



Government of Western Australia
Department of Water and Environmental Regulation

Request for Proposal - Scheme Coordinator for the Western Australia container deposit scheme

Ref: ETADWER102418

Closing date and time: 5.00pm Friday 28 September 2018

Feedback can be forwarded to tenders@dwer.wa.gov.au

The request contains:

- This Request for Proposal, containing Part A, Part B, and Part C
 - Available from the Tenders WA website (www.tenders.wa.gov.au)
- Consultation Regulatory Impact Statement, prepared by Department of Water and Environmental Regulation, dated August 2018
 - Available from the Department of Water and Environmental Regulation website (<https://www.der.wa.gov.au/our-work/consultation/69-closed-consultations/504-consultation-regulatory-impact-statement>)

Disclaimer:

The legislation for this proposal has not yet been passed. There is a risk that legislation will not proceed. Please refer to Part A for further information.

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PART A: Introduction

1. Definitions and Interpretation

1.1 Definitions

In the Request:

Business Day means any day except a Saturday, Sunday or a public holiday in Western Australia.

Buy Local Policy means the *Buy Local Policy*, published by the Government of Western Australia, revised and reprinted July 2002.

CDS means the container deposit scheme that the State Government intends to implement in Western Australia.

CDS Regulations means the regulations to be made under the *Waste Avoidance and Resource Recovery Act 2007* following the passage of the Bill to amend that Act which establishes the head powers for the CDS.

Closing Time means the time and date specified in section 12 of the Request as the closing time for the submission of Offers.

Company means any company that is:

- a Respondent to this Request;
- selected as the Preferred Respondent; and/or
- appointed as the Scheme Coordinator.

Company Personnel means all officers, employees, agents and subcontractors of the Company, and all officers, employees or agents of subcontractors, engaged in relation to the Project.

Conditions of Appointment means any and all conditions attached to the Letter of Appointment.

Conditions of Selection means any and all conditions attached to the Letter of Selection.

Corporations Act means *Corporations Act 2001* (Cth).

DWER means the Western Australian Department of Water and Environmental Regulation.

Eligible Individual means an individual who:

- is not insolvent under administration within the meaning of the Corporations Act;
- is not disqualified from managing corporations under the Corporations Act; or
- does not have a criminal conviction, other than a spent conviction, under environmental legislation or for an indictable offence under another law.

Letter of Appointment means the letter from the State Government appointing the Company as the Scheme Coordinator.

Letter of Selection means the letter from the State Government informing the successful Respondent that it has been selected as Preferred Respondent.

Minister means the Western Australian Minister for the Environment.

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Offer means the offer submitted by the Respondent in response to the Request.

Offer Information means all information, other than the Respondent's Offer, submitted by the Respondent in response to, or in connection with, the Request.

Offer Validity Period means the period specified in Part B of the Request.

Preferred Respondent means the Respondent who is selected to undertake the tasks in Stage 2.

Project means the State Government's proposal to implement, and the implementation of the CDS.

Public Authority has the same meaning as in the *State Supply Commission Act 1991*.

Request means this request for Respondents to submit an Offer to be considered for appointment to the role of Scheme Coordinator.

Request Conditions means all conditions contained in this Request.

Respondent means any person who submits an Offer.

Return Rate means the number of Containers returned under the CDS divided by the total number sold.

Scheme Coordinator means the position established by the proposed amendments to the *Waste Avoidance and Resource Recovery Act 2007* to establish and operate the CDS.

Section means a section of the Request.

Stage 1 of the Project involves DWER selecting the Preferred Respondent from the pool of Respondents.

Stage 2 means the stage in which the Preferred Respondent is to undertake various tasks in preparation for anticipated appointment as Scheme Coordinator and enter into the Stage 2 Contract.

Stage 2 Contract means the contract that the Preferred Respondent is required to enter into with the State Government as part of its selection as the Preferred Respondent, execution of which will be a Condition of Selection.

Stage 3 means the stage in which the Scheme Coordinator may be appointed by the Minister for Environment under the WARR Act.

State Government means the Government of Western Australia.

State Supply Commission means the State Supply Commission established under the *State Supply Commission Act 1991 (WA)*.

Supply Agreements mean contractual agreements between a beverage supplier and the Scheme Coordinator.

WARR Act means *Waste Avoidance and Resource Recovery Act 2007 (WA)*.

Waste Strategy means the waste strategy under section 31 of the WARR Act.

1.2 Interpretation

In the Request and these Request Conditions, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;

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- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a Public Authority, a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;
- (f) if the Respondent consists of a partnership or joint venture, then:
 - (i) an obligation imposed on the Respondent under the Request binds each person who comprises the Respondent jointly and severally;
 - (ii) each person who comprises the Respondent agrees to do all things necessary to enable the obligations imposed on the Respondent under the Request to be undertaken; and
 - (iii) the act of one person who comprises the Respondent binds the other persons who comprise the Respondent;
- (g) an agreement, representation or warranty on the part of or in favour of two (2) or more persons binds, or is for the benefit of, them jointly and severally;
- (h) a reference to the Request or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the State Government or the Respondent;
- (i) a reference to a clause, schedule, attachment or appendix is a reference to a clause, schedule, attachment or appendix to the Request;
- (j) all the provisions in any schedule, attachment or appendix to the Request are incorporated in, and form part of, the Request and bind the Respondent;
- (k) headings are included for convenience and do not affect the interpretation of the Request;
- (l) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (m) no rule of interpretation is to be applied to disadvantage the State Government or the Respondent on the basis that it was responsible for preparing the Request;
- (n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (o) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;
- (p) a reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;
- (q) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;

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- (r) a reference to a day is to a calendar day, a month is to a calendar month and a year is to a calendar year;
- (s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (t) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
- (u) a reference to a monetary amount means that amount in Australian currency; and
- (v) a reference to time means the time observed by the general community from time to time in Western Australia.

2. Liability for participation in Project

The process for procuring the Scheme Coordinator will occur concurrently with the WARR Act proposed amendments and the drafting of the CDS Regulations in order to meet the early 2020 timeframe for the commencement of the CDS. Appointment of the Preferred Respondent to the role of Scheme Coordinator will not occur until the Bill amending the WARR Act has passed.

The Preferred Respondent will be required to progress various tasks prior to appointment as Scheme Coordinator. Final details of these tasks will be formulated in Stage 2. An outline of these tasks is provided at Part C of this Request.

While it is the intention of the State to pass all legislation required for the CDS to proceed, there is a risk that the legislation will not be passed in the timeframe anticipated, or will be passed with amendments, or will not be passed at all. In such circumstances, implementation of the CDS may be delayed significantly, changed or may be cancelled altogether.

By responding to this Request, each Respondent acknowledges and accepts all liability for its participation in the Project including but not limited to liability for all and any losses, costs and expenses incurred by the Respondent as part of Stage 1.

By accepting its selection as Preferred Respondent, the Preferred Respondent acknowledges and accepts:

- that it will be required to undertake various tasks during Stage 2; and
- all liability for its participation in the Project, including but not limited to, liability for all and any losses, costs and expenses incurred by the Respondent during Stage 1 and Stage 2.

It is strongly recommended that each Respondent seek legal advice prior to responding to this Request.

