

**Department of Treasury and Finance, Victoria
Commercial Division**

Model

**Invitation for Expressions of Interest
Alliance Contracting Template**

March 2011

Document Updates

This EOI Template will be updated from time to time to reflect evolving best practices and lessons learned.

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Note:

Governments in each jurisdiction will have their own individual approval processes for capital investment projects, as well as policies (eg probity) and legislation that will impact on all capital works delivery. These over-arching jurisdictional requirements are precedent to the alliance practices covered in this document.

Acknowledgement:

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Contents

Table of contents

| | |
|--|-----------|
| Glossary | 2 |
| 1 Introduction | 6 |
| 1.1 Project overview..... | 6 |
| 1.2 Purpose of this Invitation for EOI..... | 6 |
| 1.3 Project Objectives..... | 6 |
| 1.4 Overview of Tender Process..... | 6 |
| 1.5 Structure of EOI Phase:..... | 7 |
| 1.6 Project timetable..... | 7 |
| 1.7 Closing Date for submission of EOI Responses..... | 8 |
| 2 The Project | 9 |
| 2.1 Project Overview..... | 9 |
| 2.2 Delivery method..... | 9 |
| 2.3 Scope of Works..... | 9 |
| 3 Selection Process | 10 |
| 3.1 EOI Phase..... | 10 |
| 3.2 Request for Proposal Phase..... | 10 |
| 3.3 Alliance Development Phase..... | 11 |
| 4 EOI Selection Criteria | 12 |
| 5 Proposed Commercial and Legal Framework | 13 |
| 5.1 Introduction..... | 13 |
| 5.2 Commercial Principles..... | 13 |
| 5.3 Commercial Framework..... | 14 |
| 5.4 Legal Framework..... | 14 |
| Attachments | |
| 1 Lodgement of EOI Response Form | |
| 2 Information required for EOI Selection Criteria | |

Glossary

This glossary of terms applies specifically to this Invitation for Expressions of Interest. Capitalised words and phrases have the meaning set out below.

| Term | Meaning |
|--|--|
| Alliance Charter | the alliance charter (including the Alliance Principles, alliance purpose and alliance objectives) to be set out in the Draft Project Alliance Agreement. |
| Alliance Contracting Documentation | the alliance contracting documentation published by the Department of Treasury and Finance Victoria, website: www.dtf.vic.gov.au/project-alliancing . |
| Alliance Development Agreement (ADA) | the alliance development agreement for the Project to be entered into between the Project Owner and the Non-Owner Participant(s) under which the Project Proposal is developed for the approval (or otherwise) of the Project Owner. |
| Alliance Development Phase (AD Phase) | the phase of the procurement process as described in this Invitation for EOI and to be set out in the Alliance Development Agreement, which commences on the date of the Alliance Development Agreement and ends on the earlier of: <ol style="list-style-type: none">1 the date of execution of the Project Alliance Agreement by the Project Owner and the Proponent; or2 the date of termination of the Alliance Development Agreement. |
| Best for Project | an approach, determination, decision, method, solution, interpretation, outcome or resolution that is consistent with the Project Owner's VFM Statement and the Alliance Charter. |
| Closing Date | the date and time by which the EOI Response must be submitted by the EOI Respondent. |
| Commercial and Legal Framework | the commercial and legal framework for the alliance summarised in section 5 of this Invitation for EOI and to be more fully described in the RFP and Project Alliance Agreement. |
| Corporate Overhead and Profit | the Proponent's corporate overhead and profit, being the Proponent's agreed profit margin and a contribution towards recovery of non-project specific (or corporate) overhead costs. |
| Date for Practical Completion | [insert] |

| Term | Meaning |
|--|--|
| Draft Project Alliance Agreement | the draft Project Alliance Agreement to be included in the Request for Proposal. |
| EOI Phase | the phase of the Selection Process commencing with the release of this Invitation for EOI and ending at the commencement of the RFP Phase. |
| EOI Respondent | the organisation or team of organisations that submits an EOI Response. |
| EOI Response | the response to this Invitation for EOI submitted by an EOI Respondent. |
| EOI Selection Criteria | the selection criteria listed in section 4 of this Invitation for EOI which the Evaluation Team will apply to the EOI Response. |
| Evaluation Team | the team selected by the Project Owner to evaluate the Initial Proposals and Project Proposals and make a recommendation to the Project Owner of a Successful Proponent. |
| Final Shortlist | the shortlist containing the two Shortlisted Proponents to be determined by the Project Owner at the end of the RFP Phase. |
| Initial Proposal | the proposal submitted by the Proponent in response to the Request for Proposal. |
| Initial Shortlist | the shortlist of Proponents developed by the Project Owner based on EOI Responses. |
| Invitation for Expressions of Interest (Invitation for EOI) | this invitation for EOI prepared by the Project Owner for the purposes of identifying suitably qualified Proponents to deliver the Project. |
| Key Result Areas (KRAs) | the key result areas to be set out in the Draft Project Alliance Agreement. |
| Minimum Conditions of Satisfaction (MCOS) Performance | the minimum conditions that must be met in each project objective to provide satisfaction to the Project Owner. |

