.1 Participant's warranties**

- (a) In submitting the Bid, the Participant warrants:
  - (1) that it has carried out all relevant investigations as appropriate concerning the following and has taken the following into account in its Bid:
    - (i) all information which is relevant to the risks, contingencies and other circumstances which could affect the Bid and which could be reasonably obtained;



- (ii) the means of access to and from and facilities at the relevant Synergy site and transport facilities for deliveries to the site;
  - (iii) the availability of labour for the performance of the Requirement; and
  - (iv) the latest editions of Synergy's policies and guidelines listed in the Bid Event.
- (2) the correctness and sufficiency of its Bid and that the price covers the cost of performing the Requirements in accordance with the Contract, including having regard to the risks mentioned in (1) above;
  - (3) that it has taken professional advice as is appropriate for the preparation of the Bid;
  - (4) the accuracy and completeness of all information provided by the Participant in its Bid;
  - (5) that it has and will maintain the necessary experience, skill and expertise to perform and complete the Requirement in accordance with the Contract;
  - (6) it will maintain at adequate levels throughout the period of the Contract all resources required for the proper completion of the Requirement within the time required under the Contract including, skilled manpower, finance, material, and office and factory buildings and facilities;
  - (7) that the Bid is in all respects an independent Bid and that no collusion has taken place between the Participant and any other prospective Participant or interested party in the preparation of the whole or any part of the Bid; and
  - (8) that it has complied with the Code and disclosed the existence of any finding of material Code non-compliance (as defined in paragraph 30.2 of the Code) against it or its Related Entities.

## **B6.2 Participant's acknowledgements**

- (a) The Participant acknowledges that:
  - (1) Synergy does not purport to comprehensively describe the scope of the Requirement, or provide all of the information that the Participant or the Participant's advisors would desire or require in reaching decisions in relation to, or in its assessment of, the Requirement in order to prepare its Bid;
  - (2) Synergy does not warrant or guarantee the accuracy of the information provided by Synergy in the Bid Event and takes no responsibility for that information;
  - (3) a document in electronic form has the same effect as a written document, and is considered to be "in writing";
  - (4) information provided via electronic communication has the same effect as if that information was in written form and is considered to be "in writing";
  - (5) the Participant must make its own interpretations, deductions and conclusions from the information made available and its own investigations and must

accept full responsibility for those interpretations, deductions and conclusions;  
and

- (6) Synergy does not accept any responsibility for computer viruses and the Participant should conduct its own checks for computer viruses.

### **B6.3 Participant's obligations**

- (1) Synergy reserves the right to engage (at its own cost) an independent financial assessor as a nominated agent ("**Synergy's Financial Agent**") to conduct financial assessments under conditions of strict confidentiality. For this assessment to be completed, a representative from Synergy's Financial Agent may contact the Participant concerning the financial information that it is required to provide.
- (2) The Participant shall undertake to provide to Synergy's Financial Agent upon request all such information reasonably requires to satisfy Synergy that the Participant is financially viable and has the financial capability to undertake the Scope of Work and to otherwise meet its obligations under the Contract.
- (3) The financial assessment is for use by Synergy for the purpose of assessing Participant's capability to delivering the Scope of Work and will be treated as strictly confidential.

### **B7 Reservation of Synergy's rights**

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- (a) Synergy reserves the right to, at its absolute discretion:
  - (1) suspend, end, reinstate or vary the Bid Event;
  - (2) repeat any stage in the Bid Event;
  - (3) cancel, supplement, modify or replace the Bid Event or this Bidder Agreement;
  - (4) alter the scope of the Requirement, including the technical requirements;
  - (5) not proceed with the Requirement at all or in the manner outlined in the Bid Event;
  - (6) elect not to select any Participant as the successful Participant;
  - (7) extend the Closing of Bids;
  - (8) accept or reject:
    - (i) a partial Bid;
    - (ii) a Bid that was submitted after the Closing of Bids; or
    - (iii) a Bid, if the Participant or the Bid does not comply with the Bid Event;
  - (9) not accept the lowest or any Bid;