The Preferred Respondent can cancel its participation at any time during the procurement process, by notice in writing to the [State Government], with no penalty.

DWER can, at its absolute discretion, cancel discussions with any Respondent or the Preferred Respondent during Stage 1 or Stage 2 and accepts no liability for any losses, costs and expenses incurred by a Respondent or by the Preferred Respondent.

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Commented [RB1]: WALGA Comment: This puts a considerable financial risk on the applicant with no risk on Government. This is likely to limit the type of organisations willing to develop a proposal.

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The targets and timeline outlined in this document are indicative only and are subject to change over the Project process.

3. Overview of the CDS

3.1 Background

In line with its election commitment, the State Government is delivering a CDS for Western Australia. A CDS is an example of an extended producer responsibility scheme enabled by the WARR Act where producers take responsibility for the management of post-consumer waste.

The project will be undertaken in three stages. Further particulars regarding Stage 1, Stage 2 and Stage 3 are provided in Part C of this Request. The Request process forms Stage 1. In Stage 1, an entity that wishes to be considered for appointment as Scheme Coordinator must respond to this Request by submitting an Offer. The Offer must outline the Respondent's vision for the CDS and its plans for establishment of the CDS. Stage 2 will involve, among other things, negotiations with the State Government on the specific targets to be achieved and execution of the Stage 2 Contract. Stage 2 and Stage 3 will involve the establishment of the collection network, and arranging contracts with participants of the collection network.

This Request relates specifically to Stage 1 of this process, which seeks documentation that demonstrates the Respondent's capacity to become the Scheme Coordinator.

3.2 Objective of the CDS

The State Government's objectives in introducing the CDS are to:

- (a) increase the recovery and recycling of empty beverage containers;
- (b) reduce the number of empty beverage containers that are littered or disposed of to landfill;
- (c) ensure that manufacturers or importers of beverage products meet their product stewardship responsibility in relation to their beverage products;
- (d) provide opportunities for social enterprise, and benefits for community organisations, through participation in the scheme;
- (e) create opportunities for employment (including for people with a disability and long term unemployed people); and
- (f) complement existing collection and recycling activities for recyclable waste.

The specific functions of the Scheme Coordinator covered by this Request are detailed in section 5.2.

The stages of this Request are detailed in Part C, and key dates are provided in section 13 Procurement Timeline.

Commented [RB2]: WALGA Comment: It is the Associations understanding that the specific targets for the Scheme Coordinator will be developed in consultation with the CDS Advisory Group, with these targets agreed prior to the Scheme Coordinators appointment. The wording here suggests the targets will be negotiated, rather than set by the Government.

The additional details in Part C indicates:
Negotiations will include but are not limited to, finalisation of the documents required under Part B of this Request, and discussions on the content of:

- container collection agreements with beverage suppliers;
- container recovery agreements with refund point operators; and
- material recovery agreements with material recovery facilities.

These are not targets, but rather the specific content of agreements. Therefore this section should be amended to reflect the scope of what will be negotiated.

WALGA Recommendation: Amend the wording of this section to reflect that the Scheme Coordinator will be provided with the specific targets to be achieved, negotiations will be about the specific content of agreements.

Commented [RB3]: WALGA Comment: DWER need to ensure these objectives reflect what has been published to date in the RIS and other documents.

Commented [RB4]: WALGA Comment: This is an important consideration in tendering for the collection network, as it provides an opportunity for existing infrastructure to be used as a preferred approach. Local Government have a considerable role in providing these service to the community and it is imperative the CDS builds on the existing infrastructure to ensure an efficient and convenient Scheme.

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The CDS will incorporate the costs of collecting and recycling beverage containers into the costs of producing beverage products and the 10 cent refund will provide an incentive for consumers to return containers.

The CDS is consistent with and supports the waste hierarchy, principles of waste minimisation and the move towards a waste-free society as set out in the objects of the WARR Act and *Environmental Protection Act 1986*.

As the CDS will largely be operated by the Scheme Coordinator, a non-government body, there will be a high level of State Government oversight, public transparency and opportunities for State Government to ensure the Scheme Coordinator and CDS perform as expected.

4. Features of the CDS

The CDS is expected to commence in early 2020.

The broad features of the CDS are summarised below.

4.1 Eligible containers

Most beverage containers between 150 millilitres and three litres will be eligible. This includes soft drink, beer and flavoured milk containers.

The types of containers that will not be included in the CDS include:

- plain milk (or milk substitute) containers;
- flavoured milk, pure fruit and vegetable juice containers one litre or more;
- glass containers for wine and spirits;
- casks and sachets of wine;
- cordial and concentrated fruit and vegetable juice containers;
- water in casks or containers of one litre or more; and
- registered health tonics.

The CDS Regulations will outline containers that are, and are not, eligible containers. It is intended that the types of eligible and ineligible containers will align those of New South Wales, Queensland and the Australian Capital Territory.

4.2 Refund payments

The CDS will provide for a ten cent refund to be paid to any person who returns an eligible beverage container to a refund point. The returned containers must be recycled or reused.

4.3 Funding the CDS

Beverage suppliers fund the CDS by providing payment of refund amounts and other costs of delivering the CDS to the Scheme Coordinator.

4.4 Scheme costs

The scheme costs cover all costs of operating the collection network and implementing the scheme. The scheme costs are recovered by the Scheme Coordinator from the

Commented [RB5]: WALGA Comment: WALGA continues to advocate that all of the Scheme costs should be covered, this includes the cost to regulate the Scheme.

WALGA Recommendation: That the Department of Water and Environmental Regulation receives funding from the Scheme to ensure dedicated resources are available to undertake its regulatory role relating to the Scheme.

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beverage suppliers based on the number of containers sold. The scheme costs will include:

- a handling fee paid to refund point operators set by the Scheme Coordinator and approved by State Government, which can vary according to the location of the refund point and by container type;
- a Scheme Coordinator fee;
- logistics and processing costs;
- Audit costs for material recovery facilities; and
- a fee to pay back any working capital (float) borrowed by the Scheme Coordinator.

The costs are proposed to be set at rate per container.

4.5 Approval of containers

All beverage containers to be sold in Western Australia that meet the specifications for eligibility under the CDS Regulations cannot be sold in Western Australia after commencement of the CDS unless approved.

It will be an offence to supply a beverage in a beverage container that meets the specifications for eligibility under the CDS Regulations if the container is not approved, the container does not contain a barcode and a refund mark, or where there is no supply agreement in place providing for contributions towards to the cost of the CDS.

Container registrations from other Australian jurisdictions will be recognised in Western Australia where those beverage containers meet CDS requirements, such as the beverage containers' suitability for recycling.

4.6 Collection network

The CDS will establish a collection network of refund points (where consumers and businesses can return containers to claim a refund), logistics (to transport collected containers to Processors), and processing (sorting and bailing in preparation for reuse or sale to recyclers, and verification of the quantities of containers received). The Scheme Coordinator will be responsible for procuring and establishing the collection network.

The Scheme Coordinator's collection network procurement strategy will require agreement by the State Government and will be required to have regard to the Buy Local Policy.

The State Government is seeking an open collection network that allows community groups, social enterprises and small businesses to participate with one or more refund points.