| Term | Meaning |
|--|---|
| Non-Owner Participant (NOP) | Non-Owner Participant 1 and Non-Owner Participant 2, each a party to the Project Alliance Agreement other than the Project Owner. |
| Project Alliance Agreement | the alliance agreement for the Project to be entered into between the Project Owner and the Proponent (if the Project Proposal is accepted by the Project Owner in accordance with this Agreement) substantially in the form of the Draft Project Alliance Agreement. |
| Project | as defined in section 1 of this Invitation for EOI. |
| Project Owner | [to be inserted] |
| Project Owner's Value for Money (VFM) Statement | the Project Owner's value for money proposition for the Project to be set out in the Draft Project Alliance Agreement. |
| Project Proposal | the proposal for the Project which is developed by the Proponent and submitted to the Project Owner at the conclusion of the AD Phase. |
| Proponent | the organisation or team of organisations on the Initial Shortlist that submits an Initial Proposal in response to the RFP. |
| Reimbursable Costs | all costs which are reasonably and actually incurred by the alliance participants in connection with the Works (excluding any corporate overhead component not specific to the Works and any profit or mark up of any kind). |
| Request for Proposals (RFP) | the RFP prepared by the Project Owner for the purposes of identifying and selecting Proponents to participate in the AD Phase. |
| RFP Phase | the phase of the Selection Process in which the RFP is issued to Proponents on the Initial Shortlist and ending at the commencement of the AD Phase. |
| Selection Process | the process for selecting the Successful Proponent, comprised of this EOI Phase, the RFP Phase and the AD Phase. |
| Shortlisted Proponent | the Proponents shortlisted by the Project Owner at the conclusion of the RFP Phase that will advance to the AD Phase. |

| Term | Meaning |
|-----------------------------|--|
| Successful Proponent | the Proponent selected by the Project Owner to enter into the Project Alliance Agreement with the Project Owner. |
| Works | the whole of the works and services to be performed by the alliance participants from time to time under the Project Alliance Agreement. |

1 Introduction

1.1 Project overview

[Insert brief description of Project]

1.2 Purpose of this Invitation for EOI

The Project Owner has determined that an alliance contracting methodology is the best delivery approach for the **[Project]**. This Invitation for EOI represents the first phase of the Selection Process and the Project Owner invites suitably qualified respondents to submit an EOI Response to form an alliance with the Project Owner for delivery of the **[Project]**.

The purpose of this Invitation for EOI is to:

- (a) advise the market of the Project and provide an overview of the likely scope of Works required to deliver the Project;
- (b) outline the Selection Process, including an indicative timetable for delivery of the Project;
- (c) provide an overview of the likely Commercial and Legal framework of the Alliance; and
- (d) enable the Project Owner to develop an Initial Shortlist of suitably qualified proponents to proceed to the RFP Phase.

1.3 Project Objectives

Guidance Note: The Project objectives should reflect the Project Owner's Value for Money Statement. However, the Invitation for EOI should not include the Project Owner's VFM Statement as this will only be provided to proponents who advance to the RFP Stage.

To ensure the Project is a success and is delivered according to the Project Owner's requirements, the Project Owner requires the following objectives to be achieved:

[insert summary of Project objectives]

1.4 Overview of Tender Process

Guidance Note: This template has been prepared on the basis that the Project Owner will enter into an Alliance Development Phase with two or more Proponents selected at the conclusion of the RFP Stage. This reflects the competitive selection process described in the Practitioner's Guide to Alliance Contracting. However, it is recognised that the Project Owner may determine that a different approach to selection is required to satisfy the Project Owner's VFM Statement and the specific circumstances of the Project. Where the Project Owner determines that only one Proponent will be selected to enter into an Alliance Development Phase (or otherwise), it will be appropriate to tailor this template accordingly.

