



**Transport**  
Roads & Maritime  
Services

**Request for Expressions of Interest  
for**

**M4 Smart Motorway**

**Stage 2 and / or Stage 3**

**EOI No: *17.0000302514.1017***

**18 August 2017**

**For Roads and Maritime Services**

# Request for Expressions of Interest

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**Appendix 1 – Documentation Available to EOI Respondents as Information Only**

**Appendix 2 – Deed of Disclaimer**

**Appendix 3 – Project Location**

# 1 GENERAL

## 1.1 Introduction

Managed motorways use complementary technologies to monitor traffic conditions, manage congestion and respond to incidents in real-time.

The M4 Smart Motorway project will introduce these technologies to the M4 motorway resulting in the use of real-time information, communication and traffic management tools to provide motorists with a safer, smoother and more reliable journey.

The project is now in the detailed design phase where the concept design is further refined in preparation for construction. Activities during detailed design include further field investigations, traffic and noise modelling, identification of noise mitigation measures and consultation with property owners, councils and other stakeholders.

Detailed design for Stage 2 and Stage 3 is nearing completion, with the detailed design of the entire project scheduled for completion shortly. A joint EOI for Stage 2 and Stage 3 is being conducted with the aim of short listing a number of respondents to progress to individual RFT's for both stages.

## 1.2 The Project

Roads and Maritime Services (Roads and Maritime) proposes to deliver the M4 Smart Motorway project via five construct-only contract packages.

The five packages are as follows:

- Stage 1 – Node 3 (east of Reservoir Rd) to Node 4 (east of Mamre Rd) - construction contract awarded in June 2017
- Stage 2 – Nodes 3 (east of Reservoir Rd) to Pitt St overbridge + mainline ITS signs and gantries
- Stage 3 – Node 4 (east of Mamre Rd) to Node 5 (east of Mulgoa Rd)
- Stage 4 – Mulgoa Rd interchange
- Stage 5 – Node 5 (east of Mulgoa Rd) to Lapstone

The location of the Project is shown in **Appendix 3**.

The proposed scope of work for M4 Smart Motorway Stage 2 includes:

- Noise wall construction works
- Replacement of some sections of the existing power and communications cableway between Pitt Street overpass and Node 3 (east of Reservoir Road)
- Upgrade of some sections of the existing power and communications cableway between Pitt Street overpass and Node 3 (east of Reservoir Road)
- Civil and ITS mainline upgrades between Pitt St overpass and Reservoir Road interchanges including new maintenance bays, vehicle detection and CCTV cameras.
- Installation of civil works and footings for Integrated Speed and Lane Use Sign (ISLUS) gantries and VMS between Pitt Street overpass and Reservoir Road interchanges (please note the scope does not include the delivery of ISLUS gantries and VMS signs).
- Installation of Integrated Speed and Lane Use Signs (ISLUS), gantries and VMS between Pitt Street overpass and Cumberland Highway interchange.

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- Civil and ITS ramp upgrades to four entry ramps, including noise walls, ramp metering signals, ramp control signs, vehicle detection and CCTV cameras at:
  - Burnett Street eastbound entry ramp
  - Coleman Street eastbound entry ramp
  - Cumberland Highway eastbound entry ramp
  - Cumberland Highway westbound entry ramp
- Civil and ITS ramp upgrades to two exit ramps, including pavement widening, noise walls, vehicle detection and CCTV cameras at:
  - Cumberland Highway eastbound exit ramp
  - Cumberland Highway westbound exit ramp
- Mandatory Option B1 - Installation of Integrated Speed and Lane Use Signs (ISLUS), gantries and VMS between Cumberland Highway and Reservoir Road.
- Mandatory Option B2 - Installation of Integrated Speed and Lane Use Signs (ISLUS), gantries and VMS between Reservoir Road and Roper Road.
- Mandatory Option B3 - Installation of Integrated Speed and Lane Use Signs (ISLUS), gantries and VMS between Roper Road and The Northern Road.
- Mandatory Option B4 - Installation of Integrated Speed and Lane Use Signs (ISLUS), gantries and VMS between The Northern Road and Lapstone.

The proposed scope of work for M4 Smart Motorway Stage 3 includes:

- Noise wall construction works
- Replacement of some sections of the existing power and communications cableway between Node 4 (east of Mamre Road) and Node 5 (east of Mulgoa Road)
- Upgrade of some sections of the existing power and communications cableway between Node 4 (east of Mamre Road) and Node 5 (east of Mulgoa Road)
- Civil and ITS mainline upgrades between Mamre Road and Mulgoa Road interchanges including new maintenance bays, vehicle detection and CCTV cameras.
- Installation of civil works and footings for Integrated Speed and Lane Use Sign (ISLUS) gantries and VMS between Mamre Road and Mulgoa Road interchanges (please note the scope does not include the delivery of ISLUS gantries and VMS signs).
- Civil and ITS ramp upgrades to two entry ramps, including noise walls, ramp metering signals, ramp control signs, vehicle detection and CCTV cameras at:
  - Mamre Road eastbound entry ramp
  - Mamre Road westbound entry ramp
- ITS ramp upgrades to one entry ramp, including ramp metering signals, ramp control signs, vehicle detection and CCTV cameras at:
  - Werrington Arterial (Kent Road) entry ramp
- Civil and ITS ramp upgrades to one exit ramps, including pavement widening, noise walls, vehicle detection and CCTV cameras at:
  - Mamre Road eastbound exit ramp
- Mandatory Option C1 - ITS ramp upgrades to two entry ramps at The Northern Road including ramp metering signals, ramp control signs, vehicle detection and CCTV cameras.

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The detailed design and documentation of Stage 2 and Stage 3 is currently 80% complete. The design and documentation will be completed prior to the release of the Request for Tender (RFT) documentation.

A listing of information that may be made available to any recipients of this Request for EOI in the EOI Phase is provided in **Appendix 1**. The documents referenced in Appendix 1 are subject to the disclaimers in clause 10.8 and the Deed of Disclaimer.

Prior to the release of the information listed in Appendix 1 to an entity, the entity requesting the information must complete and submit the Deed of Disclaimer as provided in **Appendix 2**. The information listed in Appendix 1 will only be released to that entity on the later of:

- a) 1 day after receipt of a properly executed Deed of Disclaimer (including, if applicable, evidence acceptable to Roads and Maritime of the authority of the signatory/ies to bind the entity); and
- b) 2 days after the issue of this Request for EOI.

Delay by an entity in providing a properly executed Deed of Disclaimer (and supporting evidence acceptable to Roads and Maritime, if applicable) will not prevent Roads and Maritime from releasing the information listed in Appendix 1 to any other entity.

### 1.3 Environmental Approvals

Roads and Maritime has obtained the following determinations for this Project:

- M4 Smart Motorway, Review of Environmental Factors, March 2015

Addendum to the M4 Smart Motorway Project REF covering Stage 2 and Stage 3 are currently under development. REF Determination is anticipated to be achieved prior to the issue of RFT documents later in 2017.

Upon achieving REF Determination, Roads and Maritime will seek single Environmental Protection Licences (EPL) covering the entirety of the individual Stages of work. The EPL's will be transferred to the Contractors upon contract award.

Further Project information, including the Reviews of Environmental Factors and the Submissions Reports mentioned above can be found on the Roads and Maritime website by following these links:

<http://www.rms.nsw.gov.au/projects/sydney-west/m4/project-documents.html>

### 1.4 Project Interfaces

The Stage 3 scope of works includes work at The Northern Road (TNR) interchange. This interchange is currently being upgraded under a separate D&C contract. Scheduling of all works impacting The Northern Road interchange requires coordination with the D&C contractor. However, during the EOI phase of procurement no contact is to be made with the TNR D&C contractor. All contact is to be via Roads and Maritime.

Roads and Maritime is interested in the Respondent's innovative approaches to traffic management to mitigate any potential impacts and ensure the successful delivery of Roads and Maritime's M4 Smart Motorway construction program.

## 2 CALL FOR EXPRESSIONS OF INTEREST

Expressions of Interest (EOI) are being invited from organisations wishing to be shortlisted to tender for the proposed contracts for construction of Stage 2 and/or Stage 3 of the M4 Smart Motorway project.