The collection network will be established by the Scheme Coordinator, via an open procurement process, through contracts with refund point operators, logistics operators, and processors, who will operate elements of the network on a for-profit basis, under contracts with the Scheme Coordinator.

4.7 Confidentiality

In order to calculate the contributions of each beverage supplier to the cost of the CDS, the Scheme Coordinator will have access to commercially sensitive information such

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Commented [RB6]: WALGA Comment: Further clarification as to what will be covered by this fee. Does it include the funding for community education and engagement?

Commented [RB7]: WALGA Comment: This indicates that the Scheme Coordinator will be arranging the logistics of collection from refund points. Previously this had not been clarified. The Processing costs, and associated procurement process, need further discussion. Also the term processor is not defined – it is not clear if this means the Material Recovery Facility processing the material or the end market for the material where it will be re-processed into a final product.

WALGA Recommendation: Further discussion is needed on what the intent including processing costs and what a processor is considered to be.

Commented [RB8]: WALGA Comment: The costs of auditing the Material Recovery Facilities, as part of the Container Protocol, should be covered by the Scheme.

Commented [RB9]: WALGA Comment: Some commentary should be included that the State Government will set the minimum collection network parameters but the Scheme Coordinator is actively encouraged to exceed this minimum number.

Commented [RB10]: WALGA Comment
It is vital that there is a high degree of State Government oversight, and involvement, in the procurement process for the network. This will be an essential part of ensuring all the objectives of the Scheme are met, particular the social enterprise involvement, job creation and to ensure comprehensive coverage of the Scheme. In addition to the State Governments Buy Local Policy, there are commitments regarding Aboriginal Enterprises.

WALGA Recommendation
The procurement strategy for the collection network will be developed in consultation with the State Government and the procurement process will include representation from the State Government. Key considerations in the procurement strategy will include social enterprise engagement, job creation, Buy Local Policies, Aboriginal Enterprise and to ensure comprehensive network coverage.

WALGA Comment
Refund points should in no way be discouraged from collecting other types of material – and this should be actively encouraged to facilitate better recovery of all materials and to work with other Product Stewardship Programs such as the TV and Computer Scheme and coming battery recycling Scheme.

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as sales data and market share of various beverage suppliers. All information is to be kept confidential and used only for its authorised purpose.

4.8 Material recovery facilities

The CDS has the potential to divert a significant amount of the material currently placed in kerbside recycling as consumers may prefer to obtain a refund for eligible beverage containers. This may reduce revenue for operators of kerbside recycling (local governments and material recovery facilities). As the State Government does not wish to adversely impact on the feasibility of kerbside recycling programs, material recovery facilities will be able to claim payment of refunds for the containers that are collected as part of kerbside collection, and the refund is to be shared with the relevant local government.

4.9 Transport of containers and preparation for recycling

The Scheme Coordinator will have responsibility for the functions of collecting, transporting, sorting, baling and verifying the containers received.

The Scheme Coordinator will ensure procedures are in place for auditing the numbers of containers collected against the claims made by refund point operators.

4.10 Prohibition against disposing of containers to landfill

The Scheme Coordinator will have the primary responsibility for ensuring that containers collected from refund points are recycled or reused and are not disposed of to landfill.

It will be a condition of payments from the Scheme Coordinator to refund point operators and to material recovery facilities that all beverage containers for which a claim or payment is made are sent for recycling and are not disposed of to landfill.

5. Administration and Governance of the CDS

5.1 Scheme Coordinator

The Scheme Coordinator is largely responsible for the management of the CDS and is expected to be appointed for a seven year term with the option for this term to be extended.

5.1.1 Legal structure

The Scheme Coordinator will be a private company registered under, and subject to the provisions of, the Corporations Act. It must operate on a not-for-profit basis with directors representing Western Australian community interests, waste and recycling industry sectors and/or areas of expertise. The Scheme Coordinator will not be an agent of the State and will not be subject to the *Public Sector Management Act 1994* and the *Financial Management Act 2006*. However, the Scheme Coordinator will be regulated by, and must comply with, the WARR Act and CDS Regulations.

5.1.2 Performance of Scheme Coordinator

The Minister will appoint the Scheme Coordinator and may intervene where the Scheme Coordinator is not meeting its performance targets. Targets are to be set including, but not limited to, targets regarding the accessibility of refund points (stating

Commented [RB11]: WALGA Comment: See previous comment on the need for the Scheme to cover audit costs associated with the Container estimation protocol.

Commented [RB12]: WALGA Comment: DWER to ensure consistent wording on the Scheme Coordinator role in this section, Section 5.2 and Part B. For example bailing is not mentioned in Section 5.2.

Commented [RB13]: WALGA Comment: The Association also considers the Scheme Coordinator has a role in facilitating market development for material collected through the Scheme.

Commented [RB14]: WALGA Comment
To ensure the Board is representative of not only the industry, but of the Western Australian industry it is strongly recommended that specific requirement be included.

Commented [RB15]: WALGA Comment
Local Government is an interest group with particular relevance to the Scheme but not currently any presence on the Board.

WALGA Recommendation
A director also be appointed who has experience in Local Government in Western Australia.

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the number of points required in each region of Western Australia) and overall return rates of containers that must be achieved by the Scheme Coordinator.

The Scheme Coordinator will also be required to report against a range of performance indicators prescribed in the Regulations or through their Conditions of Appointment.

5.1.3 Ministerial oversight of Scheme Coordinator

Ministerial oversight of the Scheme Coordinator will include approval of the Scheme Coordinator's strategic plan, regular progress reviews of the CDS, regular public reporting by the Scheme Coordinator, and the ability for the Minister to give directions to the Scheme Coordinator.

5.1.4 Sanctions for inadequate performance

Sanctions may be applied for inadequate performance by the Scheme Coordinator. Sanctions include the Minister issuing directions to the Scheme Coordinator, amendment of the conditions of appointment, or suspension or revocation of a company's appointment as Scheme Coordinator. Where an appointment is suspended or revoked, the Minister may appoint an administrator to carry out the functions of the Scheme Coordinator.

Failure to comply with a Ministerial direction will be grounds for amendment, suspension or cancellation of appointment and may be an offence.

5.2 Functions of the Scheme Coordinator

The function of the Scheme Coordinator is to:

- establish a network of refund points through contracts, and manage those contracts;
- establish or operate refund points if coverage targets are not met;
- ensure all containers collected by refund point operators or recovered by material recovery facilities are reprocessed or recycled, preferably in Australia;
- ensure arrangements are in place for collection, transport, sorting, processing, verification, and recycling of containers;
- ensure the costs of the CDS are paid by beverage suppliers;
- determine the amounts payable under the CDS (by beverage suppliers and to refund point operators);
- provide rebates to beverage suppliers of CDS charges for the containers exported from Western Australia;
- establish and maintain a database of eligible container approvals and Supply Agreements;
- raise and maintain public awareness of the CDS before and after scheme commencement, educate the public on how the CDS operates and publicise the location of refund points;
- receive and deal with complaints relating to CDS from public and CDS participants (i.e. collection network operators, beverage suppliers, retailers, material recovery facilities and local government);

Commented [RB16]: WALGA Comment: Also the location and access times for these collection points. A point may be there but not open at convenient times, or alternatively, inconveniently located.

