

# Broadwater Marine Project

## Request for Detailed Proposals Part 1 – Invitation to Lodge



The Department of State Development, Infrastructure and Planning leads a coordinated Queensland Government approach to planning, infrastructure and development across the state.

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# Important Notice

**Application:** This Important Notice applies to all Proponents and any Participant.

**Interpretation and defined terms:** Capitalised terms used in this RFDP are defined in Part 1 – Appendix B.

**Terms and conditions apply:** Proponents should read and understand the terms and conditions that apply to this RFDP and the Detailed Proposals Phase contained in Part 1 – Appendix A.

**No reliance and no claim:** The information in this RFDP has been compiled on behalf of the State for the guidance of the Proponents participating in the Detailed Proposal Phase for the Project. Neither this RFDP nor any other documentation relating to the Project constitutes an offer or recommendation by the State in relation to the Detailed Proposal Phase or the Project.

This RFDP does not purport to contain all of the information that Proponents may require in assessing the Project or whether to participate in the Detailed Proposal Phase. Proponents accept this RFDP and participate in the Detailed Proposal Phase on the condition that they will make their own enquiries and obtain their own independent advice on all information and risks relating to the Project.

To the maximum extent permitted by law, no Proponent or Participant will have any claim of any kind whatsoever against the State, other Government Parties or the Council (whether in contract, tort (including negligence), equity, under statute or otherwise) arising from, or in connection with, the Detailed Proposal Phase or the Project.

**Participation at Proponent's cost and risk:** The State is not liable for any costs incurred by a Proponent in reviewing this RFDP or participation in the Detailed Proposal Phase. Participation in the Detailed Proposal Phase is at the sole cost and risk of the Proponents.

**No public comments:** Proponents and Participants must not make any public statement in relation to this RFDP, the Detailed Proposal Phase, the Project or any other matter referred to in this RFDP without the prior written consent of the State.

# 1. Introduction

## 1.1 Invitation to Lodge

This RFDP invites Detailed Proposals from Proponents who have satisfactorily demonstrated, via the EOI process, that they have the requisite capacity, capability and experience to deliver the Project.

The Detailed Proposal Phase will be facilitated by the State, represented by the Department. The procurement process is conducted in accordance with the conditions contained in Part 1- Appendix A.

## 1.2 Purpose

The purpose of this Detailed Proposal Phase is to select a Preferred Proponent for the development of the Site. However the selection of a Preferred Proponent is contingent on the submission of a Detailed Proposal that is acceptable to the State and appropriate Ministerial approvals being obtained by the State.

This RFDP seeks to outline:

- (a) relevant information regarding the Project;
- (b) the process which will now take place in order to select the Preferred Proponent;
- (c) the information which will be made available to the Proponents by the State;
- (d) the State's Required Risk Position;
- (e) the State's Preferred Project Outcomes. The State's preferred outcomes have been further developed since the responses to the EOI. Proponents should carefully read and understand the State's Preferred Project Outcomes as set out in this RFDP;
- (f) the conditions for participation by Proponents in the Detailed Proposal Phase;
- (g) the minimum requirements and conditions applying to the preparation and lodgment of a Detailed Proposal;
- (h) the information that must be provided by Proponents to enable the State to properly assess the Detailed Proposals; and
- (i) the process for evaluation and the Evaluation Criteria.

Proponents should be aware that, depending on the outcome of this Detailed Proposal Phase, the State may reassess whether and how the State will proceed with the procurement process or to otherwise facilitate the Project.

This RFDP does not, in any way, expressly or impliedly signify acceptance or endorsement of any submission or information contained in the EOIs lodged by the Proponents (including any discussions with the State in relation to an EOI) or anything disclosed or discussed in any RFDP Information provided by a Proponent.

## 1.3 Detailed Proposal Phase

The State envisages that the Detailed Proposal Phase will:

- (1) allow the State to discuss issues with Proponents relevant to their Detailed Proposal, before it is submitted;
- (2) allow the State to gain an understanding of the nature and extent of development proposed in a Detailed Proposal, before it is submitted;
- (3) allow Proponents to formulate a Detailed Proposal which is consistent with the requirements of this RFDP, including delivery of a Cruise Ship Terminal;
- (4) require Proponents to commit to the Commercial Terms and the State's Required Risk Position as the basis of their Detailed Proposal;
- (5) allows Proponents to present their Detailed Proposal to the State, following submission;
- (6) deliver Detailed Proposals that are consistent with the State's Preferred Project Outcomes; and
- (7) subject to the receipt of a satisfactory Detailed Proposal, enables the State to select a Preferred Proponent to negotiate with and to enter into the Project Agreements.

## 1.4 Deed of Acceptance

To participate in the Detailed Proposal Phase, the Proponent must complete, execute and lodge with the State a Deed of Acceptance within 10 Business Days after a copy of this RFDP is given to the Proponent. The Deed of Acceptance is included at Part 1- Appendix C.

The Deed of Acceptance is to be lodged at the following address:

Transaction Manager - Broadwater Marine Project  
Department of State Development, Infrastructure and Planning  
PO Box 15009  
City East QLD 4002  
Australia

While executed originals of the Deed of Acceptance must be provided and accepted by the State for Proponents to participate in the Detailed Proposal Phase,

Proponents may submit their scanned executed Deed of Acceptance via Affinix to notify the Department that the document is being delivered.

If a Proponent fails to lodge a Deed of Acceptance within the required timeframe, the State may, in its absolute discretion, refuse to consider any Detailed Proposal lodged by the Proponent, or exclude the Proponent from the Detailed Proposal Phase. Access to the VDR will not be provided until a Proponent has executed and delivered a satisfactory Deed of Acceptance.

## 1.5 Governance

The Office of Major Projects within the Department has been tasked with leading the competitive process for the offer of the opportunity to develop the Project on all or part of the Site. The competitive process is being run in collaboration with Council.

The State will secure control of the Site and enter into contractual arrangements with the Preferred Proponent.

An Evaluation Panel has been formed to assess the Detailed Proposals submitted in response to this RFDP. The Evaluation Panel will include representatives from both the State and Council. However, the State will be the final decision maker in relation to all matters concerning the Detailed Proposal Phase and future stages of the procurement process.

The State has appointed the following advisors in relation to the Project:

- Allens: Legal Advisors;
- Arup: Technical Advisors;
- BDO: Probity Advisors; and
- PricewaterhouseCoopers (PWC): Financial and Commercial Advisors.

## 1.6 The Unique Opportunity

The State sees the Project as a unique opportunity for the tourism, marine and construction industries to strengthen the Queensland economy. In particular, the Project presents an opportunity to reinvigorate the Gold Coast tourism sector by delivering a Cruise Ship Terminal and major new tourism infrastructure on all, or part of, the Site.

The Site is made up of a number of parcels of land shown as Development Opportunity Zones in Part 2 – Appendix A, including Wave Break Island, land north and south of Sea World on the Spit and the waters of the Gold Coast Broadwater.

The State will consider rights to develop land based development within the Development Opportunity Zone and any associated marine infrastructure and the Cruise Ship Terminal over the water within the identified Maritime Development Zone. The Project Brief provides further details of the Site, its ownership and relevant considerations.

The opportunity to develop the Project is offered on the basis of:

- (1) acceptance by the Proponent of the State's Required Risk Position; and
- (2) delivery of a Project that includes a Cruise Ship Terminal and otherwise achieves all or some of the State's Preferred Project Outcomes.

The Preferred Proponent will be required to commence delivery of the Project as soon as practicable and not unreasonably delay commencing, continuing or completing the development of the Site in accordance with the development timeframes agreed with the State as an outcome of the RFDP process.

Figure 1: Site location



Figure 2: The Site



## 1.7 Engagement with Proponents

The State recognises that this is a complex development project and wishes to engage with and give Proponents the maximum opportunity and flexibility to provide Detailed Proposals which will best meet the State's Preferred Project Outcomes.

The State will organise interactive workshops with Proponents to allow them to raise issues and seek feedback from the State. The sessions will also allow Proponents to seek clarification from the State on issues related to the Project. Further details of the process are provided in Section 5.

## 2. This RFDP

### 2.1 RFDP Structure

The RFDP has been developed in four parts:

- Part 1 – this document, providing information and instructions to Proponents;
- Part 2 – Project Brief;
- Part 3 – Commercial Terms that will form the basis of the Project Agreements; and
- Part 4 – Returnable Schedules and Evaluation Criteria.

### 2.2 Conflicts in RFDP Documentation

In the event of a conflict between the requirements set out in any of the documents that form the RFDP, the documents should be read in the following priority:

- (1) Part 1 – Appendix A, Conditions applying to the Detailed Proposal Phase;
- (2) Part 1 – Appendix C, Deed of Acceptance;
- (3) Part 1 – Appendix G, Probity Declaration;
- (4) Part 3 – Commercial Terms;
- (5) Part 2 – Project Brief;
- (6) Part 1 – General Information and Instructions to Proponents (other than Appendices A, C and G); and
- (7) Part 4 – Returnable Schedules and Evaluation Criteria.

