



MINUTES

SPECIAL MEETING OF COUNCIL

16 MAY 2023



**Agendas and Minutes are available on the Shire website www.wagin.wa.gov.au
Alternative formats are also available upon request.**

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The Shire of Wagin advises that anyone who has any application lodged with the Shire of Wagin shall obtain and should only rely on **WRITTEN CONFIRMATION** of the outcome of the application, and any conditions attaching to the decision made by the Shire of Wagin in respect of the application.

Ian McCabe
CHIEF EXECUTIVE OFFICER



Community Strategic Vision

Wagin is a community where individuals, families and businesses can invest and prosper, preserving the safe, affordable and inclusive country lifestyle and ensuring that Wagin is a place people like to live in and visit.

Council's Mission and Philosophy

The Shire of Wagin is a focussed Local Government providing progressive and innovative leadership that builds a sustainable future while supporting a vibrant, healthy and caring community.

Council's Guiding Values

- Governance and Leadership
- Honesty and Integrity
- Innovation and Creativity
- Community Focused
- Environmentally Aware

Shire of Wagin Strategic Community Plan 2020 - 2030

1. Economic Development	2. Buildings and Infrastructure	3. Community Services and Social Environment	4. Town and Natural Environment	5. Council Leadership
1.1 Increase in the number and diversity of businesses in the town and district.	2.1 Improve road conditions on all Shire and State roads.	3.1 Keep the family-friendly country lifestyle, community spirit, safe community with low crime rate.	4.1 Upgrade main street appearance for the amenity of residents and encourage travellers and tourists to stop.	5.1 Support and provide incentives for more businesses and retail opportunities.
1.2 Support more job/ training opportunities, and entities especially for young people.	2.2 Monitor heavy vehicle movements through the townsite.	3.2 Retain the school and hospital and grow health, Doctor services, allied health and aged care services.	4.2 Improve town approach and entry statements.	5.2 Foster Communication with the community.
1.3 Increase tourism and promotion of town and heritage.	2.3 Improvement in condition and appearance of the main streets of the Town and improved signage.	3.3 Housing, Job and training especially for young people.	4.3 Maintain and improve natural environment and recreation areas	5.3 Plan services and activities based on sustainability, affordability and resources.
1.4 Facilitate Broadband and other associated electronic media infrastructure	2.4 Continue to upgrade Footpaths in town.	3.4 Progress the Wagin Community Recreational Hub	4.4 Improved waste management in town and Shire.	5.4 Encourage and acknowledge volunteering.
1.5 Explore affordable accommodation for workers.	2.5 Refine Infrastructure to support arts, culture, entertainment and library services.	3.5. Youth focus on services and recreation development including coordination of effort across the Shire/region.	4.5 Continue to increase the number of suitable trees within the townsite to enhance the tree canopy in particular the CBD	5.5 Be responsive to community aspirations and requirements within the capacity of council.
1.6 Aid retention and encourage more government services in Wagin.	2.6 Encourage greater care and restoration or preservation of heritage buildings.	3.6 Foster and support Woolorama and other events, cultural and other entertainment opportunities.		5.6 Council to have a sound strategy to the sustainability to the Shire
1.7 Support and Promote Wagin as a business opportunity.	2.7 Develop a safe fenced playground for children in a park environment	3.7 Support community activities with resources and facilities as required.		5.7 Investigate rebranding of the Shire.
1.8 Determine further waste management options.	2.8 Investigate planning and development of sporting facilities	3.8 Investigate to establish Wi-Fi Hotspots		5.8 Continue lobbying and advocacy for road infrastructure and freight networks and other strategic infrastructure for the benefit of the Shire
1.9 Maintain and improve the freight network in the Shire	2.9 Investigate future housing and expansion for tourist and other attractions.	3.9 Promote and Enhance the Wagin caravan and camping experience.	Shire of Wagin Strategic Community Plan - Key Results Areas	
	2.10 Optimise water harvesting and storage			



SHIRE OF WAGIN

Minutes for the Special Meeting of Council held in the Council Chambers, Wagin on
Tuesday 16 May 2023 commencing at 7 pm

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1. OFFICIAL OPENING

The Presiding Member, Cr Phillip Blight opened the meeting at 7 pm.