Commented [RB17]: WALGA Comment: Additional Functions of the Scheme Coordinator should include:
- Operating the Scheme in line with the Scheme's objectives
- Arranging for, and covering the costs associated with, audits of material recovery facilities

Commented [RB18]: WALGA Comment: This action needs to occur in consultation with the DWER and Local Government. Local Government is one of the main providers of information to the community on waste management, therefore needs to be informed and engaged in this process.

Commented [RB19]: WALGA Comment: Noting that there needs to be a separate complaints process for issues with the Scheme Coordinator.

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- obtain accurate data on recycling rates for beverage containers prior to the commencement of the CDS and throughout its operation and report the data to State Government, in order to measure the outcomes of the CDS;
- reporting against key performance indicators and other data as required in the conditions of appointment; and
- any other functions given under the WARR Act, regulations or another Act.

Details of the Scheme Coordinator's functions are to be set out in the draft plans referred to in Section 12 of Part B of this Request. These draft plans are to be provided as part of each Respondent's Offer and are subject to State Government approval.

The Scheme Coordinator should also align its functions with the objectives of the scheme (Section 3.2).

5.3 Function and role of agency which administers the WARR Act

The department responsible for assisting the Minister in administering the WARR Act, currently DWER, will have the following functions:

- determining applications for approval of containers, imposing conditions and amending, transferring, suspending or cancelling approvals;
- providing advice to the Minister during the selection process for the Scheme Coordinator;
- auditing Scheme Coordinator performance in relation to performance measures and targets; and
- enforcement of the WARR Act and CDS Regulations, including institution of prosecutions.

Commented [RB20]: WALGA Comment: The Association also considers that the Department has a role to be facilitating the development of the communications plan for the Scheme, including engagement with Local Government.

PART B: Submission of Offer and Selection Process

6. Note to Respondent

In preparing its Offer, the Respondent must:

- a). address each requirement set out in this Part B;
- b). take into account the Scheme Coordinator functions (Part A, Section 5.2).
- c). in respect of the Assessment Criteria in Section 12 in this Part B, provide full details of any claims, statements or examples;
- d). assume that DWER has no knowledge of the Respondent, its activities, experience or any previous work undertaken by the Respondent for DWER or any other Public Authority; and
- e). nominate any Offer Information that the Respondent wishes to expressly and reasonably nominate as confidential for the purposes of the Request Conditions.

7. Identity of Respondent

The Respondent must provide the following details:

RESPONDENT TO COMPLETE:	
(a) Name of Legal Entity:	.....
(b) ACN:	.....
(c) Registered address of Company or address of principal place of business if no registered address:	..... .....
(d) Business Name:	.....
(e) ABN:	.....
(f) Contact Person:	.....
(g) Contact Person Position Title:	.....
(h) Email:	.....
(i) Telephone:	.....
(j) Address and email for service of contractual notices:	..... .....

NB: The Offer does not require the Respondent's signature.

8. Submission of offer

8.1 Hand and post lodgement

An entity wishing to be considered for appointment as the Scheme Coordinator (Respondent) may submit its Offer as follows:

By hand at:	By post at:
Department of Water and Environmental Regulation The Atrium Level 4, 168 St Georges Terrace Perth WA 6000	Department of Water and Environmental Regulation Locked Bag 33 Cloisters Square Perth WA 6850

If the Respondent submits the Offer by hand or post, the Respondent must submit the Offer to the relevant addresses above and provide One (1) unbound copy marked "Original Copy" and provide four (4) copies.

8.2 Facsimile lodgement

Offers may not be submitted by facsimile.

8.3 Electronic lodgement (preferred)

The Respondent may submit the Offer electronically by uploading at: www.tenders.wa.gov.au.

Tenders WA can facilitate the uploading of files to a maximum 100MB limit per upload request.

The Respondent must be registered on Tenders WA to submit an offer electronically.

9. Terms of Submission of Offer

9.1 Timing

Any Offer which:

- is not submitted before the Closing Time;
- is incomplete at the Closing Time; or
- is not submitted in accordance with the provisions of this Section 8 of the Request,

will be excluded from consideration, unless the Respondent can provide conclusive evidence of mishandling of the Offer.

For the purposes of the Request, mishandling will only have occurred where:

- in the case of submission of the Offer by hand or by post, the Offer was received by the State Government prior to the Closing Time but the Offer was not transferred by the State Government to the tender box by the Closing Time.

Request for Proposal – Container Deposit Scheme Coordinator

The Offer must be received in full by the State Government prior to the Closing Time. If the Respondent submits the Offer electronically, the Respondent agrees that:

- receipt of the Offer will be determined by the date and time shown on the electronic tender lodgement service receipt issued or, if no receipt is issued, the date and time which the State Government's computer records that the Offer was received;
- if the electronic copy of the Offer contains a virus then, notwithstanding any disclaimer made by the Respondent in respect of viruses, the Respondent must pay to the State Government all costs incurred by the State Government arising from, or in connection with, the virus;
- lodgement of electronic files may take time and the Respondent must make its own assessment of the time required for full transmission of its Offer;
- the State Government will not be responsible in any way for any loss, damage or corruption of the electronic copy of the Offer;
- if the electronic copy of the Offer becomes corrupted, illegible or incomplete as a result of transmission, storage, encryption or decryption, then the State Government may request the Respondent to provide another copy of the Offer either electronically or in hard copy or both;
- if the State Government requests the provision of another copy of the Offer, then the Respondent must:
 - provide the copy in the form or forms requested within the period specified by the State Government;
 - provide a statutory declaration that the copy is a true copy of the Offer which was electronically submitted by the Respondent and that no changes to the Offer have been made after the initial attempted electronic submission; and
 - provide a copy of the electronic tender lodgement service receipt for the initial attempted electronic submission.

9.2 No assignment

An Offer is not assignable by the Respondent without the prior written consent of the State Government.

9.3 All members of Respondent are bound

If an Offer is submitted by a consortium of two (2) or more persons either by way of joint venture, partnership or otherwise, the Offer is binding on those persons jointly and severally.

9.4 Property in Offer

An Offer is, upon submission, the absolute property of the State Government and will not be returned to the Respondent. Nothing in this provision affects the intellectual property rights of the Respondent in the Offer, except that the State Government may make such copies of the Offer as the State Government requires for the proper evaluation of the Offer.

9.5 Agreement to Request Conditions

In submitting an Offer, the Respondent is deemed to have read and agreed to these Request Conditions.