Notwithstanding the above, if Proponents identify any conflict, they must seek clarification and direction from the Transaction Manager, in accordance with this RFDP.

### 2.3 Proponent to inform itself

The information contained in this RFDP is not intended to be exhaustive, nor does it purport to explore all available options for undertaking the Project or to comprehensively describe the scope of the Project. Proponents must make their own enquiries and investigations in relation to the Project.

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Proponents are advised that the State has developed this RFDP solely for the purpose of assisting it to select the Preferred Proponent, and not for any other purpose.

Proponents are directed to the terms and conditions in Part 1 – Appendix A which give the State a broad discretion to make changes to the Project and the Detailed Proposal Phase.

## 3. Project Overview

### 3.1 Project Vision

The State regards the Project as a catalyst for the tourism, marine and construction industries to strengthen the Queensland economy. The Project also presents a unique opportunity to reinvigorate the Gold Coast tourism sector through the delivery of major new tourism infrastructure.

Proponents should seek to create a Project which provides for:

An internationally acclaimed integrated tourism development that lifts the Queensland economy, provides confidence to invest in the Gold Coast, and is revered by the community for the enhanced lifestyle and recreation outcomes achieved at the Broadwater.

Detailed Proposals for the Project shall be able to demonstrate how they support the Gold Coast City Council's 2020 City Vision. The Project Brief contains further information about the Project.

### 3.2 Cruise Ship Terminal

A Detailed Proposal must include the provision of a Cruise Ship Terminal. A Detailed Proposal which does not include a Cruise Ship Terminal will be considered by the State as not conforming to the requirements of this RFDP and will not be evaluated by the State.

### 3.3 State's Preferred Project Outcomes

The State's Preferred Project Outcomes are for a Project that:

- (1) achieves the State's Required Risk Position;
- (2) is viable (and can be demonstrated in the Proponent's Detailed Proposal to be viable) both during the development and operations phases;
- (3) subject to paragraphs (1) and (2), maximises the achievement of the following Project objectives:
  - (a) maximises the public benefit and financial outcomes for the State in its dealings with the Site;
  - (b) leverages the opportunity provided by the Project to deliver a high quality integrated tourism development;

- (c) complies with the Project Brief;
- (d) supports the State's aim of stimulating the Queensland economy and providing tourism and development benefits to the Gold Coast region;
- (e) provides for the Project vision set out in Section 3.1;
- (f) includes commencement of construction in the earliest possible time after signing of a Development Agreement;
- (g) is delivered (including Returned Works) at the earliest possible time, with key tourism and public benefit elements to be delivered before the commencement of the Commonwealth Games in 2018;
- (h) all development associated with the Project is completed in its entirety within 10 years after the signing of the Development Agreement;
- (i) strengthens the economic base of the Gold Coast and supports long term job creation; and
- (j) enhances the Gold Coast's reputation as a leading tourist destination.

### 3.4 State's Required Risk Position

The State's Required Risk Position is that:

- (1) the Project is to be fully funded by the Project Company and undertaken at the sole cost and risk of the Project Company;
- (2) the State will not contribute funding or accept any risk associated with the Project, including any post-contractual contingent liability, cumulative, residual, consequential or other risk or liability associated with the development or operation of the Project;
- (3) any Returned Works and Associated Services are to be provided without cost to the State;
- (4) the Site is made available for the Project in an 'as is' condition, subject to all Site Conditions;
- (5) no taxation or other financial concessions will be provided by the State in relation to the Project;
- (6) the Proponent provides all infrastructure required to facilitate delivery of the Project;
- (7) the only consideration to be provided by the State in connection with the delivery of the Project is, subject to Contractual Close occurring, the grant by the State to the Project Company of tenure to areas of the Site owned or controlled by the State, as provided under the Project Agreements;
- (8) the Proponent assumes responsibility for managing, and all liability arising from, all Project Risks and all other risks impacting on delivery of the Project; and

- (9) the Commercial Terms and other provisions of this RFDP relating to the acceptance of risk or liability by the Project Company will apply.

### 3.5 Project Components

Without limiting the State's requirement for Detailed Proposals to include a Cruise Ship Terminal, the State considers that development of the following additional Project components may maximise the achievement of the State's Preferred Project Outcomes, subject to the Proponent demonstrating their consistency with all of the State's Preferred Project Outcomes:

- an integrated tourism development (including marina facilities);
- tourism and leisure attractions; and
- supporting land uses, including a mix of retail, commercial and residential uses.

Any Project Company Improvements should also be enhanced by community open space and recreation areas that reflect the current community use of the Site and the demands created by the Project.

To maximise the achievement of the State's Preferred Project Outcomes, the Project components should also include Returned Works and Associated Services necessary to:

- satisfy Stakeholder requirements;
- satisfy all development approval conditions; and
- achieve the State's Required Risk Position.

### 3.6 Project Viability

The State wants to understand how a Proponent proposes to establish the long term viability of all proposed Project Company Improvements. As set out in Part 4, a Business Plan must be developed which sets out the Proponent's high level vision and approach to the Project and how the Proponent will design, deliver and operate the Project.

The Business Plan should also set out how the Proponent will provide an integrated approach to the development, operation and maintenance of the Project Company Improvements, including Returned Works. The Business Plan should also have an intermediate horizon of at least ten years, and will be supported by a marketing strategy for the Site, consistent with the Proponent's vision.

### 3.7 Whole-of-Site Outcomes

Proponents are to provide a master planned approach that provides an integrated outcome for the Site which is consistent with the State's Preferred Project Outcomes and any programme for the staged completion of Project components. This whole-of-Site approach will need to balance the design of the public spaces with that of the built form across the Site, reflecting its unique character.

The challenge is to ensure that the design of spaces between any proposed Project Company Improvements is treated with the same importance as that of the buildings themselves. Well designed spaces, buildings and attractions will facilitate activation of the broader Site whilst respecting the range of existing community uses, as identified in the Project Brief.

### 3.8 Project Stakeholders

The Department is leading the procurement process of the Project on behalf of the State. However there are various other Stakeholders who will have an interest in the Site and will potentially have requirements for the Project, including:

- Department of Natural Resources and Mines;
- Department of Transport and Main Roads;
- Department of Tourism, Major Events, Small Business and Commonwealth Games;
- Queensland Treasury and Trade; and
- the Nominated Stakeholders.

See Section 5.8 in relation to the Proponent's interaction with Nominated Stakeholders.

### 3.9 Communications with the Community

The Project has the potential to gain significant community attention. The Project therefore requires a careful process of informing and consulting with both the local Gold Coast community and wider Stakeholder groups.

The Council has commenced consultation with certain Stakeholders and the community. The outcomes of this process and the identified issues and opportunities have been documented and are provided in the VDR.

The Preferred Proponent will be required to develop a Stakeholder and Community Involvement Plan, covering the period from selection of a Preferred Proponent to the opening of any proposed Project Company Improvements. Communication and engagement activities shall be designed to support the agreed Project milestones, keeping the community informed, and with opportunities for the community to provide feedback wherever possible.

### 3.10 Development and Other Approvals

Approvals, including development approval authorising the use of the Site for the Project, will be a condition to Contractual Close. The State envisages that a development application would be lodged by the Preferred Proponent by the end of April 2014, to seek approval for the first stage of the Project Company Improvements, Associated Services and Returned Works.

All development, including tidal works, would normally be assessed under the provisions of the *Sustainable Planning Act 2009 (SPA)*.

The State acknowledges that an environmental impact statement may be required for parts of the Project, dependent on the nature and extent of development proposed. A Proponent may wish to consider applying to the Coordinator-General for consideration of the Project as a coordinated project under the provisions of the *State Development and Public Works Organisation Act 1971*.

If a Proponent demonstrates as part of its Detailed Proposal how the Project meets the requirements for declaration of a Priority Development Area under the *Economic Development Act 2012*, the Department may recommend to the State that it consider declaring a Priority Development Area to facilitate all or part of the Project.

In addition to development approvals, a number of regulatory and other approvals will be required to be obtained by the Preferred Proponent to authorise the undertaking and operation of the Project.

Proponents are to articulate their proposed approval pathway (relating to both development and regulatory approvals), including in order to meet the envisaged timeline, as provided in Part 4.

The State recognises that modifications to Detailed Proposals may be required in order to gain development or other approvals to authorise the Project. The cost and risk of these will be borne by the Preferred Proponent and any changes to the Detailed Proposal would be subject to the State's approval.

### 3.11 Further Project Information

Background information and reference material relevant to the Project will be made available to Proponents in the VDR, accessible via Affinitext.

The information contained in the VDR is State Supplied Information and includes:

- Site Context Report – summarising the background information available relevant to the Site; and
- Site studies and reports.

The Proponent's access to the VDR will commence after the Proponent has completed, executed and submitted to the State the Deed of Acceptance, the State has accepted that Deed of Acceptance and the Proponent has otherwise agreed to comply with the relevant VDR conditions of use.

# 4. Project Commercial Structure

## 4.1 Commercial Terms

The Commercial Terms are set out in Part 3. The Commercial Terms will form the basis of the Project Agreements between the State and the Preferred Proponent for the planning, financing, design, construction, maintenance and operation of the Project.