- (10) exclude any Bid from further consideration once Synergy has considered it;
- (11) obtain further, revised or replaced Bids from one or more Participants;
- (12) negotiate or clarify matters with any Participant, including negotiating with one or more Participants or negotiating on different issues with different Participants;
- (13) reject a Bid if the Participant does not comply with any reasonable request from Synergy to submit further information or documents;
- (14) establish a shortlist of Participants with which to negotiate;
- (15) hold one or more Participants in reserve;
- (16) decline to answer certain queries from a Participant;
- (17) refuse participation by a particular party at any time in the Bid Event;
- (18) allow further parties to participate in the Bid Event at any time;
- (19) allow a Participant to withdraw from the Bid Event;
- (20) enter into the Contract without prior notice to the other Participants;
- (21) rely on publicly available information relating to a Participant and any of its advisors, consultants, subcontractors, suppliers or financiers as part of the evaluation of a Bid;
- (22) take other action as Synergy considers, at its absolute discretion, appropriate in relation to the Bid Event;
- (23) waive any requirements or obligation under the Bid Event, in which case that waiver will not affect any other requirements or obligations contained in the Bid Event; and
- (24) exclude a Participant from further consideration in this process if the Participant or any of its Related Entities are subject to a current finding of material Code non-compliance (as defined in paragraph 30.2 of the Code), irrespective of whether such status was disclosed by the Participant in its Bid, and irrespective of whether such finding was current as at the date of the Bid.

## **B8 Award of Contract**

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### **B8.1 Executed Contract**

- (a) Subject to clause B8.3, the Contract shall be awarded upon the preferred Participant and Synergy executing the Contract.

### **B8.2 Acceptance of portions**

- (a) If the Bid Event divides the Requirement into portions Synergy may, unless the Bid Event otherwise provides, accept a Bid from one or more Participants and for one or more of those portions as Synergy deems fit.

### **B8.3 Panel arrangements**

- (a) Where the Contract the subject of this Bidder Agreement is a master agreement, Synergy reserves the right to award the Contract to two or more Participants and create a panel arrangement.
- (b) If Synergy creates a panel arrangement, Synergy reserves the right to:
  - (1) appoint as many Panel Members as it seems fit; and
  - (2) add or remove Panel Members from the Panel at its discretion.
- (c) Synergy makes no representation that it will procure or seek Requirements or any particular volume of Requirements from a Panel Member, and, a Panel Member may not receive any Orders from Synergy during the term of the Contract.
- (d) Panel Members will be accessed from the Panel on an “as required” basis.
- (e) Appointment to the Panel does not give the Panel Member an exclusive right to supply the Requirements to Synergy, and Synergy may seek quotes for the Requirements from outside the Panel at its discretion.

## **B9 Property and Copyright in the Bid Event and Bid**

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### **B9.1 Property in the Bid Event**

- (a) The Bid Event is the property of Synergy.
- (b) All rights of intellectual property, including copyright, in the Bid Event and other documents supplied to the Participant by or on behalf of Synergy are the property of Synergy, and they must not be used by the Participant for purposes other than the preparation of a Bid except with the prior written approval of Synergy.

### **B9.2 Copyright in the Bid**

- (a) Any copyright in the Bid remains the property of the Participant. In submitting the Bid, the Participant consents to reproduction of the Bid for:
  - (1) Synergy’s internal use; and
  - (2) satisfaction of Synergy’s statutory requirements and obligations.

### **B9.3 Freedom of Information Access**

- (a) The Participant should be aware that the intent of the *Freedom of Information Act 1992 (WA)* is to provide access to information held by Synergy. However, at the same time the *Freedom of Information Act 1992 (WA)* makes clear provision for the protection of certain personal and commercial/business information.
- (b) The Participant should note that Synergy is legally bound to the requirements of the *Freedom of Information Act 1992 (WA)* and that the Bid may become the subject of an application.

- (c) All freedom of information applications will be dealt with in accordance with the provisions of the *Freedom of Information Act 1992 (WA)*.

## **B10 Confidentiality and Publicity**

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- (a) The Participant acknowledges and agrees that the Bid Event and the related data and information (including price information) exchanged between Synergy and the Participant ("**the parties**") relating to the Bid or subsequently produced following award of the Bid may include:
- (1) trade secrets of either or both the parties;
  - (2) information that has a commercial value to either or both the parties that will be destroyed or diminished by publication; or
  - (3) information about the business, professional, commercial or financial affairs of either or both parties that will be destroyed or diminished by publication,
- ("Confidential Information")**.
- (b) Each party must keep the other party's Confidential Information confidential and must not, without the other party's prior written consent, disclose or permit its disclosure. This does not apply to:
- (1) information in the public domain prior to the date of this agreement;
  - (2) information which becomes public or available to the general public otherwise than through any act or default by a party; and
  - (3) information that a party is required to disclose by an applicable law or legally binding order, or a requirement of a stock exchange or regulator.

## **B11 Exclusion of liability**

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- (a) Synergy's total aggregate liability to the Participant arising under, out of, or in connection with the Bid Event and the Bid Event under statute, contract or in tort (for negligence or otherwise) or any other basis in law or equity, is limited to zero dollars.