Interested respondents will participate in a competitive process comprised of three phases:

- (a) this Expressions of Interest Phase, open to all interested organisations;

- (b) the Request for Proposal Phase, open to Proponents on the Initial Shortlist; and
- (c) the Alliance Development Phase, open to the [two] Shortlisted Proponents.

The Project Owner will progressively increase contestability on price and non-price elements at each phase.

The Selection Process has been designed so that Initial Proposals submitted at the RFP Phase can be developed in conjunction with the Project Owner during the Alliance Development Phase to produce a final proposal, the Project Proposal, which satisfies the Project objectives.

1.5 Structure of EOI Phase:

This Invitation for EOI comprises:

- (a) this document, which includes an overview of the Project, Selection Process and the Commercial and Legal Framework; and
- (b) the documentation comprising the EOI Response which must be returned to the Project Owner, being:
 - (1) Attachment 1 – Lodgement of EOI Response Form; and
 - (2) Attachment 2 – Information required for EOI Selection Criteria.

1.6 Project timetable

| Stage | Event | Date |
|------------------|---|----------|
| EOI Phase | | |
| Phase 1 | Release of Invitation for EOI | [insert] |
| Phase 2 | Industry briefing | [insert] |
| Phase 3 | Closing Date for submission of EOI Response | [insert] |
| Phase 4 | Evaluation of EOI Response | [insert] |
| Phase 5 | Selection of Initial Shortlist | [insert] |
| RFP Phase | | |
| Phase 6 | Advertise Request for Proposals | [insert] |
| Phase 7 | Interact with Proponents (workshops, etc) | [insert] |

| Stage | Event | Date |
|--|---|----------|
| Phase 8 | Closing date for submission of Initial Proposal | [insert] |
| Phase 9 | Commence evaluation of Initial Proposals | [insert] |
| Phase 10 | Announcement of [two] Shortlisted Proponents | [insert] |
| Alliance Development Phase | | |
| Phase 11 | Commence interactive development process (e.g. workshops) with Shortlisted Proponents | [insert] |
| Phase 12 | Commence Financial Establishment Audit | [insert] |
| Phase 13 | Commercial Alignment Workshop [insert] days) | [insert] |
| Phase 14 | Closing date for submission of Project Proposals | [insert] |
| Phase 15 | Commence evaluation of Project Proposals | [insert] |
| Phase 16 | Selection of Successful Proponent by Project Owner | [insert] |
| Execution of Project Alliance Agreement and commencement of works | | |
| Phase 17 | Obtain [Board and] Ministerial approval to execute Project Alliance Agreement | [insert] |
| Phase 18 | Execute Project Alliance Agreement | [insert] |
| Phase 19 | Project commencement | [insert] |
| Phase 20 | Date for Practical Completion | [insert] |

1.7 Closing Date for submission of EOI Responses

The Closing Date for submission of EOI Responses is [insert time and date].

2 The Project

Guidance Note: This section may need to be tailored by the Project Owner if the Commercial and Legal Framework or proposed alliance structure differs from the Alliance Contracting Documentation.

2.1 Project Overview

[Insert detailed description of Project]

2.2 Delivery method

The Project Owner has determined that alliance contracting will be used to deliver the **[insert Project]**. Under the alliance, the Project Owner will collaborate with the Successful Proponent to deliver the Project and share the risks and rewards associated with delivering the Project. A commercial and legal framework will be developed and included in the Project Alliance Agreement which seeks to align the commercial interests of all alliance participants.

The Project Owner's expectation is that the collective responsibilities of the alliance participants, the sharing of Project risks and the transparency and behavioural commitments gained through this arrangement will facilitate the achievement of the Project Owner's objectives. The alliance culture will be characterised by the following principles:

- good faith;
- decision making on a 'Best for Project' basis;
- a commitment to no disputes;
- a 'no fault-no blame' culture;
- transparency through open book documentation and reporting; and
- a joint management structure where responsibility is shared between the alliance participants.

Further information regarding the alliance philosophy and principles is set out in the Alliance Contracting Documentation. Proponents should familiarise themselves with these documents prior to submitting an EOI Response that accepts the Project Owner's proposed alliance framework for the Project, including the Selection Process and the principles of the Commercial and Legal Framework for the Project outlined in section 5 of this Invitation for EOI. It should be noted that although the Alliance Contracting Documentation may be used to provide background and context to the alliance structure and key principles, the proposed Commercial and Legal Framework for this Project is as outlined in section 5.