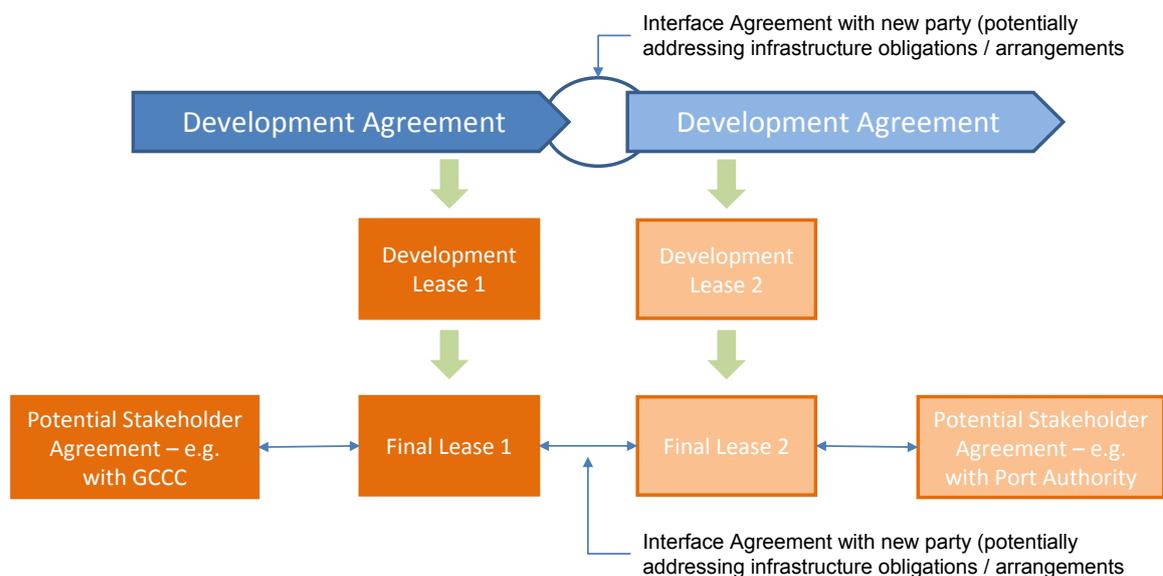
The nature and extent of any amendments to the Commercial Terms must be detailed by a Proponent in its Detailed Proposal. Any amendment by a Proponent to the Commercial Terms will be assessed by the State during the evaluation process.

## 4.2 Commercial Structure

Subject to the State being satisfied as to the terms to apply to, and the contents of, a Detailed Proposal, the State envisages that it will enter into the Project Agreements with the Preferred Proponent for the delivery of the Project.

The State expects that the Preferred Proponent (and parties related to it) will enter into a number of agreements in support of its commercial structure. If the development of the Project is to be staged, the Preferred Proponent may need to enter into a number of Project Agreements to facilitate this, as illustrated below:

Figure 3: Commercial Structure



# 5. Procurement Process

## 5.1 Introduction

The purpose of the RFDP Process is for the State to select a Preferred Proponent with whom the State will enter into the Project Agreements.

Whilst the State reserves the right at its absolute discretion to further tailor or change the RFDP Process, at this point it is envisaged that the RFDP Process will comprise the following:

- issuing of the RFDP to Proponents;
- access to background and reference material relevant to the Project via the VDR;
- an interactive workshop process, consistent with the Interactive Workshop Protocol, including a question and answer (Q&A) process, a programme of interactive workshops and an interim presentation;
- the preparation and submission by Proponents of Detailed Proposals;
- the evaluation by the Evaluation Panel of Detailed Proposals;
- if required, parallel clarification or negotiations with some or all of the Proponents, in accordance with probity procedures and requirements, to clarify any aspects of their Detailed Proposals that are either unsatisfactory to the State or which may improve the overall outcome for the State;
- following the clarification and negotiation process, a further evaluation of Detailed Proposals may be undertaken by the State in order to select the Preferred Proponent(s);
- selection of one or more Preferred Proponent(s);
- finalisation of the Development Agreement with the Preferred Proponent(s); and
- final selection of, and contract award to, the Preferred Proponent.

Should the State not be able to achieve an outcome acceptable to it, without limiting any other right of the State under or in connection with this RFDP, the State in its absolute discretion reserves the right to:

- not select a Preferred Proponent following its evaluation of Detailed Proposals; or
- request certain Proponents who have submitted Detailed Proposals to submit (whether during or following the completion of the State's evaluation process) revised Detailed Proposals or participate in a further negotiation, or other process, which may be evaluated by the State at its discretion.

## 5.2 Interactive Tender Process

An interactive tender process provides the opportunity for direct interaction between the State and Proponents prior to submission of Detailed Proposals. This interaction will include workshops with Proponents and the State to ensure Proponents:

- have a clear understanding of the State's expectations;
- meet the requirements of the RFDP; and
- develop Detailed Proposals in accordance with the Commercial Terms and the State's Required Risk Position.

Each Proponent will be offered the opportunity to attend a series of interactive workshops with the State and its advisors. The objective of this interactive process is to enable Proponents to test whether particular approaches or solutions under development may be consistent with the RFDP and the State's Preferred Project Outcomes.

The Project Team will be available for up to four interactive sessions with each Proponent, commencing approximately two weeks after the release of this RFDP, to address the following broad streams:

- Technical – (including master plan, design development and infrastructure);
- Project delivery – (including programme, delivery approach and ongoing public access to the Site);
- Operational Delivery - (including any maritime matters and business planning); and
- Commercial & Financial – (including the Commercial Terms and financial requirements).

The State will provide an indicative programme of interactive meetings to each Proponent as part of the Interactive Workshop Protocol, but Proponents will have ultimate discretion as to the requirement for and the subject nature of these sessions, subject to the availability of the Project Team and the State's advisors.

## 5.3 Interim Presentation

The State proposes to facilitate a formal presentation session with each Proponent, prior to lodgement of Detailed Proposals, to enable Proponents to present the development status of their Detailed Proposals and obtain feedback.

These sessions will include representatives of the State and Council and may include other Stakeholders. All aspects of the presentation sessions will be conducted within an appropriate probity framework.

Proponents are encouraged to use the presentation sessions to test the acceptability of their technical and commercial solutions.

A further final presentation of each Proponent's Detailed Proposal is intended to occur after its lodgement.

The State reserves the right to determine in its absolute discretion the nature and extent of all presentation sessions, including agendas for sessions and the extent of interaction with, and feedback provided by, the State.

## 5.4 Interaction between the State and Proponents

The State will use Affinix for its written communication and document management during the RFDP Process. Affinix is an internet based, electronic document management and collaboration tool that is designed to facilitate the effective management of information. General information about Affinix can be found on the public website at [www.affinix.com](http://www.affinix.com).

Affinix will provide the principal form of communication between the State and Proponents during the RFDP Process including:

- background information and reference material available in the VDR;
- the RFDP and associated protocols;
- addenda to the RFDP;
- Q&A in relation to the RFDP; and
- minutes (agreed summary only) of interactive workshops.

Proponents are required to comply with, and be bound by, additional terms governing the use of Affinix for the Project and the use and disclosure of State Supplied Information. These terms are set out in the Q&A Protocol and the Deed of Acceptance.

## 5.5 Q&A Process

Any enquiries that Proponents may wish to make in order to clarify their interpretation of the RFDP documentation, or for any other purpose (including in seeking any clarifications or direction regarding the Detailed Proposal Phase Materials), must be submitted in writing via Affinix in accordance with the Q&A Protocol.

All enquiries must be submitted not later than the 'close of Q&A' date set out in Part 1, Section 5.6. The State may, in its absolute discretion, not respond to an enquiry received after this time.

Enquiries and the State’s responses will be provided to all Proponents, except where:

- the Proponent nominates in its enquiry that it relates to confidential information relevant to its Detailed Proposal; and
- the State is of the opinion that the enquiry and the State’s response are not material to the integrity or the competitive nature of the RFDP Process.

In the event that a Proponent nominates that an enquiry relates to confidential information relevant to its Detailed Proposal, and if the State is of the opinion that the enquiry is not proprietary in nature, the State will advise the Proponent who will be given the option to withdraw the enquiry. If the Proponent then reaffirms its request for a response to the enquiry, the enquiry and the State’s response may be provided to all Proponents.

## 5.6 Indicative Procurement Process

An indicative timeline for the procurement process is outlined in the table below:

Table: Procurement Timeline

Milestone	Date
Release of Invitation to Lodge a Detailed Proposal	10 July 2013
Interim Presentation 1	2 September 2013
Close of Q&A	3 October 2013
Lodgement of Detailed Proposals	Closing Date
Presentation of Detailed Proposal	week commencing 21 October 2013
Preferred Proponent selected	December 2013 to March 2014
Execution of Project Agreements	Subject to negotiations with Preferred Proponent

The timeline is indicative only and may be subject to change.

## 5.7 Procurement Process Approvals and Changes

Further phases of the procurement process and the State’s commitment to the Project remain subject to future approvals required from the State.