2. DECLARATION OF PURPOSE OF MEETING

The purpose of this meeting is for Council to accept tender 2 of 2022/23: Supply and Lay Hot Bitumen as per council's finance policy, F15 - Purchasing and Tender Guide .

3. RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

3.1 ATTENDANCE

Cr Phillip Blight	Shire President
Cr Greg Ball	Deputy Shire President
Cr Geoff West	
Cr Sheryll Chilcott	
Cr Bronwyn Hegarty	
Cr Bryan Kilpatrick	
Cr Wade Longmuir	
Cr Ann O'Brien	
Ian McCabe	Chief Executive Officer
Donna George	Acting Deputy Chief Executive Officer
Allen Hicks	Manager of Works

3.2 APOLOGIES

Nil

3.3 APPROVED LEAVE OF ABSENCE

Nil

3.4 VISITORS

Nil

4. PUBLIC QUESTION TIME

Council conducts open Council Meetings. Members of the public are asked that if they wish to address the Council that they state their name and put the purpose of their address as precisely as possible. A minimum of 15 minutes is allocated for public forum. The length of time an individual can speak will be determined at the President's discretion.

5. PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil

6. DISCLOSURE OF FINANCIAL AND OTHER INTERESTS

Nil



6.2 DISCLOSURE OF PROXIMITY INTEREST – Local Government Act Section 5.6

6.3 DISCLOSURE OF IMPARTIALITY INTEREST – Administration Regulation Section 34c

7. REPORTS TO COUNCIL

7.1 CHIEF EXECUTIVE OFFICER

7.1.1 REQUEST FOR TENDER 2 OF 2022/23: SUPPLY AND LAY HOT BITUMEN

PROPONENT:	Not Applicable
OWNER:	Not Applicable
LOCATION/ADDRESS:	Not Applicable
AUTHOR OF REPORT:	Ian McCabe; Chief Executive Officer
SENIOR OFFICER:	Ian McCabe; Chief Executive Officer
DATE OF REPORT:	15 May 2023
PREVIOUS REPORT(S):	Not Applicable
DISCLOSURE OF INTEREST:	NIL
FILE REFERENCE:	CM.TE.2
ATTACHMENTS:	<ol style="list-style-type: none">1. Request for tender2. Submission Bitutek Pty Ltd (Confidential)3. Submission Fulton Hogan Pty Ltd (Confidential)4. Confidential evaluation report Objectives and Reasons for Differential Rates in 2022/23.

OFFICER RECOMMENDATION/4958 COUNCIL RESOLUTION

Moved Cr G R Ball

Seconded Cr S M Chilcott

That Council:

- 1. Note the confidential quotations and evaluation report;**
- 2. Endorse and accept retrospectively the quotation provided by Fulton Hogan Pty Ltd for \$322,010 in 2022/23;**
- 3. Note that Council policy F.15 Purchasing, and Tender Guide has been breached and the CEO will enact changes to the local government processes to reduce the risk of recurrence.**

Carried 8/0

BRIEF SUMMARY

This item considers quotes received from West Australian Local Government Association (WALGA) preferred suppliers for the full service, supply and laying of hot bitumen and seeks Council's retrospective endorsement of the recommendation included in the attached confidential evaluation report.

BACKGROUND/COMMENT

The Local Government Act 1995 provides at s. 3.57:

3.57. Tenders for providing goods or services

- (1) A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.
- (2) Regulations may make provision about tenders.

The Local Government (Functions and General) Regulations 1996 addresses tenders at Part 4 Division 2; Division 3 provides for pre-qualified suppliers, such as the WALGA preferred suppliers.

Council policy F.15 Purchasing and Tender Guide states that the purchase of goods valued at \$250,000 or greater is to be by public tender in accordance with the Act and Council policy.

The Shire of Wagin prepared a request for tender which was lodged by WALGA e-quotes 6 September 2022. This is provided for by regulation 11. 2. (b) of the Local Government (functions and General) Regulations 1996. There were two responses from suppliers previously engaged by the local government: Bitutek Pty Ltd and Fulton Hogan Pty Ltd. Both are reputable suppliers with the capacity to deliver as requested.