2.3 Scope of Works

Guidance Note: The Project Owner should insert a high level summary of the proposed Works required to deliver the Project. In this section, the Project Owner should describe the nature of the works to be provided by the alliance. It should be noted that a more detailed scope of works and/or project specifications will be available to Proponents at the RFP Phase.

3 Selection Process

The Selection Process comprises three phases: the EOI Phase, the RFP Phase and the Alliance Development Phase.

3.1 EOI Phase

This Invitation for EOI commences the Selection Process for the Project. The purpose of the EOI Phase is to select Proponents that:

- (a) have the capability and experience to deliver the Works; and
- (b) accept the Project Owner's proposed alliance framework for the Project, including the proposed Commercial and Legal Framework for the alliance and the Selection Process.

At the conclusion of the EOI Phase, an Initial Shortlist will be developed to select those Proponents who will advance to the RFP Phase. The Project Owner envisages that no more than **[insert]** EOI Respondents will be appointed to the Initial Shortlist, however this number may be varied according to the quality of EOI Responses received.

Interested respondents should submit an EOI Response which addresses the criteria outlined in section 4 of this Invitation for EOI, noting that the Project Owner does not require the EOI Response to incorporate design and costing information.

A briefing session for interested EOI Respondents will be held on **[insert date]**. The purpose of the briefing session is to provide an opportunity for interested respondents to clarify any aspect of this document. Interested respondents wishing to attend the briefing session should register with the Project Owner's representative identified below:

[insert Project Owner's representative and contact details]

3.2 Request for Proposal Phase

The second phase of the Selection Process will involve the release of a Request for Proposal (**RFP**) to Proponents on the Initial Shortlist. Proponents will be invited to submit an Initial Proposal which addresses the mandatory and evaluation criteria listed in the RFP.

The Evaluation Team will then select a Final Shortlist of two Proponents (**Shortlisted Proponents**) based on an assessment of the Proponent's Initial Proposal against the RFP evaluation criteria. The Shortlisted Proponents will be required to execute an Alliance Development Agreement [and provide a proposal bond in the amount of **[\$insert]** million prior to proceeding to the AD Phase. Further details regarding the proposal bond will be provided in the RFP.]

Guidance Note: It is an option for Project Owners to require that Shortlisted Proponents provide a proposal bond to secure performance of obligations during the AD Phase. This requirement and the amount of any such proposal bond should be assessed by the Project Owner on a case-by-case basis.

All Proponents must submit Initial Proposals that comply with the requirements of the RFP. In addition, Proponents may also submit one or more alternative proposals where material departures from the requirements of the RFP and attached documentation are proposed. The Project Owner may assess these alternative proposals at its discretion.

Guidance Note: The Project Owner should exercise caution when drafting engineering and design specifications for inclusion in the RFP documentation. This could unintentionally lead to the submission of alternative or 'non-conforming' proposals by Proponents. For example, highly prescriptive and detailed specifications may generate alternative proposals if Proponents suggest different or untested technology to deliver the Project that has not been reflected in the RFP documentation. Provided that the Initial Proposal is otherwise consistent with the requirements of the RFP, the Proponents should have the flexibility to propose innovative technological or engineering solutions that may enhance the Project.

3.3 Alliance Development Phase

The purpose of the AD Phase is for the Shortlisted Proponents to work with the Project Owner to develop a final, fully costed, detailed and binding proposal (**Project Proposal**). The Shortlisted Proponent's proposed solution to deliver the Project will need to be developed to a level of detail to enable the Shortlisted Proponent to submit a full Target Outturn Cost (**TOC**) as part of the Project Proposal. The Shortlisted Proponents will also be required to execute and submit a Project Alliance Agreement as part of the Project Proposal.

Based on the Project Proposal (including the final form of the Project Alliance Agreement (**PAA**) included in the Project Proposal) and the Project Owner's interactive discussions with the Shortlisted Proponents during the AD Phase, the Project Owner will select a Successful Proponent. If the Project Owner requires amendments to the final form of the PAA provided by the Successful Proponent, to which the Successful Proponent agrees, the Successful Proponent and the Project Owner will execute an amended PAA once all approvals are in place. If not, the Project Owner may at its discretion revert to the [other] Shortlisted Proponent.