The State reserves the right to alter the proposed procurement process including suspending or terminating the procurement process, changing the nature of, or omitting any phase, or adding additional phases.

The State may at any time during the procurement process request:

- any Proponent to submit additional information or provide more details and clarification about its Detailed Proposal, matters relating to the Evaluation Criteria, and its ability to complete and fulfil obligations under its Detailed Proposal;
- any Proponent to make one or more formal presentations for the purposes of explaining details in its Detailed Proposal and to allow further consideration of its Detailed Proposal by the State; and
- any Proponent to review, improve or enhance parts of its Detailed Proposal.

## 5.8 Contact with Stakeholders

During the Detailed Proposal Phase, the Department is to be the primary contact for Proponents. However Proponents must investigate and satisfy themselves as to the likely requirements of all relevant Stakeholders relating to the Returned Works, Associated Services and Project Company Improvements. Proponents must also ensure that their Detailed Proposals demonstrate consideration of and compliance with those Stakeholders' requirements.

The State agrees that Proponents may only contact directly the agencies mentioned below (**Nominated Stakeholders**). To facilitate such contact, there is a nominated officer for each Stakeholder to whom all contact must be directed:

Organisation	Contact Person	Contact Details
Council and Gold Coast Water	[REDACTED]	[REDACTED]
Department of Natural Resources and Mines	[REDACTED]	[REDACTED]
Department of Transport and Main Roads	[REDACTED]	[REDACTED]
Maritime Safety Queensland	[REDACTED]	[REDACTED]
Gold Coast Waterways Authority	[REDACTED]	[REDACTED]
Sea World	[REDACTED]	[REDACTED]
Gold Coast Fisherman's Cooperative	[REDACTED]	[REDACTED]
Energex	[REDACTED]	[REDACTED]

The Department is the only party that can provide details of the State's requirements or objectives for the Detailed Proposals Phase and the Project. Proponents acknowledge that Stakeholders (including the Nominated Stakeholders):

- do not bind the State in relation to the Detailed Proposal Phase or the Project, and
- express their own views and represent their own interests in connection with any communication with a Proponent,

including if a Stakeholder is a Queensland government department other than the Department.

Proponents must comply with the Stakeholder Consultation Protocol (Appendix F) when dealing with any Stakeholders.

## 5.9 Probity

The State has engaged a Probity Advisor. The Probity Advisor's role in this Detailed Proposals Phase includes:

- ensuring that the procedures adopted in the receipt and evaluation of Detailed Proposals are fair and equitable and to monitor the evaluation process;
- providing guidance to the State as to how probity issues can be resolved; and
- monitoring communications regarding the Project that occur between the State and Proponents during the period between the release of the RFDP and the announcement of the Preferred Proponent.

The Probity Advisor is not part of the Evaluation Panel but an independent observer of the evaluation process and will not be involved in the evaluation of any Detailed Proposals.

Proponents who have any concerns about the conduct or probity of the process must promptly notify the Probity Advisor who will investigate the matter and make an appropriate recommendation to the State. Any action taken as a result of such a process will be at the State's sole discretion.

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



## 5.10 Requirements Relating to Probity and Competitiveness Issues

The State requires that the probity and competitiveness of the RFDP Process is not materially impacted by conflicts of interest. Proponents and Participants must promptly inform the State of any actual, potential or perceived conflict of interest during the RFDP Process, or in relation to their potential involvement in the Project, that may arise prior to the lodgement of a Detailed Proposal.

A declaration must be made by Proponents and Participants and submitted with the Detailed Proposal, as to whether any conflict of interest or potential or perceived conflict of interest exists, and if so, detail the proposed approach for managing and/or resolving that conflict. Proponents and Participants must also undertake in that declaration to promptly inform the State of any actual, potential or perceived conflicts of interest that may arise after lodgement of a Detailed Proposal.

If a conflict of interest or a potential or perceived conflict of interest exists, relevant employees, agents and advisors of a Proponent and/or Participant must also submit a declaration. The required form of declaration is set out in the Probity Declaration comprising Appendix G.

Depending upon the information provided by Proponents as part of its Detailed Proposals, or otherwise obtained from its own investigations, the State may require Proponents to:

- clarify the information provided and/or provide further information; and/or
- enter into probity deeds containing covenants designed to protect the probity and competitiveness of the RFDP Process.

Where a Proponent / Participant is a Related Party, the Proponent / Participant should also provide details of:

- the relationship between Related Parties (if relevant);
- the processes by which decisions concerning the Proponent's Detailed Proposal will be made and responsibilities discharged during the RFDP Process;
- procedures and internal governance arrangements which the Proponent has or proposes to implement to ensure transparency and accountability and safeguard confidentiality, independence and perceived competitiveness of its Detailed Proposal; and
- the manner in which compliance with such internal governance arrangements and other procedures will be certified.

## 6. Evaluation Process

### 6.1 Introduction

The evaluation of Detailed Proposals will be conducted within an established probity framework. The State's appointed advisors will provide support to the State and Evaluation Panel in evaluating the Detailed Proposals.

The State is committed to a procurement process that is transparent, accountable and conducted within the framework of probity arrangements for the Project.

The evaluation process will involve a review of Detailed Proposals to:

- confirm that the Proponent has provided a satisfactory response relating to the information requirements detailed in Part 4; and
- assess each Detailed Proposal against the Evaluation Criteria.

Proponents must promptly respond to any requests for further information or clarification from the State in relation to any aspect of the Project or a Detailed Proposal. Proponents should not rely on being invited to make further submissions or to participate in any clarification process prior to the State's evaluation of Detailed Proposals being finalised.

Except to the extent the EOI is to be updated as outlined in Part 4, Detailed Proposals must not refer to anything contained in an EOI and must be totally self-contained.

### 6.2 Evaluation Criteria

The Evaluation Criteria that the State will use to evaluate Detailed Proposals are included in Part 4. Proponents should be aware of the State's rights in relation to the evaluation process and the Evaluation Criteria contained in Part 1 – Appendix A. The Evaluation Criteria are not listed in any special order of priority and may not be given equal weight.

### 6.3 Evaluation Panel and Governance

The responsibility for evaluation of Proposals will rest with the Evaluation Panel. The Evaluation Panel may be assisted by specialist sub-panels and advisors in the preparation of its evaluation report.

The Evaluation Panel's assessment, evaluation and recommendations will be provided in turn to the State for its consideration. Any selection of a Preferred Proponent is also subject to State approval.

The Evaluation Panel will include representatives of both the State and Council.

## 6.4 Evaluation process

Following the submission of Detailed Proposals on the Closing Date, an evaluation process will take place. The evaluation process is designed to facilitate the efficient and fair identification of the Detailed Proposal that best meets the State's Preferred Project Outcomes.

The evaluation of Proposals will be based on the information provided in response to Part 4 and any further information or clarification requested by the State. The evaluation of Detailed Proposals will be conducted using a staged approach consisting of:

- Stage one – minimum threshold assessment;
- Stage two – evaluation of Detailed Proposals and identification of the Preferred Proponent; and
- Stage three – negotiation and progression of required State approvals.

The State may undertake the evaluation of multiple stages in parallel (e.g. stages one and two may be undertaken simultaneously and/or stages two and three may be merged with the State undertaking negotiations with one or more Proponents).

### **Stage one – minimum threshold assessment**

The State will review all Detailed Proposals received for completeness, unintentional errors, identification and treatment of conflicts of interest, clarity and compliance with the RFDP.

### **Stage two – evaluation of Proposals and selection of Preferred Proponent**

In stage two, a detailed evaluation of Detailed Proposals will be conducted, including:

- evaluation of each Detailed Proposal against the Evaluation Criteria; and
- overall financial and commercial assessment of the Detailed Proposals considering all aspects of the Project, for the purpose of selecting the Preferred Proponent(s).

### **Stage three – negotiation and approval**

Given that the State may conduct stage three with only one party, Proponents are encouraged to submit their best and unconditional offer as part of their Detailed

Proposal. During stage two, the State may conduct discussions, validation and clarification and may issue requests for information or clarification from a Proponent.

In addition to any requests for information or clarification from the State, the State may enter into detailed negotiations with one or more Proponent(s) (at its absolute discretion), with the goal of maximising the benefits arising from the Project.

This stage is likely to involve:

- the State conducting Project Agreement negotiations with the one or more Proponent(s); and
- at the conclusion of the negotiation process, the State deciding whether to:
  - enter into Project Agreements with the Preferred Proponent; or
  - not enter into Project Agreements and discontinue the Project.

Stage three will conclude with documentation of the commercial position reached and the approval to enter into Project Agreements.

## 6.5 Selection of Preferred Proponent

Proponents should be aware that Ministerial approval is required before the State can award Preferred Proponent status or execute any Project Agreements.

The State will give written notice to the selected Preferred Proponent or Preferred Proponents and will inform the other Proponents. Selection as Preferred Proponent is not authorisation to undertake the Project and Proponents should review Part 1 – Appendix A in that regard.