As the suppliers are equal in criteria, an evaluation was made on price. This recommendation was not tabled at a subsequent Council meeting prior to acceptance and as such is a breach of the relevant policy.

Year to date, approximately \$316,617 has been expended on purchase orders 20962 / 20963 / 21168 / 21251 / 21320 related to this tender.

It is the assessment of the CEO that the structure of the request for tender; the tender assessment; and tender governance could all be improved. This will remove the risk of oversight and / or delay in presentation to council.

The CEO has taken steps to limit the use of WALGA e-quotes system and improve the tender governance process to ensure a breach of this nature does not recur.



CONSULTATION/COMMUNICATION

Staff; Shire President.

STATUTORY/LEGAL IMPLICATIONS

This is a breach of Council's purchasing policy; the risk mitigation in this case is limited by just there being two suppliers and there being just one criteria separating the tenders (price).

Without Council oversight, the local government is in breach of the Local Government Act s. 3.57 and the Local Government (Functions and General) regulations, Part 4.

POLICY IMPLICATIONS

This item addresses a breach of Council policy F.15 Purchasing and Tender Guide.

FINANCIAL IMPLICATIONS

There are no financial ramifications of this item as the purchases was provided for in the approved 2022/23 budget and is within budget allocation as at March Review.

As the supply has been provided there is no realistic alternative to retrospective approval.

STRATEGIC IMPLICATIONS

The roads programme is a significant proportion of the annual budget and constitute major and ongoing strategic projects. Purchasing is a key activity of this programme and where required, training will be improved.

VOTING REQUIREMENTS

Absolute Majority

REQUEST FOR TENDER



SHIRE OF WAGIN

**SUPPLY AND LAY HOT BITUMEN
FULL SERVICE (INC AGGREGATE)**

TENDER # 02 - 2022/2023

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1 PRINCIPALS REQUEST

1.1 CONTRACT REQUIREMENTS IN BRIEF

The Principal seeks submissions from suitably qualified and competent Tenderers for the Supply and Spraying of Bitumen:

A full statement of the Requirements required under the Contract appears in the Specification – Part 3 and the General Conditions of Contract for the Supply of Goods and the Provision of General Services– Part 4.

1.2 TENDER DOCUMENTS

This Request for Tender is comprised of the following parts:

- (a) Part 1 – Principal’s Request;
- (b) Part 2 – Conditions of Tender
- (c) Part 3 – Specification;
- (d) Part 4 – General Conditions of Contract for the Supply of Goods and the Provision of General Services;
- (e) Part 5 – Tenderers Offer;

Separate documents:

- (a) Addenda and any other special correspondence issued to Tenderers by the Principal.

1.3 DEFINITIONS

Below is a summary of some of the important defined terms used in this Request:

Attachments:	The documents you attach as part of your Tender;
Australian Standard (AS)	Refers to the latest revision, including any applicable amendments, of the quoted standard document;
Contractor:	Means the person or persons, corporation or corporations whose Tender is accepted by the Principal, and includes the executors or administrators, successors and assigns of such person or persons, corporation or corporations;
Deadline:	4.00pm Monday 3 rd October 2022
General Conditions of Contract:	Means the General Conditions Of Contract For The Supply Of Goods And The Provision Of General Services in Part 4;
Offer:	Your Offer to be selected to supply the Requirements;
Principal:	Shire of Wagin
Requirements:	The goods and/or services requested by the Principal;
Selection Criteria:	The criteria used by the Principal in evaluating your Tender;
Specification:	The statement of Requirements that the Principal requests you to provide if selected;
Tender:	Completed Offer form, response to the Selection Criteria and Attachments;

Tenderer:	Someone who has or intends to submit an Offer to the Principal
Tender Period:	The time between advertising the Request and the Deadline;
Works or Services:	Both mean the requirements, services, or the whole of the work to be carried out and completed under the Contract including variations.

1.4 CONTACT PERSON

Tenderers should not rely on any information provided by any person(s) other than those listed below:

Tender Enquiries

Name:	Allen Hicks
Telephone:	9861 1177
Email:	mow@wagin.wa.gov.au

1.5 EVALUATION PROCESS

This is a Request for Tender.

Your Tender will be evaluated using information provided in your Tender.