The proposed contracts will incorporate the C2-GC21 General Conditions of Contract available via the Roads and Maritime website. It is anticipated that the contracts will incorporate minor amendments to cater for the scale and value of this Project. Specific changes to the contracts will be made available at the RFT Phase.

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Respondents are asked to nominate their preference to be considered for either Stage 2, Stage 3 or both stages in their EOI submission.

The Principal in the proposed contract will be Roads and Maritime.

Responses to this Request for EOI must be submitted electronically to eTender no later than **2:30pm on 8 September 2017**.

### **3 THE PROCUREMENT PROCESS**

The selection of the Contractors to undertake the Projects will involve a two stage tendering process as set out below.

#### **A. Expression of Interest**

A joint EOI for Stage 2 and Stage 3 will be conducted during which respondents will nominate their preference to be considered for inclusion in the RFT for Stage 2, Stage 3 or both stages. This phase will include:

- a) an EOI briefing;
- b) the issue of this Request for EOI;
- c) submission of Responses by Respondents in accordance with this Request for EOI;
- d) evaluation of Responses;
- e) Interviewing respondents and
- f) shortlisting Tenderers from the Respondents which will proceed to individual RFT Phases.

#### **B. Request for Tender - Stage 2**

The RFT Phase will involve calling for tenders from the shortlisted Respondents for the construction of the Project and will include:

- a) the issue of the RFT;
- b) a pre-Tender meeting;
- c) a 5-7 week tender preparation period;
- d) an evaluation period which may include an opportunity for Tenderers to participate in limited structured interactive sessions with Roads and Maritime; and
- e) selection of a Preferred Tenderer.

#### **C. Request for Tender - Stage 3**

The RFT Phase will involve calling for tenders from the shortlisted Respondents for the construction of the Project and will include:

- a) the issue of the RFT;
- b) a pre-Tender meeting;
- c) a 5-7 week tender preparation period;
- d) an evaluation period which may include an opportunity for Tenderers to participate in limited structured interactive sessions with Roads and Maritime; and
- e) selection of a Preferred Tenderer.

#### **3.1 Expression of Interest Phase**

The objective of the EOI Phase is to identify and shortlist organisations that have demonstrated suitable capacity, capability and experience to carry out the proposed works.

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An Evaluation Panel will be convened by Roads and Maritime to evaluate the Responses on the basis of the evaluation criteria set out in clause 5 of this Request for EOI.

The Evaluation Panel will identify the Respondents that it considers best satisfy the evaluation criteria. The current intention is for the Evaluation Panel to recommend two (2) Respondents to be shortlisted and invited to submit Tenders for each Stage of the project. Roads and Maritime reserve the right to increase the number of short listed respondents as it sees fit.

Roads and Maritime will determine which of the Respondents will be shortlisted. Respondents may be shortlisted for more than one RFT. Only organisations that are shortlisted through this EOI Phase will be eligible to submit Tenders.

### 3.2 Request for Tender Phase

On commencement of the RFT Phase, Tenderers will be issued with the RFT documentation that will outline the process and the requirements for Tenderers.

The RFT will provide details of the development of the Project including the Project design and specifications and detail the requirements to be met by the Tenderers.

The RFT Phase may include limited interactive sessions between each Tenderer and Roads and Maritime. These interactions will draw Tenderers' attention to the key Project issues and allow clarification of related requirements.

The evaluation process will be developed and implemented to ensure that a fair and objective process and best value for money outcome is achieved for the Tenderers, Roads and Maritime and the NSW Government.

It is envisaged that the evaluation process will take approximately 4-6 weeks. However, Roads and Maritime may (in its absolute discretion) vary the sequence and timing of the process for any reason.

### 3.3 Indicative Timetable

An indicative timetable for the procurement process is as follows:

EOI briefing:	9 August 2017
Expressions of Interest open:	18 August 2017
Expressions of Interest close:	8 September 2017
Shortlisting of Tenderers and Respondent notifications issued:	October 2017

## 4 FURTHER INFORMATION

### 4.1 Contact Person

All requests for information or clarification about this EOI process must be referred in writing to the following Contact Person:

Name:	Moinur Rahman
Telephone number:	0411 559 060
e-mail address:	Moinur.RAHMAN@rms.nsw.gov.au

### 4.2 Addenda to this Request for EOI

Roads and Maritime may amend this Request for EOI or issue additional information as a result of a Respondent's request for clarification or for any other reason. Any such Addenda or additional information will form part of this Request for EOI.



### 4.3 EOI Briefing for Potential Respondents

An EOI briefing session informing potential Respondents about the Stage 2 and Stage 3 works was held on 9 August 2017. Attendance at the EOI Briefing was not a mandatory requirement for submitting a Response to this Request for EOI.

A written record of all questions asked at the briefing and the answers given has been made available to potential Respondents.

## 5 SELECTION AND EVALUATION CRITERIA

### 5.1 Mandatory Selection Criteria

To be considered for shortlisting to Tender, Respondents must demonstrate that they meet minimum requirements in respect of the following mandatory criteria:

- Minimum Prequalification Levels;
- Confirmation of appropriate WHS accreditation;
- Confirmation of compliance with relevant Codes;
- Sufficient financial resources and liquidity to satisfactorily undertake the Project; and
- Parent Company Guarantee.
- Proven experience in the implementation of effective construction staging for road infrastructure construction projects

The requirements for these mandatory criteria are set out below and are to be addressed in Returnable Schedule 2.

#### 5.1.1 Confirmation of Prequalification

A Respondent must demonstrate its prequalification under the National Prequalification System for Civil (Road and Bridge) Construction Contracts at Category B2 for bridgeworks, R5 for roadworks and financial capacity level F100+.

#### 5.1.2 Confirmation of appropriate WHS accreditation

The Respondent must provide its accreditation status, including the expiry date of accreditation, or evidence that accreditation is being sought under the Australian Government Building and Construction WHS Accreditation Scheme.

#### 5.1.3 Confirmation of compliance with relevant Codes

Respondents must comply with the Building Code. Respondents must attach a signed "Declaration of Compliance" in the form set out in Attachment 2B to Returnable Schedule 2.

It is a mandatory selection requirement that Respondents comply with the Building Code, including at the time of lodgement of their Response. It is also a mandatory selection requirement that, at the time of lodgement of their Response, the Respondent must not be:

- precluded from tendering for Australian Government funded building and construction work

In addition, it is a mandatory selection requirement that Respondents must comply with the NSW Code and NSW Guidelines. Please refer to clause 10.2 in this regard. Respondents must attach in this response a signed "Schedule of Compliance" in the form set out in Attachment 2C to Returnable Schedule 2.

#### 5.1.4 Financial resources and liquidity

**Note: financial information is not to be forwarded with the Response.**

The Respondent must have sufficient financial resources and liquidity, as determined by Roads and Maritime in its absolute discretion, to satisfactorily undertake the Project. The Respondent and each Participant must acknowledge and agree in their Response to provide all information requested by Roads and Maritime during the EOI Evaluation, including that outlined at section

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5.1.5, to be used in assessing the financial capability of the Respondent's and each Participant's capacity to construct the Project and the Parent Company's financial capacity.

Where the Respondent or Participant is a trustee, the financial information will be required for both the trust and the trustee.