Guidance Note: This final sentence may be revised depending on the number of Shortlisted Proponents involved in the AD Phase.

4 EOI Selection Criteria

The Project Owner will evaluate all EOI Responses using the EOI Selection Criteria outlined in the table below. Proponents must satisfy these mandatory criteria in order to qualify for the Initial Shortlist and advance to the RFP Phase.

Guidance Note: These criteria have been included for illustration purposes only. The Project Owner will need to determine the EOI Selection Criteria for the specific Project on a case-by-case basis and specify any documentation that may be required to support the EOI Selection Criteria.

EOI Selection Criteria

| | |
|---|---|
| Criterion 1: Statement of past experience | Demonstrate recent experience in design, construction, project implementation and construction management experience on at least one project similar to [insert nature of Project] . The following information is required: <ul style="list-style-type: none">(a) project name and location;(b) details of the works, roles and responsibilities carried out;(c) the number and details of company employees engaged in carrying out the roles and responsibilities; and(d) client reference and contact details. |
| Criterion 2: Statement of general capability to undertake the Project | Demonstrate relevant current capability to undertake design, construction, project implementation and construction management of the Project. The following information is required: <ul style="list-style-type: none">(a) financial capacity to undertaken the Project;(b) safety record;(c) nominated team, including each personnel experience, capability, availability and commitment;(d) quality and environmental management record;(e) project management capability; and(f) accreditation (e.g. ISO accreditations). |
| Criterion 3: Acceptance of the Project's alliance framework | Indicate acceptance of the Project's proposed alliance framework for the Project, including acceptance of the Selection Process and the Commercial and Legal Framework as outlined in section 5 of this document. |

5 Proposed Commercial and Legal Framework

5.1 Introduction

This section provides a high-level summary of the Project Owner's proposed Commercial and Legal Framework for the Alliance. The role of the Commercial and Legal Framework in the Selection Process is as follows:

(a) EOI Phase

EOI Respondents must indicate, in their EOI Response, acceptance of the Commercial and Legal Framework outlined in this section and the Project Owner's Selection Process.

(b) RFP Phase

A more detailed Commercial and Legal Framework will be attached to the RFP. Proponents will be asked to identify, and give reasons for, any proposed departures from the Commercial and Legal Framework.

Although the proposed Commercial and Legal Framework sets out the Project Owner's preferred approach and structure for the Project, Proponents may wish to propose alternative arrangements in the RFP Phase by identifying why and how the departures from the proposed Commercial and Legal Framework will be beneficial to the achievement of the Project objectives.

It will be a condition of the RFP that Proponents must comply with, and must not amend, any undertaking given by them at an earlier stage of the Selection Process. This includes their acceptance of the Selection Process and Commercial and Legal Framework as described in this EOI, which is required to be provided under Attachment 2 of the EOI Response.

(c) AD Phase

The Commercial and Legal Framework for the alliance will be finalised during the AD Phase and will be documented in the final form of the Project Alliance Agreement submitted as part of the Project Proposal.

5.2 Commercial Principles

Guidance Note: The commercial principles outlined below should be amended by the Project Owner to reflect the specific Commercial and Legal Framework developed for the Project.

Proponents should be made aware that the Project Owner is required, by undertaking the Project, to achieve certain objectives in delivering the Project. These objectives are set out in a business case that has been approved by the Project Owner's relevant governance body or bodies.

The Project Owner is committed to achieving commercial and business outcomes that will provide value for money for the State. There are a number of commercial principles which inform the Commercial and Legal Framework:

- all alliance participants are jointly responsible for achieving the Project objectives;
- 100% open and transparent accounting;
- actual cost reimbursement;

- performance that fails to achieve MCOS Performance leads to liability under the Risk or Reward Regime;
- collective assumption of risk in accordance with the Risk or Reward Regime;
- the Non-Owner Participants remuneration is commensurate with their performance; and
- the Non-Owner Participants are incentivised to achieve the Project objectives.

5.3 Commercial Framework

The Non-Owner Participants will be remunerated in accordance with the following three elements. Further details regarding the calculation of each element will be provided in the RFP.

(a) Reimbursable Costs

Non-Owner Participants will be reimbursed for direct project costs and indirect project specific overhead costs which are actually and reasonably incurred in the performance of the Works.