# 7. Format and Lodgement

## 7.1 General

Part 4 outlines the information required to enable the State to assess the Proponent's Detailed Proposal.

Proponents must submit their Detailed Proposals in accordance with the provisions of this RFDP. It is expected that Proponents will provide sufficient material to fully describe their Detailed Proposal, working within the page and content limits prescribed within Part 4.

Detailed Proposals must remain valid and open for acceptance by the State for a minimum period of 5 months after the Closing Date, unless extended by written agreement between the parties.

## 7.2 Complete Detailed Proposal

For the purposes of the evaluation of Detailed Proposals, the State will consider a submission to be a Detailed Proposal meeting the requirements of this RFDP, provided that in the State's reasonable opinion it:

- (1) addresses the State's Preferred Project Outcomes;
- (2) is in accordance with the State's Required Risk Position and the Commercial Terms;
- (3) includes a Cruise Ship Terminal;
- (4) contains a full suite of completed Returnable Schedules as required by Part 4; and
- (5) is duly executed by a representative of the Proponent, who confirms and provides evidence of the basis of their authority to bind the Proponent to deliver its obligations under the Detailed Proposal.

## 7.3 Format of Detailed Proposal Documents

Proponents should note the following with respect to the required format of Detailed Proposals. Detailed Proposals must:

- be in English;
- where practical, be submitted in A4 format (except for drawings which must be in A3 format);

- be set out in no smaller than Arial 11 point font; and
- be clear and concise, with responses of the format, content and level of detail set out in Part 4.

Unnecessarily elaborate responses or excessive attachments are discouraged and the State reserves the right to disregard any Detailed Proposal (in part or in whole) in this event. However, Proponents should submit Detailed Proposals in sufficient detail to allow the Evaluation Panel to complete its assessment.

Proponents must comply with the *Privacy Act 1988* (Cth) in relation to any personal information provided in their Detailed Proposal.

The State will not accept changes, modifications or adjustments to Detailed Proposals after lodgement other than as outlined in this document and at its absolute discretion.

## 7.4 Late Lodgement Policies

Detailed Proposals received after 2pm Brisbane time on the Closing Date will be deemed to be 'late' and will be registered separately. A late Detailed Proposal will only be admitted for evaluation if the State, in its absolute discretion, makes a decision to do so.

## 7.5 Lodgement of Detailed Proposals

Detailed Proposals must be received no later than 2pm Brisbane time on the Closing Date.

Detailed Proposals are to be lodged in a sealed envelope/secured box clearly marked:

Private and Confidential

Detailed Proposals – Broadwater Marine Project- DSDIP-1975-12

Attention: The Transaction Manager, Broadwater Marine Project

Major Projects Office, Department of State Development, Infrastructure and Planning

And addressed to:

Queensland Government Tender Box

DSDIP-1975-12

Decipha Pty Ltd

2 Duncan Street

West End QLD 4010

Australia

An acknowledgement of receipt will be issued by the State as soon as practicable in respect of the Detailed Proposal.

Proponents must provide Detailed Proposals as follows:

- 1 bound copy of its Detailed Proposal, marked 'Original';
- 3 unbound copies of its Detailed Proposal in ring-binder/lever-arch files; and
- 4 CD or USB flash drives each containing a full copy of the Detailed Proposal formatted to Microsoft Office 2003 or later, in both PDF and Word (editable) format (or in respect of drawings, dwg format).

The bound and unbound copies should be numbered consecutively from 1 to 4 and electronic copies numbered consecutively from 1 to 4. The content of the copies (hard and soft) must be identical. In the event of any discrepancies between the copies, the bound copy marked 'Original' will prevail.

Proponents should refer to Part 4 for further information, including certain exceptions to the above lodgement requirements for the Financial Model.

Detailed Proposals must be hand delivered to the address above. Detailed Proposals will not be accepted by the State if sent by facsimile, email or other electronic means or lodged outside of Business Hours.

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## **8. Part 1 Appendices**

**8.1 Appendix A – RFDP Conditions**

**8.2 Appendix B – RFDP Interpretations**

**8.3 Appendix C – Deed of Acceptance**

**8.4 Appendix D – Q&A Protocol**

**8.5 Appendix E – Interactive Workshop Protocol**

**8.6 Appendix F – Stakeholder Consultation Protocol**

**8.7 Appendix G – Probity Declaration**

# Appendix A – Conditions applying to the Detailed Proposal Phase

Outlined below are general terms and conditions applicable to the Detailed Proposal Phase.

## 1 No Legal Relationship

The information in this RFDP and any State Supplied Information, has been compiled on behalf of the State for the guidance of the Proponents participating in the Detailed Proposal Phase for the Project.

Except to the extent of obligations accepted by a Proponent in executing a Deed of Acceptance, neither the provision of this RFDP or any State Supplied Information, nor a Proponent's participation in the Detailed Proposal Phase is intended to, nor shall constitute, any contractual or other legal relationship between the State and the recipient of this RFDP or any State Supplied Information (whether about the carrying out of the Project or the process for the selection of the Preferred Proponent).

No legal or other obligation shall arise between a Proponent (or any Participant) and the State in connection with the carrying out of the Project unless and until formal Project Agreements have been signed by both parties.

## 2 Reservation of Rights

Notwithstanding any provision of this RFDP to the contrary, the State may conduct the Detailed Proposal Phase in such manner as it thinks fit and the State reserves the right, in its absolute discretion and at any time, to:

- change the structure, procedures, nature or timing of the Detailed Proposal Phase or overall procurement process for the Project;
- alter the terms of participation in the Detailed Proposal Phase or overall procurement process for the Project (including timeframes);
- seek clarifications or additional information from any Proponent, including to invite presentations from any Proponents or engage in an interview with any Proponent;
- conduct due diligence investigations in respect of any Proponent;
- draw on outside expertise as required;
- consult with or seek assistance from the Council or other Government Parties or stakeholders;
- request further information from any Proponent;
- terminate further participation in the Detailed Proposal Phase by any Proponent;

- refuse to allow any particular organisations or consortia, including any Proponent, entry to the Detailed Proposal Phase;
- refuse to consider any Detailed Proposal that does not conform to the requirements of this RFDP;
- not select a Preferred Proponent;
- not accept any Detailed Proposal;
- take into account, evaluate and accept or reject any incomplete Detailed Proposal;
- allow further organisations or consortia to participate in the Detailed Proposal Phase or overall procurement process for the Project (whether or not they have submitted an EOI);
- terminate or reinstate the Detailed Proposal Phase;
- alter or extend the date and time for presentations or interviews;
- not proceed with the Project;
- not proceed with the Project in the manner outlined in this RFDP;
- amend the nature, scope or timing of the Project, including the Closing Date;
- allow the withdrawal or addition of any Proponent;
- agree to terms for the delivery of the Project that are different from those referred to in this RFDP;
- publish the names of Proponents;
- take such other action as it considers in its absolute discretion appropriate in relation to the Detailed Proposal Phase or overall competitive process for the Project;
- determine the nature, scope and timing of any further stages in the procurement process (including evaluation criteria); or
- not provide Proponents with any reason for any actions or decisions it may take, including in respect of the exercise by the State of any or all of the abovementioned rights.

## 3 Confidentiality

### 3.1 Proponent's Confidentiality

The contents of this RFDP and any State Supplied Information are being made available to Proponents only in connection with the Project and must not be disclosed or used other than for the purposes of the Proponent participating in the Detailed Proposal Phase.

Each Proponent must keep any information regarding or contained in the RFDP and any State Supplied Information confidential and not:

- (1) disclose it to any person; or
- (2) copy, use or otherwise deal with it for any purpose,
- (3) except to the extent:
- (4) the Proponent is specifically authorised to do so in writing by the State;
- (5) the information is disclosed to and used by others (who are also bound by terms acceptable to the State to keep the information confidential) for the purposes of enabling the Proponent to participate in the Detailed Proposal Phase; or
- (6) the information is already in the public domain, otherwise than because of a breach by the Proponent of these confidentiality obligations.

Proponents must not make any public statement in relation to this RFDP, the Detailed Proposal Phase, the Project or the procurement process for the Project, State Supplied Information, RFDP Information or any other matter referred to in this RFDP without the prior written consent of the State.

### 3.2 State's Confidentiality

All RFDP Information provided by Proponents may be disclosed to the Council, Government Parties and any other party from whom the State may seek advice in connection with this Detailed Proposal Phase or the Project.

Subject to the terms of this RFDP, all RFDP Information will be stored securely and held in confidence, except to the extent that disclosure is required for audit or legal purposes, is required to be released under the Right to Information Act 2009 (Qld) or any other legislative requirements or as required or allowed by this RFDP.