### 5.1.5 Mandatory financial information to be provided on request

**Note: financial information is not to be forwarded with the Response.**

The financial information requested from the Respondent and each Participant may include at least the following:

- A. Financial statements for the past three financial years
  - 1. Financial statements should preferably be prepared in accordance with Australian Accounting Standards. Financial statements should contain a Balance Sheet, Profit and Loss Statement (summary and detailed), Statement of Cash Flows, Notes to the Accounts, Compilation Report (if externally prepared), Director's / Trustee Report (if prepared), and Auditor's Report (if required to be audited).
  - 2. Most recent half-yearly or management accounts (preferably no more than 6 months old).
  - 3. Forecast Balance Sheet and Profit & Loss to the end of the current financial year.
  - 4. Forecast Cash Flow Statements to the end of the current financial year.
- B. Contracting entity
  - 1. The Respondent must ensure that the financial information provided relates to the contracting entity itself.
- C. Business details
  - 1. Brief description of business and company history.
- D. Ownership and structure
  - 1. Details of shareholders, directors and executive managers including their background and experience and contingency plans for risk management.
  - 2. An organisational chart showing internal management structure and key positions.
- E. Wider corporate structure
  - 1. Diagram of corporate relationships and listing of related parties.
  - 2. Listing of all related party loans.
- F. Key customers
  - 1. For 20 largest clients, prepare information including client name, number of jobs completed in last 12 months and percentage of total revenue in last 12 months.
- G. Working capital management
  - 1. Ageing analysis of all trade debtors and trade creditors i.e. 1-30 days, 31-60 days, 61-90 days, over 90 days.
  - 2. Individual ageing debtor analysis of top 50 trade debtors by total amount owed.
  - 3. Individual ageing creditor analysis of top 50 trade creditors by total amount owing.
- H. Supplier concentration
  - 1. Listing of critical suppliers and value of spend in past 12 months.
- I. Projects
  - 1. Listing of current tenders submitted and potential value.
  - 2. A list of all contract works and services currently being undertaken by the Respondent for a client including details of client for each contract, the contract value, the percentage completed and payments received to date.

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3. Summary of forecast revenue in the current financial year end based on work remaining from secured work.
- J. Claims
1. Summary of any significant claims against the Respondent or by the Respondent that could affect financial capacity.
- K. Regulatory environment
1. List of major regulatory requirements governing the operation of the business.
- L. Financing facilities
1. Listing of all banking facilities such as overdraft, loan facilities and bank guarantee facilities including facility limit, amount drawn and amount remaining. Details of any refinancing required and covenants that exist between the company and financial institutions.
  2. A recent letter from a bank or financier confirming the banking facility details.
- M. Trade survey information
1. Nomination of at least 10 suppliers and 10 subcontractors with email contact details for assessors to conduct trade surveys.
- N. Cash flow forecasts
1. A detailed monthly cash flow forecast for the Respondent (and each Participant) for the 12 months from the last financial year end to the current financial year end together with information regarding assumptions relating to the forecasts, or other relevant information requested by the financial assessor.

Where the Respondent or Participant proposes a Non-approved Entity to provide the Parent Company Guarantee, the Respondent and each Participant must acknowledge and agree to provide, upon request, all financial information in relation to the Non-approved Entity of the same kind as outlined above, for use in assessing the financial capability of the proposed Non-approved Entity.

### **5.1.6 Proven experience in the implementation of effective construction staging for road infrastructure construction projects**

The Respondent must demonstrate experience in the implementation of effective construction staging to minimise traffic impacts to motorists and the local community for the duration of the works. The customer experience and community impact are key aspects of the project and will be carefully considered in the shortlisting process.

### **5.2 Mandatory Information from Joint Venture Respondents**

Where the Respondent is a joint venture the Respondent must provide the proposed joint venture agreement, or bid agreement attaching a proposed joint venture agreement. In the event that the joint venture Respondent is shortlisted as a Tenderer, and prior to proceeding to the RFT Phase, the Participants must either enter into the joint venture agreement or a bid agreement, in either case in a form acceptable to Roads and Maritime. The bid agreement must be a binding agreement between the Participants that is acceptable to Roads and Maritime, under which the Participants agree to execute the joint venture agreement if they are selected as the Recommended Tenderer and before the Respondent enters into the Contract.

### **5.3 Project Specific Evaluation Criteria**

Respondents are required to address the Project specific evaluation criteria, which are as follows, by submitting detailed responses to the information required in the relevant Returnable Schedules:

- Respondent's capability, capacity and experience, Returnable Schedule 3;
- Proposed key personnel including consultants and subcontractors, Returnable Schedule 4;
- Respondents current and anticipated work load, Returnable Schedule 5;

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- Demonstrated capacity for successful collaboration with the NSW Government, Returnable Schedule 6.

The Project specific evaluation criteria are described in more detail below.

### 5.3.1 Respondent's Capability, Capacity and Experience

Under this criterion the Respondent must demonstrate:

- Successful recent experience (last 10 years) in the delivery of projects of similar size, type, value and complexity with particular reference to construction staging and community impact
- Completion of relevant projects within required timeframes;
- Successful performance in Quality, Work Health and Safety, Environment, Aboriginal Participation and Training (including apprenticeship) outcomes;
- Experience working with construct only schedule of rates and/or Lump Sum contracts (GC21 or similar) or evidence of capacity and capability to manage this type of contract;

To respond to this criterion, Respondents must submit the information required by Returnable Schedule 3 – **Respondent's Experience and Capability**.

### 5.3.2 Proposed Key Personnel including Consultants and Subcontractors

Under this criterion the Respondent must provide details of:

- The size, organisational structure and key roles of the nominated full-time site-based team for this Project;
- The relevant competencies and experience of nominated key personnel; and
- Availability of key personnel and replacement personnel.

This criterion also relates to any major consultants and subcontractors proposed for design, documentation or certification of temporary works/construction methods, temporary utility relocations and/or protection and provision of significant work elements.

If a Respondent is shortlisted to proceed to the RFT Phase, Roads and Maritime expects that these significant personnel will be nominated and included for the same roles in the Respondent's Tender and, if the Respondent is the successful Tenderer, the Contract.

The Respondent is required to provide a statement regarding the involvement of the nominated key personnel in the RFT process as required and their commitment to the Project delivery.

The Evaluation Panel will assess whether an adequate level of resources is offered and whether the Respondent demonstrates that it has the competencies required to achieve the desired Project outcomes.

To respond to this criterion, Respondents must submit the information required by Returnable Schedule 4 – **Proposed Personnel including Consultants and Subcontractors**.

### 5.3.3 Current and Future Work Load

Under this criterion Respondents must outline their current and future workload and commitments, demonstrating their ability to undertake these works along with Stage 2 and /or Stage 3, including:

- Current workload and anticipated commitments on other contracts over the next twenty four months.

To respond to this criterion, Respondents must submit the information required by Returnable Schedule 5 – **Current and Future Workload**.

### 5.3.4 Demonstrated Capacity for Successful Collaboration with the NSW Government

To respond to this criterion, Respondents must submit the information required by Returnable Schedule 6 – **Demonstrated Capacity for Successful Collaboration with the NSW Government**.

## **6 SUBMISSION OF EOI RESPONSES**

### **6.1 Documents to be Submitted**

By the Closing Date and Time, Respondents must lodge their **Response** including all the information required by the following Returnable Schedules:

- Response Form, Returnable Schedule 1;
- Respondent's Details, Returnable Schedule 2;
- Respondent's experience and capability, Returnable Schedule 3;
- Proposed personnel including consultants/subcontractors, Returnable Schedule 4;
- Respondent's workload, Returnable Schedule 5; and
- Demonstrated capacity for successful collaboration with the NSW Government, Returnable Schedule 6.

Respondents must also complete and submit Returnable Schedule 7 – **Compliance of Response** confirming that the required information has been provided and the Response contains information relating to each evaluation criterion.

The Evaluation Panel may decide to pass over any Response that does not:

- Include the information required by ALL Returnable Schedules; and
- Acknowledge in the Response that the Response allows for all Addenda issued.

Respondents should not change the text in the Returnable Schedules except to insert information. Respondents must submit their Response in the format specified in the Returnable Schedules, with attached information in the same order as the Returnable Schedules and with clear cross-references between the attachments and applicable Returnable Schedules.

The Response should be concise as indicated by the page limits in the Response Schedules and all information must be current and relevant to the specifics of this Project. Do not submit general information such as brochures about the Respondent.

### **6.2 Lodgment Methods**

All Responses are to be lodged in eTender by the Closing Date and Time.

Without limiting clause 10.5, Responses submitted in hard copy, by facsimile or email will not be considered.

### **6.3 Late Responses**

In accordance with the NSW Government Code of Practice for Procurement, late Responses will not be accepted unless the lateness does not compromise the integrity and competitiveness of the EOI process. Any Response that is not received in full by the Closing Date and Time may be passed over.

Where a Response is received after the Closing Date and Time the Respondent may need to satisfy Roads and Maritime that all the required information was submitted at a time that should reasonably have allowed receipt before the Closing Date and Time.