(b) Corporate Overhead and Profit

Corporate Overhead and Profit provides the only contribution (other than under the Risk or Reward Regime) to the Non-Owner Participants' required profit margin and corporate overheads. The Proponent's Corporate Overhead and Profit expectations must reflect an equitable return for delivering the Project for the TOC whilst achieving MCOS Performance in each of the KRAs within an alliance environment.

Proponents will be required to submit their proposed Corporate Overhead and Profit as part of their Initial Proposal.

The Project Owner considers that Corporate Overhead and Profit expectations within an alliance environment should reflect the benefits of the alliance approach, including the collective assumption of risk by all alliance participants.

(c) Risk or Reward Regime

Under the Risk or Reward Regime, an amount will be payable or deductible (as the case may be) depending on the Participants' collective performance. The Risk or Reward Regime will be designed to incentivise participants to achieve the Project objectives and reward participants for price and non-price performance.

The Risk or Reward Regime will comprise both payments of reward amounts by the Project Owner to the Non-Owner Participants and the payment of liability amounts by the Non-Owner Participants to the Project Owner.

5.4 Legal Framework

Under the alliance approach, the alliance participants will be parties to the following primary agreements:

(a) Alliance Development Agreement

The Alliance Development Agreement will be entered into between each of the Shortlisted Proponents and the Project Owner prior to the development of the Project Proposals during the AD Phase.

The ADA will govern the terms of the relationship between the Project Owner and the Shortlisted Proponents up to the point of execution of the Project Alliance Agreement and will address matters including the dispute resolution process, payments to the Shortlisted Proponent, insurance and the sharing of information between alliance participants.

Guidance Note: The Project Owner should base the Project's ADA on the Model *Alliance Development Agreement*, Department of Treasury and Finance Victoria, October 2010.

(b) Project Alliance Agreement

The Project Alliance Agreement will be entered into between the Successful Proponent and the Project Owner at the conclusion of the AD Phase. The PAA governs the delivery of the Project pursuant to the alliance arrangement and addresses matters including the alliance management structure, design and construction of the Works, performance of the Works and payment.

Guidance Note: The Project Owner should base the Project's Project Alliance Agreement on the Model *Project Alliance Agreement*, Department of Treasury and Finance Victoria, October 2010.

Attachments

Table of contents

- 1. Lodgement of EOI Response Form**
- 2. Information required for EOI Selection Criteria**

Lodgement of EOI Response Form

1 EOI Respondent details

Registered Business Name :.....

ACN or ARBN :..... ABN :

2 Contact details

Registered Business Address:

.....

Telephone No. :.....

Facsimile No. :.....

Email Address :.....

Website :

Names and positions of two senior personnel who may be contacted for further information, if required.

Name #1: Job Title :

Phone No. : Facsimile Number :.....

Mobile Telephone : E-mail address :

Name #1: Job Title :

Phone No. : Facsimile Number :.....

Mobile Telephone : E-mail address :

3 Acknowledgements

We testify that we respond to this Invitation for EOI on the basis that we:

- (a) accept the Project Owner's Selection Process and the Commercial and Legal Framework outlined in this Invitation for EOI; and
- (b) have the experience, capability, commitment and motivation to deliver on the Project Owner's objectives in accordance with the principles of the Alliance Contracting Documentation.

Signed:

Name:

Position:

Date:

Information required for EOI Selection Criteria

EOI Respondents are requested to provide sufficient information to allow the Evaluation Team to assess the EOI Response against the EOI Selection Criteria. EOI Responses must be structured according to the following headings:

Criterion 1: Statement of past experience

Demonstrate recent experience in design, construction, project implementation and construction management experience on at least one **[insert nature of Project]**. The following information is required:

- (a) project name and location;
- (b) details of the works, roles and responsibilities carried out;
- (c) the number and details of company employees engaged in carrying out the roles and responsibilities; and
- (d) client reference and contact details.

Criterion 2: Statement of general capability to undertake the Project

Demonstrate current capability to undertake design, construction, project implementation and construction management of the Project. The following information is required:

- (a) financial capacity to undertaken the Project;
- (b) safety record;
- (c) nominated team, including each personnel experience, capability, availability and commitment;
- (d) quality and environmental management record;
- (e) project management capability; and
- (f) accreditation (e.g. ISO accreditations).

Criterion 3: Acceptance of the Project's alliance framework

- (a) Indicate acceptance of the Project's proposed alliance framework for the Project, including acceptance of the Selection Process and the Commercial and Legal Framework principles as outlined in section 5 of this document.