## 4 Queries by Proponents

- (1) During the Detailed Proposal Phase, all Q&As and responses to Q&As will be provided through the Transaction Manager under the process set out in the Q&A Protocol. The Transaction Manager reserves the right to determine the extent to which Proponents will be entitled to raise Q&As.
- (2) Unless a communication is formally issued by the Transaction Manager in accordance with the Q&A Protocol, that communication is not a formal response to an Q&A.
- (3) The State may, in its discretion, provide a response to an Q&A raised by a particular Proponent to both the Proponent who has raised the Q&A (**Q&A Proponent**) and to the other Proponents (**Other Proponents**) even if the Q&A

is commercial in confidence to the extent the State considers, acting in accordance with the probity requirements of this RFDP, that:

- (a) it is necessary to ensure due probity or fairness in the Detailed Proposal Phase; or
  - (b) the Q&A raises an issue that necessitates a change to the requirements for the Project.
- (4) At the time that a Q&A Proponent raises a Q&A, the Q&A Proponent may request the Transaction Manager to treat an Q&A response to that Q&A as commercial in confidence, in which case:
- (a) the Transaction Manager will determine whether the Q&A response should be treated as commercial in confidence;
  - (b) if the Transaction Manager, in conjunction with the Probity Advisor as necessary, determines that the Q&A response should be treated as commercial in confidence, subject to paragraph (3), the response will be given to the Q&A Proponent and not the Other Proponents.
- (5) If the State provides a response to the Q&A, that response shall in all cases be State Supplied Information.

## 5 Extent of Interaction

The State may in its absolute discretion determine the content, extent and form of any interactions with the Proponents.

## 6 Proponent Privacy

'Personal Information', as defined under the National Privacy Principles and provided by Proponents may, in the course and for the purposes of evaluation, be disclosed to the Government Parties and any other party from whom the State may seek advice in relation to this Detailed Proposal Phase or the Project.

In relation to that Personal Information, the Proponent warrants to the State:

- (1) the Proponent has obtained the consent of each individual about which any Sensitive Information (as defined in the Privacy Act 1988 (Cth)) is provided; and
- (2) the Proponent has or will within the time required by the Privacy Act ensure that each individual about whom any Personal Information is provided has received a written statement setting out all of the matters required by National Privacy Principle 1.3 or, on or after 12 March 2014, the matters required by Australian Privacy Principles 5.1 and 5.2:
  - (a) in relation to disclosure of the Personal Information to the Government Parties and other parties in accordance with this RFDP; and

- (b) disclosing that the entities referred to in paragraph (i) shall use the Personal Information for the purposes of reviewing and assessing any RFDP Information provided by the Proponent.

## 7 Costs to be borne by Proponents

To the extent permitted by law, no Proponent shall have any claim of any kind whatsoever against the State or other Government Parties (whether in contract, tort (including negligence), equity, under statute or otherwise) arising from or in connection with:

- (1) any costs, expenses, losses or liabilities suffered or incurred by the Proponent in preparing and providing any RFDP Information (including without limitation its Detailed Proposal, any requests for further information by the State, attendance at interviews or presentations or involvement in discussions) or otherwise in connection with its participation in the Detailed Proposal Phase or the Project;
- (2) the State at any time exercising or failing to exercise, in its absolute discretion, any rights it has under or in connection with the RFDP or the Project; or
- (3) any of the matters or things relevant to its participation in the Detailed Proposal Phase or the Project in respect of which the Proponent must satisfy itself under the RFDP.

Without limiting the foregoing, if the State cancels or varies the Detailed Proposal Phase at any time, or does any other thing referred to in Section 2 of this Part 1 Appendix A, no Proponent shall have any claim against the State arising from or in connection with any costs, expenses, losses or liabilities incurred by the Proponent in participating in the Detailed Proposal Phase or otherwise in connection with or in relation to (whether directly or indirectly) the Project.

## 8 No warranties

The Government Parties do not make any warranty or representation (express or implied), as to the currency, accuracy, adequacy, suitability, reliability or completeness of the information contained in this RFDP or any information which may be provided in association with it including without limitation any State Supplied Information. None of the Government Parties accept any responsibility or liability whether arising from negligence or otherwise (except a liability that cannot be lawfully excluded) for any reliance placed on the contents of this RFDP, State Supplied Information, any information which may be provided in connection with the RFDP or for any representations (whether express or implied) or information (including forecasts) contained in, or any omissions from, this RFDP or any written or oral communications transmitted to a recipient in the course of the evaluation of the Project.

There may also be other information or documents in the knowledge or possession of the Government Parties which are relevant to the Project or the Detailed Proposal Phase but are not disclosed by the Government Parties.

To the extent the Government Parties are not the author or source of any document provided to Proponents, they merely pass that document on to Proponents and do not adopt or accept any responsibility for the content of it.

This RFDP and all statements and information made in relation to it including without limitation any State Supplied Information, reflect the Government Parties' current intention only. The information and intentions set out in this RFDP and any other information made available in connection with the Detailed Proposal Phase, including without limitation any State Supplied Information, may change at any time without notice. The risk, responsibility and liability connected with the Detailed Proposal Phase are solely that of each Proponent.

## 9 Disclaimer

This RFDP and all State Supplied Information, has been prepared to give potential Proponents background information in relation to the Project. This RFDP and any information made available in connection with the Detailed Proposal Phase, including without limitation the State Supplied Information, does not, and does not purport to, comprehensively describe the scope of the Project or contain all of the information that Proponents may require in reaching decisions in relation to whether or not to participate in the Detailed Proposal Phase. Proponents must form their own views as to what information is relevant to such decisions.

Proponents must not rely on the information contained or referred to in this RFDP or any State Supplied Information. Proponents must make their own independent investigations of the information contained or referred to in this RFDP and any State Supplied Information and their own appraisal of the opportunity to participate in the Project. Proponents must obtain their own independent legal, financial, tax and other advice in relation to information in this RFDP or otherwise made available to them during the Detailed Proposal Phase including without limitation any State Supplied Information.

## 10 Changes

The delivery of this RFDP shall not under any circumstances be taken to create an implication that there has been or will be no material change in the affairs, the operations or status of the Government Parties. The Government Parties will not be responsible for any errors, inaccuracy in or omissions from this RFDP, nor will they have any responsibility to inform any recipient of this RFDP or any State Supplied Information of any matter or information coming to their attention which may affect

any other matter or information contained or referred to in this RFDP or any State Supplied Information.

## 11 Diagrams and Plans

To the extent that this RFDP or any State Supplied Information contains diagrams and plans, those diagrams and plans are only indicative in nature. The Government Parties do not make any representation or warranty, express or implied, that such diagrams or plans are accurate.

## 12 Assumptions and Sources

Certain information contained or referred to in this RFDP or any information which may be provided in association with it, including without limitation any State Supplied Information, is based on a number of electronic and other assumptions, and must be interpreted in the context of those assumptions. Where information in this RFDP or any information which may be provided in association with it, including without limitation any State Supplied Information, includes reference to another source, recipients of this RFDP and any State Supplied Information should refer to, and interpret the information in the context of, that source.

## 13 Proponents to inform themselves

Without limiting the scope of the obligations of, or the risks and responsibilities assumed by, the Preferred Proponent under the Project Agreements, each Proponent must:

- (1) examine and satisfy itself by its own independent investigations or advice as to the Detailed Proposal Phase Materials, the Site and its surroundings, and any State Supplied Information (including any information made available by other persons on the State's behalf), to the Proponent for the purpose of lodging a Detailed Proposal;
- (2) examine all information relevant to the risk, contingencies and other circumstances having an effect on its Detailed Proposal;
- (3) satisfy itself as to the correctness and sufficiency of its Detailed Proposal and that it takes into account all the obligations under or in respect of this RFDP and the Project Agreements;
- (4) inform itself of all matters relevant to the employment of labour at the Site and all industrial matters relevant to the Site;
- (5) secure access to any part of the Site it requires to carry out investigation and testing for design purposes or otherwise;

- (6) take such professional advice as is appropriate for a project of this type; and
- (7) otherwise undertake all other due enquiries and investigations.

The scope of the responsibility assumed by each Proponent under this clause is not limited or otherwise affected by the provisions of, or any act or omission of the State arising out of or in connection with this RFDP.

## 14 Ownership of RFDP Information

All RFDP Information shall become the property of the State on provision to the State, and will not be returned to Proponents.

Any intellectual property rights that may exist in RFDP Information will remain the property of the relevant Proponent. Any element of RFDP Information considered to carry any intellectual property rights should be clearly identified by Proponents whether verbally or otherwise. Where the State, in its sole discretion, determines that such elements are subject to such intellectual property rights, the State will treat that element as protected.

By participating in the Detailed Proposal Phase, each Proponent grants the Government Parties a non-exclusive, fully paid up and royalty free, perpetual, assignable licence to copy, adapt, modify, disclose or do anything else necessary at the State's sole discretion, to all material (including material that contains any intellectual property rights of a Proponent or any other person) contained in any RFDP Information, for the purposes of determining the State's requirements for the Project.

## 15 Changes to Participants

A Proponent must immediately notify the Transaction Manager of any change in the Participants involved in the Proponents Detailed Proposal at any time. If the State, in its sole discretion, determines that this change is material, the State reserves the right in its absolute discretion to re-evaluate the EOI and to exclude the Proponent from further participation in the Detailed Proposal Phase and any further stages in the process of selection of the Preferred Proponent for the Project.