## **7 AFTER EOI RESPONSES CLOSE**

### **7.1 Evaluation of Responses**

The Evaluation Panel will evaluate each Response in accordance with the evaluation criteria set out in clause 5.3 of this Request for EOI.

The evaluation will be based on information provided with the Response. Any information required by the Request for EOI which is omitted, illegible or unintelligible may be treated as failing to fulfil the relevant requirement.

The Evaluation Panel may request some or all Respondents to provide additional information to clarify aspects of their Responses, either in writing or during post-EOI interviews (if requested). If a written response is requested, it must be provided within 48 hours after the request is received.

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The Evaluation Panel may make its own enquiries to establish the past performance of Respondents in respect of similar work.

All information submitted in the Response or obtained subsequently by the Evaluation Panel will be treated as confidential.

### **7.2 Mandatory Selection Criteria**

Without limiting clause 10.5, any Response that does not demonstrate that the Respondent meets all the mandatory selection criteria listed in clauses 5.1 and 5.2 may be eliminated from consideration.

### **7.3 Project Specific Evaluation Criteria**

Responses will be evaluated in terms of the Project specific evaluation criteria listed in clause 5.3, using the information provided by each Respondent in Schedules 3 to 6.

### **7.4 Respondent Interviews**

Respondents may be requested to attend a formal interview and/or make a formal presentation in relation to their Response.

### **7.5 Outcome of the EOI process**

The decision to shortlist a Respondent to participate in either one or both RFT Phases, with or without conditions, is at the sole discretion of Roads and Maritime.

Respondents will be advised in writing whether they have been shortlisted or are unsuccessful.

On request, the Contact Person will arrange a debriefing for any unsuccessful Respondent, in accordance with the NSW Code.

### **7.6 Disclosure of Information**

Details of this Request for EOI and the outcome of the tender process will be disclosed in accordance with the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) and the Premier's Memorandum 2007-01. Further information about the operation of the GIPA Act is provided in clause 10.3.

### **7.7 Changes in Circumstances**

Respondents must advise the Contact Person immediately in writing of any material change to the information contained in their Response, including any substantial change in their ownership or their financial or technical capacity. Copies of relevant documents must be submitted with the advice. This requirement applies to Respondents proceeding to the RFT Phase, until a contract is awarded as a result of any subsequent tendering process.

It is expected that key personnel nominated in the Response will be utilised, in the capacity indicated. If any of the Respondent's nominated key personnel become unavailable due to circumstances beyond its control, the Respondent must immediately advise the Contact Person and provide relevant details of a proposed replacement together with an updated Returnable Schedule. The proposed replacement must have equivalent expertise as determined by Roads and Maritime. Such changes will be taken into account in selecting Tenderers and evaluating Responses.

### **7.8 Publicity**

Shortlisted Respondents must not advertise or publish their shortlisting in any form without the prior written consent of Roads and Maritime, until they are formally invited to tender for the proposed Project.

### **7.9 Protection of Privacy**

The Respondent warrants that information provided in the Response is accurate, up to date and complete, and that nominated individuals authorise its collection and are aware:

- That the information is being collected for the purpose of evaluating Responses and may be made available to Roads and Maritime and its agents for that purpose;
- Of any consequences for the individual if the information (or any part of it) is not provided;

- If the supply of information by the individual is required by law or is voluntary; and
- Of the existence of any right to access or correct the information.

### 7.10 Exchange of Information between Government Agencies

By submitting a Response, the Respondent authorises Roads and Maritime to gather, monitor, assess, and communicate to other NSW Government agencies or local government authorities information about the Respondent's financial position and its performance in respect of any contract that may be ultimately awarded. Such information may be used by those agencies or authorities in considering whether to offer the Respondent future opportunities for work.

## 8 PROJECT REQUIREMENTS

The requirements outlined in this clause 8 do not apply in the EOI Phase, but are identified in this Request for EOI so that Respondents are aware that the requirements must be satisfied in the RFT Phase and under the Contract.

### 8.1 Work Health and Safety Requirements

The Contractor will be required to develop, implement and maintain a Project specific Work Health and Safety ("WHS") Management System in accordance with the New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines (5th Ed September 2013 (updated March 2014) or any later edition).

### 8.2 Training Requirements

The Respondent's attention is drawn to the requirements of the NSW Government Procurement Guideline Skills and Training in the Construction Industry. The Guideline is attached to NSW Procurement Board Direction PBD 2016-02 - Construction apprenticeships, which is available for download from: <http://arp.nsw.gov.au/pbd-2016-02-construction-apprenticeships>

If shortlisted to submit the Tender, the Tenderer will be required to provide the skills development and training details.

If successful, the Contractor will be required to meet the commitments made in the accepted Tender.

If successful, the Contractor will be required to provide quarterly reports to RMS (at the end of March, June, September and December), giving details of the apprentices and trainees engaged in the carrying out of the Contractor's Work and demonstrating that the Contractor is meeting (or will meet at Completion) the commitments made in the contract.

### 8.3 Aboriginal Participation Requirements

The Contractor will be required to comply with Category 2 requirements of the New South Wales Government Policy on Aboriginal Participation in Construction (1 May 2015 or any later update). The mandatory minimum Targeted Project Spend (TPS) will be 1.5% of the construct Contract award value (excl GST) less allowable exclusions, in line with the Policy goals. The policy document is available from the Policy framework for construction page in the Procurepoint website at:

<https://www.procurepoint.nsw.gov.au/policy-and-reform/nsw-procurement-reform/construction/policy-framework-construction>

### 8.4 Heavy Vehicle National Law - Chain Of Responsibility Provisions

The Respondent's attention is drawn to the chain of responsibility provisions of the *Heavy Vehicle National Law* (NSW) (**Heavy Vehicle Law**). Under the Heavy Vehicle Law, the Contractor may be a party to the chain of responsibility.

The chain of responsibility provisions are directed at ensuring that road transport operations involving heavy vehicles are conducted safely for all road users, and without causing damage to assets or infrastructure or having significant adverse effects on the environment or community amenity.

## Request for Expressions of Interest

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If shortlisted to submit a Tender, the Respondent will be required to demonstrate a commitment to ensuring compliance with the chain of responsibility provisions of the Heavy Vehicle Law.

The Contractor will be required to develop and implement a Chain of Responsibility (CoR) Management Plan, to ensure compliance with the chain of responsibility duties.

The Contractor will also be required to provide a monthly report on how the Contractor is meeting compliance with the chain of responsibility provisions of the Heavy Vehicle Law.



## **9 ADDITIONAL PROJECT REQUIREMENTS**

To address the scale of this Project, a two stage procurement process, as detailed in clause 3, will be implemented with the Project being delivered under a construct only contract based on Roads and Maritime's GC21 model contract.

Roads and Maritime may make amendments to the GC21 model contract as part of its routine process of updating its suite of template documents, or to suit the particularities of the Project.

## **10 ADDITIONAL TERMS AND CONDITIONS**

### **10.1 Validity of Responses and Withdrawal**

By submitting a Response (whether or not it complies in all respects with this Request for EOI), a Respondent will be taken to have promised to Roads and Maritime not to withdraw or amend the Response before 8 September 2017 (except with the prior written consent of Roads and Maritime, in its absolute discretion).

Nothing in this clause limits the operation of clause 10.5 (Roads and Maritime's Discretion and Rights) or is to be taken as imposing any obligation (contractual or otherwise) on Roads and Maritime to receive or to consider any Response from any Respondent.

If a Respondent purports to withdraw from any phase of the process for any reason, then without prejudice to any other right or remedy that Roads and Maritime may have, Roads and Maritime may, in its absolute discretion, further consider other Responses or Respondents.

### **10.2 NSW Government Code of Practice for Procurement**

All Respondents must comply with the NSW Government Code of Practice for Procurement (**NSW Code**) and Implementation Guidelines to the Code of Practice for Procurement: Building and Construction (**NSW Guidelines**), in addition to the Building Code and Supporting Guidelines as referred to in clause 5.1.3, as an essential condition to being considered or participating in any Phase of the procurement process, or award of the Contract.