9.6 Agreement by Respondent

In submitting an Offer, the Respondent agrees that:

- **(information true and correct)** all information in its Offer and all Offer Information is true and correct at the time of its submission;
- **(relies on own enquiries)** other than in respect of information provided by the State Government to the Respondent in writing, it relies entirely on its own enquiries in relation to all matters in respect of the Request and the Request Conditions;
- **(understood Request)** it has examined and understood the Request and the Request Conditions and any other information available to the Respondent in respect of the Request;
- **(understood Addenda)** prior to the Closing Time the Respondent must log on to Tenders WA [www.tenders.wa.gov.au] to ensure that prior to submitting its Offer it has examined and understood each Addendum in respect of the Request as by submitting its Offer it will be deemed to have examined and understood each Addendum;
- **(made reasonable enquiries)** it has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Offer which is obtainable by the making of reasonable enquiries, which enquiries the Respondent has made;
- **(does not rely on warranties)** other than in respect of information provided by the State Government to the Respondent in writing, it does not rely on any warranty or representation of the State Government or DWER or any person actually or ostensibly acting on behalf of the State Government;
- **(no reference to information on websites)** it must not make reference to any information contained on the Respondent's website or on any other website. Any information on the Respondent's website or on any other website which the Respondent wishes the State Government to rely on must be set out in full in the Respondent's Offer;
- **(no secret commission)** it has not paid or received and will not pay or receive any secret commission in respect of the Request;
- **(no collusion)** it has not colluded and will not collude with any other person in respect of the Request;
- **(no inflation or deflation of proposed fees)** its proposed fees are not inflated or deflated to advantage another Respondent;
- **(no unlawful arrangement)** it has not entered and will not enter into any unlawful arrangement with any other person in respect of the Request;
- **(no improper influence)** it has not sought and will not seek to influence any decision in respect of the Request by improper means; and

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- **(own cost and expenses)** it will pay its own costs and expenses in connection with:
 - the preparation and submission of its Offer; and
 - any discussions, enquiries or negotiations with, or provision or consideration of further information to, the State Government, whether before or after the submission of any Offer,irrespective of whether its Offer is accepted or not.

9.7 Respondent may withdraw Offer

The Respondent may withdraw its Offer at any time prior to acceptance of its Offer, by notifying the State Government in writing.

9.8 Offer Validity Period

The Offer Validity Period is one year.

The Offer Validity Period may be extended or further extended by the State Government by advising each Respondent in writing at any time or times.

9.9 Disclosure of Information

- The Respondent agrees and acknowledges that its Offer and its Offer Information are subject to the *Freedom of Information Act 1992 (WA)* and may also be disclosed by the State under a court order or upon request by Parliament or any committee of Parliament or if otherwise required by law.
- By submitting an Offer, the Respondent releases the State from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting from the disclosure of its Offer and its Offer Information under this clause by the State.
- The Respondent agrees and acknowledges that the powers and responsibilities of the Auditor General for the State under the *Financial Management Act 2006* and the *Auditor General's Act 2006* are not affected in any way by the Request.
- Subject to this clause and to the provisions of the *Financial Management Act 2006* and the *Auditor General's Act 2006*, the State Government will not make public any part of the Offer or any Offer Information that the Respondent expressly and reasonably nominates in its Offer as confidential. However, the State Government may require the Respondent to withdraw any claim to confidentiality in respect of any part of the Offer or any Offer Information as a condition of acceptance of the Offer.

10. State Government's Rights

10.1 Cancellation and Variation

The State Government reserves the right, at any time and from time to time, to cancel, vary, supplement, supersede or replace the Request or any part of the Request.

If the State Government cancels, varies, supplements, supersedes or replaces the Request, then;

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- the State Government will advise each Respondent that the Request has been cancelled, varied, supplemented, superseded or replaced; and
- the Respondent will not have any recourse against the State Government whatsoever including for claims for any losses, costs or expenses incurred up to and including the date that the Request or any part of the Request is cancelled, varied, supplemented, superseded or replaced.

10.2 State Government reserves its rights

If the Respondent's Offer makes reference to information on its website, or on any other website, the State Government will not take into account that information when evaluating an Offer.

The State Government is under no obligation to accept any Offer and may reject any Offer or all Offers, in the State Government's discretion, including:

- **(failure to comply with Request Conditions)** if an Offer fails to comply with these Request Conditions;
- **(failure to comply with requirements)** if an Offer fails to comply with any of the requirements set out in Part B of the Request;
- **(false or misleading)** if an Offer contains information or representations that are false or misleading;
- **(change of control)** if anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Respondent to another person, including in respect of a Respondent which is a body corporate, if there is a change in control of the Respondent within the meaning of the Corporations Act;
- **(change of consortium membership)** in respect of a Respondent which consists of a consortium, if there is a change of membership of the consortium members; or
- **(change of policy or commercial reasons)** if the State Government decides to cancel the Request due to changes of policy or for commercial reasons.

10.3 State Government may require additional information

After the Closing Time, the State Government may:

- request additional information from the Respondent in relation to the content of the Offer for the sole purpose of clarifying the Offer; and
- request information from the Respondent regarding their capacity to fulfil the role,

and if so requested, the Respondent must promptly provide such information to the State Government.

In evaluating an Offer, the State Government may take into account any information regarding the Respondent that the State Government has in its possession or receives from any source, including information about the past or current performance of the Respondent under any other contract, arrangement or dealing between the Respondent and a Public Authority.

The State Government reserves the right to conduct site visits as it deems appropriate.

10.4 Discretion

Whenever the consent of the State Government is required under the Request, that consent may be given or withheld by the State Government in the State Government's absolute discretion and may be given subject to such conditions as the State Government may determine.

11. How the Offer will be evaluated

11.1 Selection of Preferred Respondent

The State Government may select, but is not obliged to select, one or more Respondents as a Preferred Respondent.

Selection as a Preferred Respondent does not confer any rights on a Preferred Respondent and the Request Conditions continue to apply until such time as the Stage 2 Contract is entered into or the Request is terminated.

The Respondent agrees that, if it is selected as the Preferred Respondent, then:

- its Offer will remain open for acceptance by the State Government at any time prior to the expiry of the Offer Validity Period;
- the State Government may choose to negotiate any aspect of the Offer; and
- the State Government may request the Respondent to provide a performance guarantee, a bank guarantee or some other form of security on terms and conditions acceptable to the State Government.

At any time during the negotiations either the State Government or a Preferred Respondent may terminate the negotiations for any reason.

If the State Government does terminate negotiations, the State Government may:

- accept the Respondent's original Offer; or
- select and then negotiate with any other Respondent as the Preferred Respondent in accordance with the terms of this Request; or
- terminate the Request.

11.2 Selection Process

The State Government will evaluate the Offer by:

- applying relevant State Supply Commission and Government policies to the assessment of the Offer (see Section 11.3);
- assessing the Offer against the Compliance and Disclosure Requirements in Section 11.4; and
- assessing the Offer against the Assessment Criteria in Section 12.

11.3 State Supply Commission and Government policies

The following State Supply Commission policies apply to this Request:

- Value for Money;
- Probity and Accountability;

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- Open and Effective Competition; and
- Sustainable Procurement.

The following Government policies apply to this Request:

- Buy Local Policy; including the Addenda.

These policies can be viewed and downloaded from www.finance.wa.gov.au or copies of these policies are available from the State Supply Commission (telephone (08) 6551 1500).

This Request is a covered procurement under the Australia-United States Free Trade Agreement (AUSFTA), the Australia-Chile Free Trade Agreement (ACI-FTA), the Korea-Australia Free Trade Agreement (KAFTA), the Japan-Australia Economic Partnership Agreement (JAEPA) and the Singapore-Australia Free Trade Agreement (SAFTA).

11.4 Compliance and disclosure requirements

DWER will consider the extent to which the Offer satisfies the following Compliance and Disclosure Requirements. DWER reserves the right to reject any Offer that does not properly address any of the Compliance and Disclosure Requirements and/or which contains material departures from the Request Conditions.