## 16 Change in circumstances

Proponents must inform the Transaction Manager promptly in writing of any material change to any RFDP Information, and of any material change in circumstances which may affect the truth, completeness or accuracy of any information provided in, or in connection with the RFDP Information.

## 17 Canvassing

Except as expressly permitted by this RFDP, Proponents must not contact any members, or employees or officers of the Government Parties, the Project Team (other than the Transaction Manager), elected members of the Commonwealth, State or Local Governments, officers of the Local Government authorities, government agencies, or the Government Parties' advisers with a view to providing or obtaining information in respect of any part of the Project, the Detailed Proposal Phase or their RFDP Information, or attempting to support or enhance their prospect of being selected as Preferred Proponent.

None of the State's advisers (as identified in this RFDP or subsequently notified in writing by the State) will be contacted for any purpose, and will not be required to meet or enter discussions with any Proponent for any reason, unless the State agrees otherwise in its absolute discretion.

At the absolute discretion of the State, any unauthorised communication or attempted approach by a Proponent may lead to the Proponent's exclusion from the Detailed Proposal Phase and any further stages in the process of selection of the Preferred Proponent for the Project.

## 18 Collusion

Proponents and their respective officers, employees, agents and advisers must not engage in any collusive tendering, anti-competitive conduct or any other similar conduct with any other Proponent or any other person in relation to participation in the Detailed Proposal Phase including without limitation the preparation or lodgement of any RFDP Information. At the absolute discretion of the State, any such conduct may lead to the Proponent's exclusion from the Detailed Proposal Phase and any further stages in the process of selection of the Preferred Proponent for the Project.

## 19 Conflict of Interest

Proponents undertake to inform the State of any actual or potential conflicts that may arise during the Detailed Proposal Phase. This obligation extends to any conflict which arises due to the existence of a Related Party to a Proponent or Participant.

The State reserves the right, in its absolute discretion, at any stage to undertake investigations to satisfy itself that there are no conflicts of interest or potential conflicts of interest. At the absolute discretion of the State, any conflict or potential conflict may lead to the Proponent's exclusion from the Detailed Proposal Phase and any further stages in the process of selection of the Preferred Proponent for the Project.

## 20 Return or Destruction of Information

The State reserves the right, in its absolute discretion, at any stage, to require that material and other information provided to Proponents (and copies or reproductions of such information) be either destroyed by Proponents or returned to the State unless otherwise required by law in which case the Proponents will continue to be bound by the terms of the Deed of Acceptance.

The State may require that Proponents provide evidence (in a form satisfactory to the State) that any of its requirements in this respect have been fully met.

## 21 Right to Information

Proponents should note that the Right to Information Act 2009 (Qld) (RTI Act) and the Information Privacy Act 2009 (Qld) (IP Act) may allow members of the public rights to be given access to documents relating to the Project.

All or part of any RFDP Information may be disclosed to third parties if there is a requirement to do so under the provisions of the relevant legislation.

Any information that is of a confidential nature or concerns the business, professional, commercial or financial affairs of a Proponent, the disclosure of which could reasonably be expected to have an adverse effect on those affairs, may be exempt from disclosure under the relevant legislation and should be marked as follows:

“Right to Information Act and Information Privacy Act – SENSITIVE  
BUSINESS INFORMATION  
Confidential to [entity name]  
Refer to [name and title of company representative who is claiming  
exemption]  
Telephone [direct telephone number]”

Marking information in the manner stated above will not necessarily prevent disclosure of the matter in accordance with the relevant legislation. Any decision to grant access to a document will be determined by the requirements of the relevant legislation. Proponents will not be entitled to make any claim in relation to any actions taken in relation to, or under, the relevant legislation.

Proponents are advised that, while the Government Parties may deal with applications for access in response to right to information requests, there may be occasions on which a Proponent exercises a right to seek independent external review of the decisions made.

## 22 Status of RFDP Information

The State and each Proponent acknowledges that:

- the RFDP Information will not be used for any evaluation purposes associated with any subsequent activities in the Detailed Proposal Phase or any subsequent stages of the procurement process (if any) for the Project except to the extent it is resubmitted by a Proponent for the purposes of that subsequent stage;
- the content of the RFDP Information will not be binding upon either the Proponent or the State for any purpose;
- the State is under no obligation to incorporate or reflect information provided in a Proponent's RFDP Information in determining the State's requirements for the Project (including any future activity in the Detailed Proposal Phase or any future stages of the procurement process); and
- the State will not use the RFDP Information for any purpose other than assisting it develop and formulate future requirements for the Project.

## 23 Addenda to this RFDP

Written addenda issued by the State are the only explanations of, or amendments to, the RFDP that will be recognised by the State. All Proponents are responsible for ensuring they are correctly registered with the State to ensure they are provided with addenda information. Proponents are to satisfy themselves that they have received, acknowledged and addressed all addenda that may have been issued up during the Detailed Proposal Phase. Updates of addenda issued will be available from the Transaction Manager.

## 24 No Appeal

Proponents will not have a right to appeal to the State against any decisions made or rights exercised by the State in connection with the Detailed Proposal Phase or the Project.

## 25 Acceptance of Conditions

To participate in the Detailed Proposal Phase, Proponents are required to explicitly acknowledge and accept each of the terms and conditions of this RFDP by lodging a Deed of Acceptance.

## 26 State's powers not fettered

Proponents acknowledge:

- (1) the State gives no warranty and makes no representation as to the way the State or any other Government Parties may exercise any discretion relevant to any aspect of the Project; and
- (2) nothing in this RFDP or any information which may be provided in association with it, including without limitation any State Supplied Information, fetters the exercise by any Government Party of any discretion whether to grant, grant subject to conditions, or refuse:
  - (a) any approval; or
  - (b) any lease,or fetter the exercise, by any Government Party, of any executive discretionary or other powers or actions whatsoever; and
- (3) where the State has a discretion or its approval is required for anything, the State is entitled to withhold or delay its decision or approval in its absolute discretion, without giving any reason.

## 27 Application of this RFDP

Except to the extent the State expressly agrees otherwise, this RFDP (including without limitation these conditions applying to the Detailed Proposal Phase) shall continue to apply to any process that the State may undertake (including following the close of the Detailed Proposal Phase) in connection with the selection or negotiation or dealings with any Proponent.

## 28 Proponent's Legal and Ethical Obligations

Every Proponent must:

- (1) in participating in the Detailed Proposal Phase, comply with all applicable laws, legal requirements and acceptable probity standards; and
- (2) without limiting paragraph (1):
  - (a) not collude with, accept any commission from, or offer any commission to, any other Proponent;
  - (b) not disclose any part of its proposal to any other Proponent;
  - (c) not enter any contract, arrangement or understanding with any other Proponent or any trade, industry or other association to the effect that the Proponent, if successful in achieving Preferred Proponent status, will confer any benefit on any other party;

- (d) not offer any incentives, gifts or other favours to any person who is in any way:
  - (i) involved with;
  - (ii) capable of providing technical or other advice to those who are involved in any way with; or
  - (iii) in a position to influence,the evaluation of proposals (including without limitation any person closely related or associated with those persons or entities); and
- (e) not enter any anticompetitive contract, arrangement or understanding with any other party in connection with the Proponent's proposal.

## 29 Terms and Conditions to Prevail

The terms and provisions of this Appendix A prevail over any other provision of this RFDP or any information provided by the State in association with this RFDP, including without limitation any State Supplied Information.

## 30 Governing Law

This RFDP is governed by the laws applicable in Queensland.

## 31 Engagement with other Stakeholders

Proponents accept that:

- (1) no Stakeholder (including without limitation the Council or any Government Party) is authorised by the State to make any statement or provide any information under or in connection with the Detailed Proposal Phase or the Project on behalf of the State;
- (2) subject to the terms of this RFDP, each Proponent must satisfy itself by its own enquiries as to any requirements of Stakeholders for or in connection with the Project;
- (3) each Proponent must assume responsibility for satisfying all lawful requirements of Stakeholders for or in connection with the Project, at its own costs and risk; and
- (4) the role of any Stakeholder in the Detailed Proposal Phase is limited to the role expressly provided for by this RFDP, including the Stakeholder Consultation Protocol.

## 32 Interactive Workshop Protocol

- (1) The State and the Proponents will comply with the Interactive Workshop Protocol during any presentation or interview conducted during the Detailed Proposal Phase.
- (2) The State and the Proponents acknowledge that during interviews and presentations, the ability of the State's team to meet the aims and requirements of the Interactive Workshop Protocol will be restricted by confidentiality and probity constraints associated with the competitive nature of the procurement process for the Project, including without limitation the Detailed Proposal Phase.

## 33 Selection of Preferred Proponent

Unless the State expressly agrees otherwise:

- (1) no contract in connection with the Project will be binding upon the State until the parties have formally executed all Project Agreements required by the State; and
- (2) any notice notify selection as the Preferred Proponent is:
  - (a) not authorisation for the Preferred Proponent to undertake the Project; and
  - (b) subject to execution of the all Project Agreements required by the State.