Submission of a Response will itself be an acknowledgement and representation by the Respondent that it is aware of the requirements of the NSW Code and NSW Guidelines, and that:

- (a) the Respondent will comply with the NSW Code and NSW Guidelines on all future projects, including privately funded projects, to which the NSW Guidelines apply, whether or not successful in this Response;
- (b) any party which is precluded from performing works to which the NSW Code and NSW Guidelines apply is excluded from consideration for selection under the procurement process; and
- (c) the Respondent agrees to provide periodic evidence of compliance with the NSW Code and NSW Guidelines and access to all relevant information to demonstrate compliance for the duration of any contract that may subsequently be awarded to it, when required.

### **10.3 Confidentiality and public access to information**

The Respondent must keep confidential and not:

- (a) disclose to any person; or
- (b) copy, use or otherwise deal with for any purpose:
  - (i) any information regarding this Request for EOI, the Request for Tender for the Project or any other information with which it has been provided by Roads and Maritime or any other person on behalf of Roads and Maritime except to the extent:
    - A. the Respondent is specifically so authorised in writing by Roads and Maritime;
    - B. the information is disclosed to and used by others (who are also bound to keep the information confidential) for the purposes of enabling the Respondent to prepare a Response;

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- C. the information is already in the public domain, otherwise than because of a breach by the Respondent of these confidentiality obligations; or
- D. the information is required to be disclosed by law, and in such case the Respondent must provide Roads and Maritime with written notice of the legal basis for the disclosure.

Roads and Maritime may issue, or may have issued, a form of deed of confidentiality and disclaimer, and require that each Participant in the Respondent submit a duly completed and executed deed in that form, in which case, compliance with those requirements will be mandatory.

Respondents should note that documents relating to the Project may be disclosed to the public if requested by Parliament or under the *Government Information (Public Access) Act 2009 (NSW) (GIPA Act)*. Subject to certain exemptions, the GIPA Act gives members of the public the right to be given access to documents held by public sector bodies, including Roads and Maritime. These access rights are limited by exceptions and exemptions necessary for the protection of the public interest, the ability of the government to function effectively, and private and business affairs of persons or organisations in respect of which information is collected and held by the public sector bodies.

A person who makes an application under section 9 of the GIPA Act (**GIPA Applicant**) has a legally enforceable right to access that information unless there is an overriding public interest against disclosure. The GIPA Act provides that there may be public interest considerations against disclosure if such disclosure could reasonably be expected, among other things, to:

- (a) reveal commercial-in-confidence provisions (as that term is defined in clause 1 of Schedule 4 to the GIPA Act) of the proposed Contract;
- (b) diminish the competitive commercial value of any information contained in the Respondent's Response; or
- (c) prejudice any Respondent's legitimate business, commercial, professional or financial interests.

To assist Roads and Maritime in determining whether, in the circumstances of any particular request for all or part of the Response, there is an overriding public interest against disclosure, Respondents are invited to identify information contained within their Response which they consider the disclosure of which might have one of the effects stated above (or which they consider may otherwise give rise to a public interest consideration against disclosure in accordance with the GIPA Act).

Identifying information in the manner stated above will not necessarily prevent disclosure in accordance with the GIPA Act and any decision to grant access to information will be determined by the requirements of the GIPA Act. Roads and Maritime will consult with the Respondent in accordance with the GIPA Act prior to making a decision. If Roads and Maritime determines to disclose the information, the Respondent will be entitled to pursue rights of review in accordance with the GIPA Act. If Roads and Maritime does not determine to disclose the information, the GIPA Applicant will have rights of review and Respondents will not be entitled to make any claim in respect of the decision or proceedings.

### 10.4 Costs Borne by Respondent

All costs and expenses incurred by the Respondent in preparing and submitting its Response and otherwise in the selection process must be borne entirely by the Respondent. The Respondent will not have any claim against Roads and Maritime or the State of New South Wales (or any of their advisers) in tort, contract, equity, at law, under statute or otherwise, arising from or in connection with any loss, damage or cost from any aspect of this Request for EOI or the Request for Tender or processes, activities or circumstances associated with or related to them, including the preparation of a Response or Tender, or the exercise by Roads and Maritime of any discretion, or the evaluation by Roads and Maritime of any Response or Tender.

### 10.5 Roads and Maritime's Discretions and Rights

Roads and Maritime may conduct the process for the evaluation of Responses, the shortlisting of Respondents, the selection of the Tenderers for the RFT Phase, the selection of a Recommended Tenderer or engagement of the Contractor or any other matter or process

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contemplated in this Request for EOI in such manner as it thinks fit and, without limitation, may at its absolute discretion (without any obligation to do so):

- cancel or abandon the Request for EOI and Request for Tender process at any time;
- provide to all Respondents any further information provided to a particular Respondent, including in response to queries regarding this Request for EOI (in which case, Roads and Maritime may provide to all potential Respondents that have obtained the Request for EOI from Roads and Maritime any further information provided to a particular prospective Respondent);
- provide to a Respondent any further information;
- consider or refuse to consider any Response which:
  - is lodged by any means other than in accordance with this Request for EOI;
  - is lodged after the Closing Date and Time;
  - does not meet the mandatory criteria referred to in clauses 5.1 and 5.2; or
  - has been lodged by a Respondent who has not complied with this Request for EOI;
- decide at any time to:
  - use information held by Roads and Maritime about any Respondent and Participant, not provided by the Respondent, for the purposes of evaluation;
  - not proceed with all or any part of the Project for any reason;
  - vary funding for the Project;
  - have any other person or persons (whether or not a Respondent who has submitted a Response) carry out all or any part of the Project;
  - extend or change the Closing Date and Time for the lodgement for Responses or otherwise vary the timing of any part of the procurement process; or
  - reject any Response lodged by any Respondent who has breached the NSW Code or NSW Guidelines, or the Building Code or Supporting Guidelines, or engaged in any collusive tendering, anti-competitive conduct or any similar conduct with any other Respondent or any other person in relation to the preparation or lodgement of their Response;
- at any time, re-invite Responses for the Project from all or any of the Respondents who have submitted a Response, or from any other person (whether or not they submitted a Response);
- at any time, pre-qualify, short-list or enter into negotiations with any one or more persons;
- at any time, accept a substitution of, withdrawal of, or addition to any of the parties comprising a Respondent (including short-listed Respondents);
- at any time, issue addenda to this Request for EOI or clarify the Request for EOI in any way or to respond to potential Respondents' queries, including to vary the selection process (including the evaluation process) or its requirements for any Phase (including the contractual structure proposed for the carrying out of the Project):
  - if in the EOI Phase – by notice in writing to the potential Respondents to this Request for EOI; and
  - if in the RFT Phase – by notice in writing to the Tenderers.

Any notice given after the completion of the EOI Phase will be given to the Tenderers only, and not to all Respondents. Respondents must immediately acknowledge receipt of any addenda issued by Roads and Maritime during the EOI Phase and such addenda will become part of and will amend this Request for EOI;

- without limiting any requirements of this Request for EOI, at any time:

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- request any Respondent to submit additional information or clarifications (and the Respondent in question must promptly respond, in writing, to any such requests);
- request any Respondent to attend one or more meetings to discuss the Contract, the Respondent's Response, the Project or to discuss issues associated with the selection process or any other aspect of the EOI Phase (and the Respondent in question must attend any such meetings as requested); and/or
- otherwise communicate with any Respondent to discuss the Respondent's Response or to discuss issues associated with the selection process or any other aspect of the EOI Phase or the Project (and the Respondent in question must participate in any such communications as requested).

Where Respondents do not comply with the requirements of the three preceding paragraphs within the timeframe nominated by Roads and Maritime, Roads and Maritime may continue the evaluation or selection processes on the basis of the available information and:

- decide whether or not to short-list Respondents, proceed to the RFT Phase or enter into the Contract or any other contract with any Respondent or other person in connection with the Project; or
- in addition to any right under this clause 10.5, discontinue the Request for EOI process at any time.

### 10.6 No Legal Relationship

Other than the Deed of Disclaimer, the deed in respect of Related Companies referred to in clause 10.14, and the warranty and undertaking referred to in clause 10.11, no obligations arise from this Request for EOI as between any prospective Respondents or Participants and Roads and Maritime or any of Roads and Maritime's officers, employees or advisers, except to the extent that in consideration of Roads and Maritime accepting a Response and commencing to consider it, the Respondent promises that it will not amend or withdraw its Response before 6 March 2017.