11.4.1 Compliance

(i) Request and Request Conditions

The Respondent must confirm whether it will comply with the Request and Request Conditions. If the Respondent will not comply with any Section of the Request and Request Conditions, the Respondent must set out:	
(A) the Section it will not comply with;	
(B) the extent of non-compliance – including the alternative clause, if any, or a description of any changes it requires to the Request and Request Conditions; and	
(C) the reason for non-compliance.	
RESPONDENT TO COMPLETE:	
Does the Respondent agree to the Request and Request Conditions?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>
If no, provide details:	

11.4.2 Disclosures

(i) Participants (including subcontractors)

RESPONDENT TO COMPLETE:	
Is the Respondent acting as an agent or trustee for another person or persons?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, provide details:	
AND	
Is the Respondent acting jointly or in association with another person or persons?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, provide details:	
AND	
Has the Respondent engaged, or does the Respondent intend to engage, another person or persons as a subcontractor in connection with the supply of the Services?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, provide details:	

(ii) Criminal Convictions

The Respondent must confirm that each Director and Executive Officer of the Respondent:

- is not insolvent under administration within the meaning of the Corporations Act;
- is not disqualified from managing corporations under the Corporations Act; or
- does not have a **criminal conviction**, other than a spent conviction, under any environmental legislation or for an indictable offence under another law,

and must also confirm that the Respondent has not been convicted of a criminal offence under any environmental legislation or for an indictable offence under another law.

RESPONDENT TO COMPLETE:

Commented [RB21]: WALGA Comment: Clarification is requested on the term ‘criminal conviction’ and the scope of what this would cover. Individuals may have been issued infringements, rather than have criminal convictions, that would be important to understand.

The wording in the DWER Licence appears to be much more comprehensive in the range of offences which are contemplated -
“has the applicant ever been convicted, or paid a penalty, for an offence under a provision of the EP Act, its subsidiary legislation, or similar environmental protection or health-related legislation in Western Australia or elsewhere in Australia?”

WALGA Recommendation: The DWER expand the scope of offences which require declaration, as per the DWER Licence Application.

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Is any Director or Executive Officer of the Respondent: <ul style="list-style-type: none"> insolvent under administration within the meaning of the Corporations Act?; disqualified from managing corporations under the Corporations Act?; Or do they have: <ul style="list-style-type: none"> a criminal conviction, other than a spent conviction, under any environmental legislation or for an indictable offence under another law? Has the Respondent been convicted of a criminal offence under any environmental legislation or for an indictable offence under another law?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, provide details:	

(iii) Conflict of Interest

The Respondent must declare and provide details of any actual, potential or perceived conflict of interest. RESPONDENT TO COMPLETE: Does the Respondent have any actual, potential or perceived conflict of interest in relation to the functions of Scheme Coordinator (if appointed) by the Respondent?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, the reasons why:	

(iv) Small Business, Australian Disability Enterprise (ADE) and/or Aboriginal Business

RESPONDENT TO COMPLETE: Respondent is required to disclose whether it is a:	
(A). small business that employs less than twenty (20) people; and/or	
Yes <input type="checkbox"/>	No <input type="checkbox"/>
(B). registered Australian Disability Enterprise (ADE) – registered means to be listed as an approved ADE on the Australian Disability Enterprises website at: www.ade.org.au/ ; and/or	
Yes <input type="checkbox"/>	No <input type="checkbox"/>
(C). registered Aboriginal Business – the business is to be registered on the Aboriginal Business Directory WA at: http://www.abdwa.com.au/ .	
Yes <input type="checkbox"/>	No <input type="checkbox"/>

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The Respondent should note that its response to this Compliance and Disclosure Requirement:

- (A) will be used by the Department of Finance for statistical purposes only; and
- (B) will not be used by DWER in its evaluation of the Offer.

11.5 Tenders WA

The Respondent may register (free) for the Tenders WA website to ensure that the complete Request has been downloaded including any and all addenda.

12. Assessment criteria and information requirements

The State Government will, in its assessment, consider the extent to which the Offer satisfies the following assessment criteria. The State Government reserves the right to reject any Offer that does not properly address and satisfy any of the assessment criteria.

The assessment criteria are not weighted equally. Refer to the % weighting for each Requirement listed below.

12.1 Organisational Capacity and Demonstrated Skills and Experience (30% weighting) [37.5%]

Requirements for Proposal

1. The Respondent must provide a draft copy of the Company's constitution, including the specifications outlined in this Section.
2. The Respondent must provide evidence that the Respondent is, or is able to become, a Company that can comply with the requirements contained in this Section and that each of its directors and executive officers is an Eligible Individual.
3. The Respondent must provide nominations for at least ~~four~~five directors who are independent of the beverage industry directors of the board including the Chair, ~~and the community~~ and waste and recycling industry representative;
4. The Respondent must provide a signed consent of each person that the Respondent considers is a director or executive officer of the Respondent to:
 - a. the collection of personal or background information about the person by the chief executive; and
 - b. a criminal history check;
5. The Respondent must provide a register of interests of each person who is a director or an executive officer of the Respondent.

The Respondent must address the following:

- a) Under the proposed WARR Act amendments, the Scheme Coordinator must be a Company with the following key features:
 - (i) the Company is established under the Corporations Act;

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- (ii) the Company must operate on a not-for-profit basis; and
 - (iii) the Company must have specific board representation to ensure the company represents the broad interests of the community.
- b) **The company constitution of the Scheme Coordinator must:**
- (i) specify the requirement of nine company **directors**:
Chair independent of beverage industry and appointed by Minister
 - the chair who is a director and independent of the beverage industry, and approved by the Minister;**Directors representing beverage industry (as extended producer responsibility scheme)**
 - at least one director that is an executive officer, employee, or business associate of a small beverage supplier or represents small beverage suppliers;
 - at least one director that is an executive officer, employee, or business associate of a large beverage supplier;**Skills and/or experienced based directors**
 - at least one director that has experience in the **Western Australian recycling and waste industry, is independent of the beverage industry**;
 - at least one director who **has experience in represents** community interests, is independent of the beverage industry, and approved by the Minister; and
 - at least two directors who have legal or financial qualifications and experience and are independent of the beverage industry.
 - (ii) prohibit dividends from being paid to, or the income, profits or assets of the company being distributed among, its members
 - (iii) require persons appointed as directors and executive officers to be Eligible Individuals; and
 - (iv) specify:
 - How the chair and directors are appointed and removed;
 - How the chair and directors vote on and decide on matters;
 - Remuneration and other entitlements of the chair and directors;
 - How the constitution is amended.
- c) The Respondent must provide the names, skills and experience of the Directors who will be involved with delivering the Project, including current curriculum vitae of each Director.
- d) The individuals appointed as directors and executive officers must at all times be Eligible Individuals. It will be an ongoing condition that the

Commented [RB22]: WALGA Comment: The Beverage industry should not have the balance of power on the Board.

Commented [RB23]: WALGA Comment: Further clarification is needed as to whether these roles are directors only, or if there is the potential for some members to be executive directors.

Commented [RB24]: WALGA Comment: Is the Chair approved or appointed by the Minister, as both words are used in this section.