The State reserves the right to cancel its selection of any party as a Preferred Proponent if the Preferred Proponent does not execute final Project Agreements in a form acceptable to the State within 20 Business Days of being requested to do so. The Preferred Proponent will have no recourse to the State should such cancellation occur.

## 34 State's Responsibility

Despite the process for the Detailed Proposal Phase set out in this RFDP, the Proponent acknowledges and agrees that:

- (1) any review, consultation or comments regarding any aspect of the EOI, RFDP Information or any other information provided in connection with the procurement process for the Project by the State or its employees, contractors or consultants does not reduce or otherwise affect a Proponent's responsibility for the RFDP Information or Detailed Proposals or the Proponent's obligations under this RFDP; and
- (2) the State does not owe any duty of care to a Proponent in relation to the content of the RFDP Information or Detailed Proposals.

## 35 Checks of Proponents

Each Proponent consents to the State undertaking such checks in respect of that Proponent and any relevant Participants as the State considers reasonable. Such checks may include:

- (1) investigations into commercial structure, business and credit history;
- (2) prior contract compliance;
- (3) any criminal records or pending charges;
- (4) interviews with any referees nominated; and

research into any relevant activity that is or might reasonably be expected to be the subject of regulatory investigation.

## Appendix B – Interpretations and definitions applicable to the RFDP

Associated Services	Means all services and works required to be provided by the Project Company in connection with the development and ongoing operation of the Project Company Improvements (including the assumption by the Project Company of maintenance responsibility and liability for Returned Works delivered as part of the Project).
Best Industry Practice	Means design, construction, commissioning, repair, operating and maintenance practices performed with the due skill, care and diligence which may reasonably be expected of a skilled professional suitably qualified in the performance of obligations similar to the Project Company's obligations under the Project Agreements so as to achieve a result consistent with law, reliability, safety, protection of the environment and the requirements of the Project Agreements.
Business Hours	From 9:00am to 5:00pm (Brisbane time) on any day that is not a Saturday, Sunday or public holiday in Brisbane.
Closing Date	17 October, 2013 or such later date as may be advised by the State.
Commercial Terms	Means the terms proposed by the State to apply to the delivery and operation of the Project outlined in Part 3.
Contractual Close	The date on which the last pre-condition in the Development Agreement is satisfied or waived by the parties, and the obligation to develop the Project becomes binding on the Project Company.
Council	The Gold Coast City Council.
Cruise Ship	Larger passenger vessels (ships) that are typically greater than 240m in length.
Cruise Ship Terminal	Means an open access terminal for Cruise Ships that meets the requirements of this RFDP, including the Project Brief.
Deed of Acceptance	A deed poll in the form attached at Part 1 – Appendix C.
Department	Department of State Development, Infrastructure and Planning.
Detailed Proposal	A proposal submitted by a Proponent in response to this RFDP.
Detailed Proposal Phase	The phase of the procurement process for the Project which is envisaged to include the release of this RFDP, lodgement of Detailed Proposals, evaluation of Detailed Proposals, the nomination of a Preferred Proponent and contract negotiations with the Preferred Proponent.
Detailed Proposal Phase Materials	The documents provided or made available to the Proponent by or on behalf of the State in relation to the lodgement of Detailed Proposals, including anything contained in the VDR.
Development Agreement	An agreement to be negotiated and entered into between the State and the Project Company for the development of the Project.

Development Lease	One or more short term leases or subleases from the State or its nominee allowing the Project Company to construct its development on the Site.
Development Premium	Means the payment made to the State by the Project Company pursuant to the Development Agreement, referred to in Part 3.
Development Concept	The concept proposed by the Proponent for the development of the Project.
EOI or Expression of Interest	The response which was submitted by a Proponent in response to the Department's EOI Invitation.
Evaluation Criteria	The criteria that will be used by the State to evaluate the Detailed Proposals, outlined in Part 4.
Evaluation Panel	The panel appointed for the purpose of evaluating the Detailed Proposals.
Final Leases	One or more long term leases from the State or its nominee to the Project Company which permit the Project Company to operate and maintain Project Company Improvements and provide Associated Services, following completion and commissioning of those improvements in accordance with the Development Agreement.
Government Parties	The Queensland Government, its Ministers, the Department or any of their statutory bodies, agencies, representative officers, employees, advisors, contractors or agents.
Infrastructure Network	Land, facilities and works relating to infrastructure including (but not limited to) public open space and recreation, transport, public utility plant, drainage and maritime infrastructure and tidal works.
Interactive Workshop Protocol	The interactive workshop protocol comprising Appendix E, available via Affinitext.
Land Payment	Means a payment made to the State by the Project Company as a pre-condition to the issue of freehold title to a part of the Site that has been reclaimed and transferred to the Project Company.
Maritime Development Zone	The zone identified within the Site where tidal works can occur.
Nominated Stakeholders	Means the Stakeholders identified as nominated stakeholders in Part 1, Section 5.8.
Participants	Any party that is: <ul style="list-style-type: none"> <li>(1) a member, shareholder, partner, joint venturer, or beneficiary in a consortium comprising a Proponent;</li> <li>(2) otherwise responsible for the delivery of any aspect of the Project, including equity providers; or</li> <li>(3) is a director, secretary or chief executive officer of the Proponent or is otherwise in a position to influence or control (directly or indirectly) the management and operation of the Proponent.</li> </ul>

Preferred Proponent	The Proponent that the State selects to deliver the Project and to enter into the Project Agreements.
Probity Declaration	Means the probity declaration, comprising Appendix G available from Affinitext.
Project	The Broadwater Marine Project the subject of this RFDP, including any development and operation activities related to that project.
Project Agreements	The agreements to be entered into between the Project Company and the State (or its nominees) and other Participants or Stakeholders for the implementation of the Project.
Project Brief	Part 2 of this RFDP.
Project Company	The company nominated by the Preferred Proponent (and acceptable to the State, in its discretion) to enter into the Project Agreements.
Project Company Improvements	All buildings, works, services, improvements and infrastructure which are to be delivered by the Proponent as part of the Project and which are not Associated Services or Returned Works.
Project Risks	Means all risks relating to the Project (including without limitation those risks identified in Part 3, 'Project Risks').
Project Team	The Department and Council team and their respective advisors responsible for the day-to-day management and delivery of the Project.
Proponent	A proponent who has been shortlisted during the EOI stage and issued the RFDP to participate in the Detailed Proposal Phase.
Proponent Documents	All documents and information submitted by a Proponent in response to this RFDP (including the Detailed Proposal).
Related Party	Means, in relation to an entity (the <b>first entity</b> ): <ul style="list-style-type: none"> <li>(1) a Related Body Corporate of the first entity;</li> <li>(2) a Subsidiary of the first entity;</li> <li>(3) an entity of which the first entity is a Subsidiary; or</li> <li>(4) a Subsidiary of another entity of which the first entity is also a Subsidiary.</li> </ul> <p><b>Related Body Corporate</b> and <b>Subsidiary</b> have their respective meanings in the Corporations Act 2001 (Cth).</p>
Returned Works	The works or services required for delivery of and improvement to public places and other infrastructure, utilities and services to be handed over by the Project Company as part of the Project.
RFDP	This Request for Detailed Proposals document, inclusive of Parts 1, 2, 3 and 4.
RFDP Information	All Proponent Documents and any other information (oral or otherwise) provided by a Proponent during the Detailed Proposal Phase whether during an interview, a presentation or otherwise.

RFDP Process	The process for the selection of a Preferred Proponent by way of a competitive bidding process incorporating the Detailed Proposal Phase.
Q & A Protocol	The Q&A protocol comprising Part 1 – Appendix D, available via Affinixtext
Site	The site for the Project as indicatively shown on the plan in Part 1, Section 1.6 and as further described in Part 2, Section 2.3.
Site Conditions	Means the physical conditions on, above, below or about the Site or its surroundings, including without limitation natural and artificial things, geotechnical and sub-surface conditions, soil contamination, hazardous substances or things, conditions of existing improvements (including at any interface with the Project Company Improvements), site services whether or not they could reasonably have been identified prior to the entering into of Project Agreements.
Stakeholders	Means any party having an interest in the Project including the Council, Government Parties and Nominated Stakeholders.
Stakeholder Consultation Protocol	The stakeholder consultation protocol comprising Part 1 – Appendix F, available via Affinixtext.
State	The State of Queensland.
State Supplied Information	Any information (oral or otherwise) provided or made available to the Proponents at any time by or on behalf of the State which relates to the Project, including during any interview, any addenda and all Detailed Proposal Phase Materials.
State's Preferred Project Outcomes	Means those outcomes described in Part 1, Section 3.3.
State's Required Risk Position	Means the State's required approach to risks and costs related to the Project described in Part 1, Section 3.4.
Transaction Manager	The person nominated by the State in its absolute discretion at any time and notified to the Proponents in writing.
VDR	Means the virtual data room established by the State and operated by Affinixtext to provide State Supplied Information to Proponents.
Waterways Authority	Means the Gold Coast Waterways Authority and includes any successor to the Gold Coast Waterways Authority or other authority, such as a port authority established under the <i>Transport Infrastructure Act 1994</i> having jurisdiction over the Broadwater.