This Request for EOI is not an offer, it is an invitation to treat and, except as referred to in the preceding paragraph, must not be construed, interpreted, or relied upon, whether expressly or impliedly, as an offer capable of acceptance by any person, or as creating any form of contractual, quasi-contractual, restitutionary or promissory estoppel rights, or rights based upon other legal or equitable grounds.

Except as referred to in the first paragraph of this clause 10.6, no binding contract (including a process contract) or other understanding (including, without limitation, any form of contractual, quasi-contractual, restitutionary or promissory estoppel rights, or rights based upon similar legal or equitable grounds) will exist between Roads and Maritime and any Respondent unless and until the Contract is signed by Roads and Maritime and the Recommended Tenderer or Contractor (as the case may be).

### 10.7 Obligations of Roads and Maritime

Except as expressly stated in the Contract, Roads and Maritime has no obligations or liabilities to any prospective Respondents or Participants in respect of the Request for EOI, the Request for EOI process or the evaluation or selection processes and to the maximum extent permitted by law, any obligations and liabilities which may otherwise be implied or imposed on Roads and Maritime under contract, in tort including negligence, in equity, at law, by statute or otherwise are excluded.

### 10.8 Disclaimer

Each Respondent and Participant acknowledges, accepts and agrees that:

- any information, documents, statements and any representations in this Request for EOI and in any other documents referred to in this Request for EOI or provided as part of the Request for EOI process are not exhaustive, may contain errors or omissions, may be amended at any time during the EOI Phase (or subsequently) and may be incomplete, inaccurate, misleading or inadequate for the needs of the Respondents;

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- there may also be other information or documents in the knowledge or possession of Roads and Maritime, other Government departments or agencies or their respective officers, employees, consultants, contractors or agents, which are relevant to the Project, this Request for EOI, the Request for EOI process or the preparation or lodging of a Response, which have not been provided to the Respondents or to which reference has not been made;
- it must make its own enquiries and make its own assessment of the information and documents provided and about any further information or documents required and must satisfy itself from its own investigations, evaluations, enquiries, assessments, interpretations and sources as to all matters and things relevant to the Respondent's Response; and
- notwithstanding whatever information is provided to the Respondents by or on behalf of, or withheld from the Respondents by, or obtained by the Respondents from, any federal, state or local government department or agency (including Roads and Maritime) or their respective officers, employees, consultants, contractors or agents or others, it must rely only upon its own investigations, evaluations, enquiries, interpretations and sources and its own assessments of the Project and as to all matters and things relevant to the Respondent's Response.

### 10.9 Respondent's Legal Obligations

Each Respondent and Participant must, in preparing and lodging any Response, comply with all applicable laws, legal requirements and acceptable probity standards. Without limiting the meaning or scope of, or requirements in relation to, this clause, each Respondent and Participant must not:

- collude with, accept any commission from, or offer any commission to any other prospective Respondent, other Respondent or Participant of another Response;
- disclose any part of its Response (or any draft thereof) to any other prospective Respondent, other Respondent or Participant of another Response;
- enter any contract, arrangement or understanding with any other prospective Respondent, other Respondent or Participant of another Response or any trade, industry or other association with the effect that if the Respondent is short-listed as a Tenderer or is selected as the Recommended Tenderer or the Contractor, a benefit will be conferred on any other party (except another Participant in the same Response);
- enter any improper or anti-competitive contract, arrangement or understanding with any other person in connection with the Request for EOI, the Request for EOI process, the RFT or the Project; or
- procure information from, offer any incentives, gifts or other favours to, any person who is in any way involved with, in a position to influence, or capable of providing technical or other advice to, those who are involved in any way with the evaluation of the Responses.

### 10.10 Changes to parties to a Response

If Participants in a Respondent change (or a Parent Company of a Participant changes) after the Closing Date and Time, the affected Respondent must immediately notify Roads and Maritime of this change in writing. If Roads and Maritime, in its absolute discretion, determines that this change is material, it reserves the right to re-evaluate the Response or to eliminate the Respondent from further participation in the Request for EOI process. Respondents should (as a minimum) notify Roads and Maritime of any change to any of the following entities or individuals occurring after the Closing Date and Time:

- any entity that proposes to take a direct equity interest in the Respondent or a Participant if the Respondent is short-listed or becomes the Contractor;
- the ultimate parent entity of any entity that proposes to take a direct equity interest of the type mentioned in the paragraph above;

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- any other entity that is likely to be in a position to exercise control or influence (direct or indirect) over the future management and operation of the Respondent or a Participant;
- any director, secretary or chief executive of any entity falling within the above paragraphs and any proposed new director, secretary or chief executive officer; and
- any key Project resources identified by the Respondent as providing a core capability to the Respondent.

### 10.11 Warranty and Undertaking by Respondent

By submitting a Response (whether or not it complies in all respects with this Request for EOI), the Respondent and all Participants:

- accept and agree to the terms of this Request for EOI;
- warrant to Roads and Maritime that the information contained in their Response is accurate and complete as at the date on which it is submitted (except insofar as any information is not known to the relevant Participant), and may be relied upon by Roads and Maritime in determining whether or not to short-list the Respondent as a Tenderer or enter into the Contract with the Respondent; and
- undertakes to promptly inform Roads and Maritime of any changes in circumstances within its knowledge that may cause the information contained in its Response to become inaccurate or incomplete in any respect.

### 10.12 Joint and Several

Where a term is used in this Request for EOI to refer to the Respondent or to more than one person or Participant in a Response:

- an obligation of those persons or entities (including of each Participant) is joint and several;
- a right of those persons or entities is held by each of them severally; and
- any other reference to that person or entity or term is a reference to each of those persons or entities separately.

### 10.13 Privacy Act Compliance

In relation to any personal information (as defined in, and for the purposes of, the *Privacy Act 1988* (Cth) and the *Privacy & Personal Information Protection Act 1998* (NSW) (**Privacy Acts**)) provided by an Respondent or Participant in connection with the Respondent's Response, each of the Respondent and Participant must comply with the provisions of the Privacy Acts.

Each of the Respondents and Participants must comply with the provisions of the Privacy Acts in relation to any personal information provided to them by Roads and Maritime or by any of its officers, employees, agents or advisers.

### 10.14 Competitiveness, Probity and Related Companies

#### 10.14.1 Related Companies and Probity Deeds

Roads and Maritime intends to ensure that the participation of Related Companies in two or more Responses does not materially impact the probity, competitiveness or cost of the Project.

Depending upon the information provided by Respondents, Roads and Maritime may require Respondents to:

- clarify or improve the information provided and/or provide further information;
- implement internal governance arrangements and procedures to address probity and competitiveness concerns; and
- provide verification that all such arrangements and procedures have been complied with.

Without limiting the foregoing, if Roads and Maritime proceeds to invite Tenders for the Project in the RFT Phase of the procurement process, Roads and Maritime may, for each of the Tenderers,

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activate the relevant probity deed in order to preserve effective competition between, and competition and probity within, Tenderers including in relation to participation of Related Companies.

### **10.14.2 Probity Advisor**

A Probity Advisor will be appointed for the procurement. The Probity Advisor's role in the EOI Phase includes the following:

- ensuring that the procedures adopted in receiving Responses and the evaluation process of Responses is fair and equitable and that the probity of the process is independently validated;
- monitoring and reporting to Roads and Maritime that the evaluation process and procedures have been followed and that the outcome is capable of being independently validated;
- providing confidence to all Respondents that appropriate processes were fully adhered to and that no Respondents were given an unfair advantage or were unfairly discriminated against;
- providing guidance to Roads and Maritime in relation to the probity of Responses and the involvement of Related Companies in two or more Responses;
- providing guidance to Roads and Maritime as to how unforeseen probity issues could be resolved;
- attending evaluation team and Roads and Maritime meetings where relevant;
- attending any Respondent meetings and presentations;
- monitoring communication during the period between submission of Responses and final decisions;
- attending debriefing meetings of successful and unsuccessful Respondents, where applicable; and
- preparing a report outlining the work performed, any issues that arose during the process and confirming that the evaluation process and procedures have been followed.

The Probity Advisor is an independent observer of the procurement process and will not be involved in the actual evaluation of any Response. Respondents who have any concerns about the conduct or probity of the selection process should promptly bring their concerns to the Probity Advisor's attention.