Commented [RB25]: WALGA Comment: A director may have experience with the beverage industry but cannot be a representative of the industry. On that basis, all of the Directors are skills and/or experience based.

Commented [RB26]: WALGA Recommendation: That an additional director be included with experience in Local Government.

Commented [RB27]: WALGA Comment: The representative needs direct WA experience and should also be independent of the beverage industry.

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Scheme Coordinator must notify the Minister if a director or an executive officer is no longer an Eligible Individual.

- e) The Respondent must demonstrate that it has the organisational capacity, including the entity structure and governance arrangements, or is likely to obtain the capacity to perform the Scheme Coordinator functions.
- f) The Respondent must demonstrate that it has the financial capacity, or is likely to obtain the financial capacity to perform the Scheme Coordinator functions.
- g) The Respondent must confirm whether it has, or will obtain, and will continue to maintain for the life of the CDS, all of the required insurances outlined below:
- (i) Public Liability Insurance:
Public liability insurance covering the legal liability of the Company and the Company's Personnel arising out of the Project for an amount of not less than **\$20 million** for any one occurrence and unlimited in the aggregate.
- (ii) Professional Indemnity Insurance:
Professional indemnity insurance covering the legal liability of the Company and the Company Personnel in relation to the Project, if the Company is selected as the Preferred Respondent, or appointed as the Scheme Coordinator (or both), arising out of any act, negligence, error or omission made or done by or on behalf of the Company, or any subcontractor in connection with the Project for a sum of **\$1 million** for any one claim and in the annual aggregate, with a provision of one automatic reinstatement of the full sum insured in any one period of insurance.
Professional Indemnity Insurance required under this clause must include:
- fraud, dishonesty, defamation, breach of confidentiality, infringement of patent, copyright, design, trade mark or circuit layout rights;
 - loss of or damage to documents and data; and
 - breach of Chapters 2 and 3 of the Australian Consumer Law and the Australian Consumer Law (WA).
- (iii) Workers Compensation Insurance
Workers' compensation insurance in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* (WA), including cover for common law liability for an amount of not less than **\$50 million** for any one occurrence in respect of workers of the contractor. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under section 175(2) of the *Workers' Compensation and Injury Management Act 1981*.

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- (iv) **Motor vehicle third party**

Motor vehicle third party insurance covering legal liability against property damage and bodily injury to, or death of, persons (other than compulsory third party motor vehicle insurance) caused by motor vehicles used in connection with the project for an amount of not less than **\$30 million** for any one occurrence or accident.
- (v) **Compulsory third party**

Compulsory third party insurance as required under any statute relating to motor vehicles used in connection with the Project.
- h) The Respondent must provide details of contracts or arrangements for similar services provided for other clients. The Respondent must provide:
 - a detailed description of the Services provided;
 - similarities between the previous contracts or arrangements and this Request;
 - when the previous contracts or arrangements were performed; and
 - the outcome of the previous contracts or arrangements.
- (iv) The Respondent must provide a minimum of two referees in respect of the contracts detailed above. Referee details must include:
 - the referee's name and position;
 - company name;
 - the contact telephone number; and
 - the contract or project title.

12.2 Suitability of Proposed Services (50% weighting) [62.5%]

The Respondent must address the following:

- a) The Respondent must provide a timeframe for the delivery of the services identifying scope of work, key dates and milestones and outlining how any timing requirements will be met, noting that the timeframes will be subject to legislation being enacted;
- b) The Respondent must demonstrate a comprehensive understanding of the requirements of the Project and provide a clear outline of the proposed methodology and approach. Details of the methodology should include:
 - (i) how the Offer meets the CDS objectives stated in Part A of this Request;
 - (ii) the proposed approach for the inclusiveness of social enterprises;
 - (iii) a description of critical issues, and quality control mechanisms used in undertaking the requirements of the role of the Scheme Coordinator.
- c) The Respondent must provide the following materials:

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- (i) A draft strategic plan outlining the Respondent's plans for establishing and administering the CDS, including estimated costs for establishing and administering the CDS;
- (ii) A draft collection network procurement strategy outlining:
 - the procurement strategy to develop the collection network, logistics and processing services;
 - how the Respondent intends to ensure the network of refund points is convenient for consumers;
 - how refund point operator applicants will be encouraged and supported, particularly small applicants (those with less than 10 refund points);
 - how State Government targets will be met for:
 - number of refund points
 - location of refund points
 - accessibility of refund points
 - rate of return
 - A code of practice in relation to operating conditions for refund point operators;
- (iii) A draft financial model for the CDS which outlines how the Respondent intends to fund the capital costs (legal fees, premises, salaries before the CDS starts, IT systems, etc);
- (iv) A draft operating budget for the Scheme Coordinator for the first year of the CDS, and subsequent three years, based on available information and assumptions which must be listed;
- (v) How the amounts payable will be set under the CDS:
 - by the beverage suppliers;
 - to the refund point operators; and
 - to material recovery facilities;
- (vi) A draft framework for resolving disputes between the Respondent, beverage suppliers, refund point operators, the operators of material recovery facilities, and the public;
- (vii) Draft plans for maintaining an up-to-date register of approved containers for the CDS;
- (viii) A draft social enterprise engagement plan that specifically deals with:
 - job creation; and
 - fundraising opportunities;

Commented [RB28]: WALGA Comment: There is work being undertaken by DWER that will contribute to the definition of convenience.

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- (ix) A draft network improvement plan which explains how the Respondent will build a network of refund points which are convenient and attractive for consumers to use, and how improvements to the network will be made over time. It should include:
 - improving convenience for consumers;
 - adoption of appropriate new technologies and processes; and
 - a common system across all refund point technologies to pay container refunds to consumers;
- (x) A draft plan outlining how confidentiality of commercially sensitive information will be managed;
- (xi) A draft confidentiality deed that all directors of the Company will sign if the Respondent is appointed as the Preferred Respondent;
- (xii) A draft public education and awareness plan including:
 - information on the scheme
 - how the public can find refund points (customer convenience)
 - how the scheme will achieve its objectives;
- (i) A draft fraud protection plan/chain of custody issues (auditing claims for containers by refund point operators and material handling facilities).

12.3 Local Content (20% weighting) [0%]

When a bid is received from:

- A business that is located in another state or territory of Australia, or in New Zealand under the Australia New Zealand – Government Procurement Agreement (ANZGPA);
- A business that is located in the United States (when the purchase is a “covered procurement” under the Australia-United States Free Trade Agreement (AUSFTA));
- A business that is located in Chile (when the purchase is a “covered procurement” under the Australia Chile Free Trade Agreement (ACI-FTA));
- A business that is located in Korea (when the purchase is a “covered procurement” under the Korea-Australia Free Trade Agreement (KAFTA));
- A business that is located in Japan (when the purchase is a “covered procurement” under the Japan-Australia Economic Partnership Agreement (JAEPA)); or
- A business that is located in Singapore (when the purchase is a “covered procurement” under the Singapore-Australia Free Trade Agreement (SAFTA)),

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the local content weighted selection criteria will not be evaluated during the qualitative assessment. Should the local content criterion not be applicable, the 20% weighting will be divided proportionately across the remaining criteria (see [xx%] for revised weightings).

The Respondent must address the following:

- a) the Respondent must specify the location where contract management will be undertaken;
- b) the Respondent must provide details of how the Respondent supports other Western Australian businesses through subcontracting or material supply arrangements;
- c) the Respondent must estimate the percentage of the Project as to the amount which represents Project activities performed in Western Australia, in other Australian States or Territories, New Zealand, the United States, Chile, Korea, Japan, Singapore and overseas, in accordance with the following table:

	Western Australian Content	Other Australian States, New Zealand, United States, Chile, Korea, Japan and Singapore	Imported Overseas Content	TOTAL
%	%	%	%	100%

- d) the Respondent must estimate the employment creation and retention and industry and skills development initiatives which may arise if the Respondent is appointed Scheme Coordinator; and
- e) the Respondent must provide details of any other economic, social or environmental benefits to Western Australia.

RESPONDENT TO COMPLETE:

Respondent to provide the local content information required under this clause.

13. Procurement timeline

The procurement timeline for the Project is as follows:

- Request for Proposal opens – Monday 22 October 2018
- DWER will provide a briefing at a time and place to be advised. It is anticipated the briefing will be held prior to the 7 December 2018
- Request for Proposal closes – Monday 17 December 2018
- Preferred Respondent notified – February 2018
- Scheme Coordinator appointed (subject to legislation being passed) – approximately March 2019

Note that the timeline above is subject to change.

14. Conflict of Interest

The Respondent must, prior to any acceptance of its Offer by the State Government, disclose to the State Government any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to the Request or the performance of the role of Scheme Coordinator (if appointed) by the Respondent.

The State Government may, in its discretion, accept or reject the Respondent's Offer if the State Government considers that the Respondent has, or could reasonably be considered to have, an actual, potential or perceived conflict of interest in relation to the Request or the performance of the role of Scheme Coordinator (if appointed) by the Respondent.

15. No Bribe, Inducement or Offer of Employment

The Respondent must not, without the prior written consent of the State Government, directly or indirectly approach or communicate with any officer or employee of the State Government having any connection or involvement with the Request, with respect to:

- an offer of employment; or
- availability of employment,

with the Respondent or any related entity.

The Respondent must not directly or indirectly offer a bribe, gift or inducement to any officer or employee of the State Government in connection with the Request.

16. Probity

DWER has engaged a probity advisor to:

- ensure the procedure for assessing and appointing a Scheme Coordinator is aligned with probity requirements;

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- monitor the assessment process for independent validation; and
- provide advice on the resolution of probity issues.

The probity advisor 2020 Global is an independent observer of the procurement process and does not evaluate the proposals.

If a Respondent has any concerns with the probity of the procurement process, please direct these concerns to Bruce Donald, Director 2020 Global, bruce@2020global.com.au.

17. More information and contact details

ENQUIRIES:

Title: CDS Manager
E-mail: tenders@dwer.wa.gov.au

ADVICE ON DELIVERING OFFERS:

Name: Tendering Services
Telephone: (08) 6551 2345

ADVICE ON USING TENDERS WA:

Name: Procurement Systems Support
Telephone: (08) 6551 2020

The Respondent must not contact any other person within State Government or any consultant engaged in relation to this Request to discuss this Request.

PART C: Stages of the Project

18. Stages

This Section of the Request will outline the staged approach to the procurement of the Scheme Coordinator. Below is an overview of the three stages of the procurement.

18.1 Stage 1 – Selection of Preferred Respondent

Each Respondent must provide documentation to demonstrate that it can meet the requirements of Stage 1, as outlined in Part B of this Request, or provide evidence to show that it will be able to meet those requirements.

DWER will hold a briefing during the Response period which potential Respondents may attend. The purpose of the briefing will be to allow potential Respondents to clarify the State Government's requirements and expectations for this Request. A panel will assess the Offers and recommend a Preferred Respondent to the Minister.

18.2 Stage 2 – Interactive Partnership

18.2.1 Selection of Preferred Respondent

If a Preferred Respondent is selected, a Letter of Selection and Conditions of Selection will be sent to the Preferred Respondent notifying it that it has been selected as the Preferred Respondent along with the Stage 2 Contract.

The Stage 2 Contract comes into existence when the Preferred Respondent executes it.

The Preferred Respondent acknowledges and accepts all liability and risk in undertaking activities as the Preferred Respondent, in particular that the Project is contingent on the passing of the WARR Act amendments. The State Government accepts no liability for any expenses or costs incurred or claims made, in relation to the Project and makes no warranty or representation in relation to the passing of the required legislation or its timing.

If the WARR Act amendments are passed during Stage 2, the Minister may, exercising absolute discretion, appoint the Preferred Respondent as Scheme Coordinator during Stage 2.

18.2.2 Negotiation on implementation of the CDS

The Preferred Respondent and the State Government will negotiate the specific criteria and targets to meet the role requirements of the Scheme Coordinator, and the details of delivery and implementation of the CDS, in good faith.

Negotiations will include but are not limited to, finalisation of the documents required under Part B of this Request, and discussions on the content of:

- container collection agreements with beverage suppliers;
- container recovery agreements with refund point operators; and
- material recovery agreements with material recovery facilities.

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The Preferred Respondent will use its best endeavours to accommodate the requirements and suggestions of the State Government that arise out of the Stage 2 negotiations.

Any outcomes from negotiations at this time between the State Government and the Preferred Respondent will be formalised in a legally binding document.

18.2.3 Additional steps that may be taken in Stage 2

The collection network procurement process cannot be conducted until the Scheme Coordinator is formally appointed. However, the Preferred Respondent is expected to develop the documentation to conduct the procurement process during this Stage. The procurement documents will be submitted for State Government approval to allow the procurement process to commence once the Preferred Respondent is appointed as the Scheme Coordinator.

It is expected that the Preferred Respondent will appoint the chairperson, and the board members representing community interests, small beverage and experience in the recycling and waste industry, as specified in Part B of this Request, prior to finalising its strategy and documents for procuring the collection network.

18.3 Stage 3 – Appointment of Scheme Coordinator

18.3.1 Appointment of Scheme Coordinator

Following the passage of the WARR Act amendments the Minister will be in a position to formally appoint the Scheme Coordinator by way of the Letter of Appointment. Such appointment will be exercised at the Minister's discretion.

18.3.2 Conditions of Appointment

The appointment of the Scheme Coordinator will be subject to the Conditions of Appointment. The Conditions of Appointment may include but are not limited to conditions requiring the Scheme Coordinator to finalise items outstanding from Stage 1 or Stage 2.

The Conditions of Appointment may require the Scheme Coordinator to enter into a further legally binding agreement with the State Government.

Any conditions imposed as part of the appointment of the Scheme Coordinator will be set for the term of the appointment.

18.3.3 Implementation of the CDS

Following appointment, and prior to the commencement of the CDS, the Scheme Coordinator will:

- undertake its collection network procurement process;
- appoint refund point operators which will then be able to apply for all necessary approvals and authorisations (including planning approval) to develop refund points;
- finalise agreements with:
 - beverage suppliers
 - refund point operators
 - logistics suppliers

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- material recovery facilities
- promote the CDS through a public education and awareness campaign; and
- implement the plans requested in Stage 1 and actions required under the Conditions of Appointment.

DRAFT