Contact details for the Probity Advisor will be provided when appointed.

### **10.15 References to documents**

A reference to a document, including a policy document, includes a reference to the document as up-dated, amended, replaced or reissued from time to time.

## 11 DEFINITIONS

In this Request for EOI and the Returnable Schedules all words and expressions (unless the context otherwise requires) have the meanings assigned to them in this clause.

<b>Building Code</b>	Building Code issued under subsection 34(1) of the BCIP Act, being the document titled 'Code for the Tendering and Performance of Building Work 2016', which is available at <a href="http://www.legislation.gov.au">www.legislation.gov.au</a> .
<b>Closing Date and Time</b>	The date and time identified in clause 2 of this Request for EOI.
<b>Contractor</b>	The successful Tenderer that is engaged to carry out the Project.
<b>Contact Person</b>	The person specified in clause 4.1 of this Request for EOI, or as otherwise notified by Roads and Maritime in writing.
<b>Deed of Disclaimer</b>	A deed poll in the form included as Appendix 2 (Deed of Disclaimer) to this Request for EOI.
<b>EOI</b>	Short for Expression of Interest.
<b>EOI Phase</b>	The process described under clause 3.1 of this Request for EOI.
<b>Evaluation Panel</b>	The panel constituted by Roads and Maritime to assess Responses as contemplated under clause 3.1 of this Request for EOI.
<b>Government</b>	The New South Wales Government and/or Australian Federal Government.
<b>Information Document</b>	Has the same meaning as in the Deed of Disclaimer included in Appendix 2.
<b>NSW Code</b>	The New South Wales Government's Code of Practice for Procurement.
<b>NSW Guidelines</b>	The New South Wales Government's Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction. Copies of the Implementation Guidelines are available at: <a href="http://www.industrialrelations.nsw.gov.au/oirwww/About_NSW_IR/Building_and_Construction_Industry.page?">http://www.industrialrelations.nsw.gov.au/oirwww/About_NSW_IR/Building_and_Construction_Industry.page?</a>
<b>Participant</b>	An entity which is a partner or joint participant in a Respondent.
<b>Phase</b>	Either or both of the EOI Phase and the RFT Phase as the context requires.
<b>Probity Adviser</b>	The person appointed by Roads and Maritime to carry out probity related activities in respect of the process for engaging a Contractor, as referred to in clause 10.14.2.
<b>Project</b>	All activities associated with the construction of Stage 2 and/or Stage 3 of the M4 Smart Motorway Project, including as



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	described in clause 1.2.
<b>Recommended Tenderer</b>	The Tenderer selected to become the Contractor.
<b>Related Company</b>	A related body corporate as defined by section 9 of the <i>Corporations Act 2001</i> (Cth).
<b>Request for EOI</b>	The Request for EOI as contained in this document to submit a Response.
<b>Request for Tender or RfT</b>	Roads and Maritime document inviting the Tenderer to submit a Tender for the Project.
<b>Respondent</b>	An organisation, joint venture, consortium or any other enterprise (including joint Participants) submitting a Response to this Request for EOI to be selected as a Tenderer to submit a Tender for the Project.
<b>Response</b>	The submission made by a Respondent to this Request for EOI.
<b>Returnable Schedules</b>	The schedules to be returned by the Respondent in its Response to this Request for EOI.
<b>Roads and Maritime</b>	Roads and Maritime Services.
<b>RFT Phase</b>	The process described under clause 3.2 of this Request for EOI.
<b>Supporting Guidelines</b>	The Supporting Guidelines to the Building Code. The Supporting Guidelines can be downloaded from <a href="https://docs.employment.gov.au/node/31116">https://docs.employment.gov.au/node/31116</a>
<b>Tender</b>	The tender submitted by a Tenderer to Roads and Maritime at the end of the RFT Phase in response to the Request for Tender.
<b>Tenderer</b>	A Respondent who has been shortlisted from the Respondents in the EOI Phase of the procurement process and to whom the RFT has been issued.

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## Appendix 2 – Deed of Disclaimer

**This Deed Poll** is made by \_\_\_\_\_ ("**Respondent**") in favour of Roads and Maritime Services ("**Roads and Maritime**") in respect of the Procurement Processes for the construction of the *M4 Smart Motorway Stage 2 and/or Stage 3* ("**Project**").

1. In consideration of Roads and Maritime inviting the Respondent to participate in the Procurement Processes for the Project and issuing or making available the Information Documents and (to the extent applicable) any Request Documents, the Respondent:
  - (a) warrants that it will not rely upon the Request Documents or Information Documents as being proper, adequate, suitable and/or complete for the purposes of enabling it to perform the construction obligations which the Respondent will be required to perform if it enters into any contract with Roads and Maritime with respect to the Project ("**Contract**");
  - (b) warrants that it will make its own independent evaluation of the Request Documents' and / or Information Documents' adequacy, accuracy, suitability and completeness for the purposes of enabling the Respondent to perform the obligations which the Respondent will be required to perform if it enters into the Contract, and it will base the price which it bids as part of any tender that it submits upon its own independent evaluations;
  - (c) acknowledges that no representation or warranty (express or implied) has been or is made by Roads and Maritime (or by anyone on its behalf) to the Respondent that any specifications or drawings included in the Information Documents will represent a completed or suitable design or that they will be suitable for any purpose, including completion of any design, or for construction purposes;
  - (d) acknowledges that:
    - (i) Roads and Maritime will provide it with the Information Documents (and for that purpose, any information, opinion, data or document which is provided (including verbally or visually) by Roads and Maritime at, or following from, any briefing in relation to the Project or otherwise as part of the Procurement Processes, other than the Request Documents, will constitute 'Information Documents');
    - (ii) the Information Documents:
      - A. will be provided by Roads and Maritime for the information only of the Respondent; and
      - B. do not form part of the Request Documents and will not form part of any contract with respect to the Project;
    - (iii) Roads and Maritime does not owe any duty of care to the Respondent with respect to the Information Documents;
    - (iv) to the extent that Roads and Maritime is not the author or source of any of the Information Documents it merely passes those documents on to the Respondent and does not adopt those documents;
    - (v) Roads and Maritime:
      - A. is not responsible for; and
      - B. makes no representation or warranty in respect of, the contents of the Information Documents including the accuracy, adequacy, suitability or completeness of any reports, data, test results, samples, reports or geotechnical investigations, opinions, recommendations, findings or other information contained in the Information Documents;
    - (vi) where any information or document is referred to and incorporated by reference in an Information Document, the Respondent should not rely upon any summary of the information or document which appears in the Information Document;

## Request for Expressions of Interest

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- (vii) no representation or warranty (express or implied) has been made by Roads and Maritime (or by anyone on its behalf) to the Respondent that the Information Documents are accurate, adequate, suitable or complete for any purpose connected with the Project, including the preparation of any response to the Request Documents and the performance of any obligations which the Respondent will be required to perform if it enters into the Contract; and
  - (viii) it will have the opportunity during the Procurement Processes and subsequently to undertake for itself and to request others to make further enquiries and investigations relating to the subject matter of the Information Documents and for this purpose must have regard to the acknowledgments, warranties and releases in this Deed Poll in undertaking its own enquiries and investigations and in requesting further enquiries and investigations;
- (e) warrants that, if it submits a tender in response to the Request for Tender:
- (i) it will prepare its tender and (if its tender is successful) enter into the Contract based on its own investigations, interpretations, deductions, information and determinations including (without limitation) its own independent evaluation of the accuracy, adequacy, suitability and completeness of the Information Documents for the purposes of the Project including the preparation of its tender and the performance of any obligations which the Respondent will be required to perform if it enters into the Contract; and
  - (ii) it will not in any way rely upon:
    - A. the Information Documents; or
    - B. the accuracy, adequacy, suitability or completeness of the Information Documents,for any purpose in connection with the Project, including for the purposes of preparing its tender or entering into the Contract;
- (f) acknowledges and agrees that:
- (i) Roads and Maritime will be providing the Information Documents to the Respondent in reliance upon the acknowledgements and warranties contained in this Deed Poll;
  - (ii) if it submits a tender and Roads and Maritime accepts its tender, Roads and Maritime will be accepting its tender and entering into the Contract in reliance upon the acknowledgments and warranties contained in this Deed Poll; and
  - (iii) Roads and Maritime will not be liable to the Respondent upon any Claim (to the extent permitted by law) arising out of or any way in connection with:
    - A. the provision of, or the purported reliance upon, or use of, the Information Documents by the Respondent or any other person to whom the Information Documents are disclosed by the Respondent; or
    - B. a failure by Roads and Maritime to provide any information to the Respondent;
- (g) irrevocably releases and indemnifies Roads and Maritime from and against:
- (i) any Claim against Roads and Maritime by, or liability of Roads and Maritime to, any person; or
  - (ii) (without being limited by clause 1(g)(i)) any costs, losses or damages suffered or incurred by Roads and Maritime,
- arising out of or in connection with:
- (iii) the provision of, or the purported reliance upon, or use of, the Information Documents by the Respondent or any other person to whom the Information Documents are disclosed by the Respondent; or
  - (iv) the Information Documents:
    - A. being relied upon; or

## Request for Expressions of Interest

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- B. otherwise being used in the preparation of any information or document, including any information or document which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms in the *Competition and Consumer Act 2010 (Cth)*, or any equivalent provisions of State or Territory legislation),
- by the Respondent or any other person to whom the Information Documents are disclosed by the Respondent; and
- (h) irrevocably releases and indemnifies Roads and Maritime from and against any Claim arising out of or in connection with any breach by the Respondent of this Deed Poll.
2. In consideration of Roads and Maritime agreeing to provide the Respondent with the Request Documents and the Information Documents (in this clause 2 jointly called "Project Documents"), the Respondent:
- (a) acknowledges and agrees that the Project Documents are:
- (i) owned by Roads and Maritime; and
- (ii) in some instances, confidential and secret; and
- (b) warrants that it will not:
- (i) copy or otherwise reproduce in any form or medium the contents of the Project Documents (or any part of them) or otherwise cause, permit or allow the Project Documents (or any part of them) to be copied or reproduced in any form or medium;
- (ii) disclose the contents of the Project Documents (or any part of them) or otherwise cause, permit or allow the Project Documents (or any part of them) to be disclosed; or
- (iii) use the contents of the Project Documents (or any part of them) or otherwise cause, permit or allow the Project Documents (or any part of them) to be used;
- other than:
- (iv) for the purpose of responding to the Request Documents (including, if applicable, preparing and submitting its tender); or
- (v) where the Respondent enters into a Contract, as permitted by that Contract; or
- (vi) as required by law or as otherwise permitted by Roads and Maritime.
- Nothing in this clause 2 will in any way limit clause 1 of this Deed Poll.
3. In this Deed Poll,
- "Claim"** includes (without limitation) any claim, action, demand or proceeding:
- (a) under, arising out of, or in connection with the Contract;
- (b) arising out of, or in connection with, any task, thing or relationship connected with the Project; or
- (c) otherwise at law or in equity including (without limitation):
- (i) by statute;
- (ii) in tort for negligence or otherwise, including (without limitation) negligent misrepresentation; or
- (iii) for restitution including (without limitation) restitution based on unjust enrichment.
- "Contract"** has the meaning given in clause 1(a).
- "Information Document"** means any information, data or document which is:
- (a) referred to in Appendix 1 and issued by, or on behalf of, Roads and Maritime to the Respondent as a hard copy document or as an electronic file;
- (b) issued or made available by, or on behalf of, Roads and Maritime to the Respondent in connection with the Procurement Processes and which at the time of issue (or being made available) is expressly classified or stated to be an "Information Document";

## Request for Expressions of Interest

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- (c) issued or made available by, or on behalf of, Roads and Maritime to the Respondent in connection with the Request Documents, but which is not intended to form part of the Request Documents (regardless of whether or not it is expressly classified or stated to be an "Information Document"), including any information, opinion, data or document which is provided (including verbally or visually) by Roads and Maritime at, or following from, any of the Pre-Tender Processes or pre-tender or tender briefing; or
  - (d) referred to or incorporated by reference in an Information Document, whether issued or made available:
  - (e) before, on or after the date of this Deed Poll;
  - (f) before, on or after the submission of any tender by the Respondent; or
  - (g) before, on or after the date of execution of the Contract,

other than the Request Documents themselves or any document which Roads and Maritime is obliged by the terms of the Contract to provide to the Respondent.

**"Pre-Tender Processes"** means any processes that Roads and Maritime engages in with the Respondent between the date and time for submission of responses to the Request for Expressions of Interest and the issuing of any Request for Tender.

**"Procurement Processes"** means Roads and Maritime's processes to procure a contractor to deliver the Project and includes the Request for Expressions of Interest and any Pre-Tender Processes, Request for Tender, and any negotiations leading to award of the Contract.

**"Request Documents"** means the Request for Expressions of Interest, Request for Tender, any addenda and any document in relation to Pre-Tender Processes that Roads and Maritime issues as part of the Procurement Processes.

**"Request for Expressions of Interest"** means the Request for Expressions of Interest (including any addenda to it) that Roads and Maritime issues as part of the Procurement Processes.

**"Request for Tender"** means the Request for Tender (including any addenda to it) that Roads and Maritime may issue to the Respondent as part of the Procurement Processes.

- 4. If the Respondent is more than one person, each person making up the Respondent is jointly and severally bound by the terms of this Deed Poll.
- 5. This Deed Poll cannot be revoked or otherwise modified without the prior written consent of Roads and Maritime.
- 6. This Deed Poll ends when:
  - (a) Roads and Maritime consents in writing to it ending; or
  - (b) it is replaced by a later Deed Poll or agreement which provides for substantially the same or similar obligations.
- 7. This document operates as a Deed Poll and is enforceable against the Respondent in accordance with its terms by Roads and Maritime, despite Roads and Maritime not being a party to this Deed Poll.
- 8. This Deed Poll is governed by the laws of New South Wales

## Request for Expressions of Interest

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Date                      day of

### Executed as a deed poll

**Executed** by **[insert name and ABN of Respondent]** by or in the presence of:

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Signature of Director

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Name of Director in full

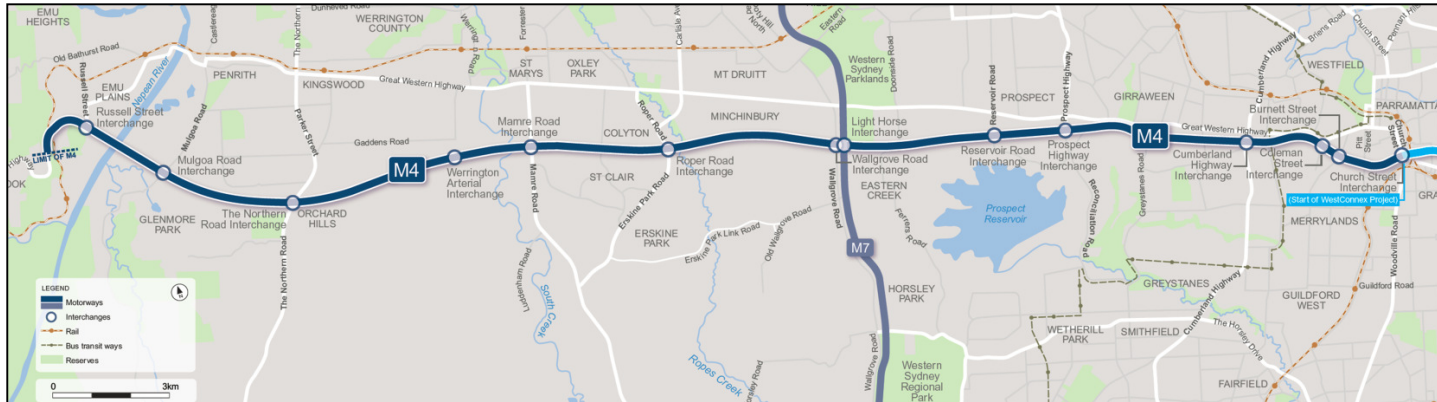
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Signature of Secretary/other Director

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Name of Secretary/other Director in full

## Appendix 3 – M4 Smart Motorway Project Location



Entire Project