The following evaluation methodology will be used in respect of this Request:

- (a) Tenders are checked for completeness and compliance. Tenders that do not contain all information requested (e.g. completed Offer form and Attachments) may be excluded from evaluation.
- (b) Tenders are assessed against the Selection Criteria.
- (c) The most suitable Tenderers may be short listed and may also be required to clarify their Tender. Referees may also be contacted prior to the selection of the successful Tenderer.
- (d) A Contract may then be awarded to the Tenderer(s) whose Tender is considered the most advantageous Tender to the Principal.

1.6 SELECTION CRITERIA

The Contract may be awarded to a Tenderer or Tenderers who best demonstrate the ability to provide quality products and/or services at a competitive price. The tendered prices will be assessed together with qualitative and compliance criteria to determine the most advantageous outcome to the Principal.

The Principal has adopted a best value for money approach to this Request.

This means that, although price is considered, the tender containing the lowest price will not necessarily be accepted, nor will the Tender ranked the highest on the qualitative criteria.

A scoring system will be used as part of the assessment of the qualitative criteria.

In determining the most advantageous Tender, the Evaluation Panel will score each Tenderer against the qualitative criteria. Each criterion will be weighted to indicate the relative degree of importance that the Principal places on the technical aspects of the Requirements being purchased.

NOTE: It is essential that Tenderers address each qualitative criterion. Information that you provide addressing each qualitative criterion will be point scored by the Evaluation Panel.

Failure to provide the specified information may result in elimination from the tender evaluation process or a low score.

1.6.1 COMPLIANCE CRITERIA

These criteria will not be point scored. Each Tender will be assessed on a Yes/No basis as to whether the criterion is satisfactorily met. An assessment of “No” against any criterion may eliminate the Tender from consideration.

(a) <u>Compliance with the Conditions of Tendering</u>
(b) <u>Compliance with Specification</u>
(c) <u>Complete Pricing Schedule</u>
(d) <u>Corporate Information</u>
<ul style="list-style-type: none"> Advise if agent or a trust for another party.
(e) <u>Conflict of Interest</u>
<ul style="list-style-type: none"> Will any actual or potential conflict of interest in the performance of your obligations under the Contract exist if you are awarded the Contract, or are any such conflicts of interest likely to arise during the Contract?

1.6.2 QUALITATIVE CRITERIA

Before responding to the following qualitative criteria, Tenderers must note the following:

- All information relevant to your answers to each criterion are to be contained within your Tender;
- Tenderers are to assume that the Evaluation Panel has no previous knowledge of your organisation, its activities or experience;
- Tenderers are to provide full details for any claims, statements or examples used to address the qualitative criteria; and
- Tenderers are to address each issue outlined within a qualitative criterion.

<p>A) Organisation Capabilities</p> <p>Tenderers are to provide:</p> <p>(i) Details of similar work undertaken in the last two (2) years including the Client’s name and project value;</p> <p>(ii) Details of issues that arose during the project and how they were managed;</p> <p>(iii) Relevant trade/qualifications of personnel working on or supervising these works</p> <p>(iv) The percentages of operational capacity represented by this Works should you be appointed to perform the Works</p> <p>(v) Details of any achievement of, or progress towards, Quality Assurance Certification for your organisation.</p> <p>Supply details in an attachment and label it “Organisation Capabilities”.</p>	<p>Weighting 10%</p>
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<p>B) Performance</p> <p>Tenderers should demonstrate:</p> <ul style="list-style-type: none"> (i) Your ability to provide the Works in addition to any future contracts you may be obligated to. (ii) Ability to perform and carry out the services at all times in a conscientious, expeditious and professional manner and within reasonable time limits as measured against industry standards (iii) Your ability to ensure site clean-up is acceptable performed to the Principals satisfaction (iv) Ability to perform traffic management requirements and ensure a safe site at all times <p>Supply details in an attachment and label it "Performance".</p>	<p>Weighting 10%</p>
<p>B) Resources</p> <p>Tenderers should demonstrate:</p> <ul style="list-style-type: none"> (i) Plant, equipment and materials; (ii) Contingency measures or back up of resources including personnel (where applicable). <p>Tenderers are to also provide:</p> <ul style="list-style-type: none"> (iii) details of any or any proposed subcontractors required to perform the Requirements of this Request; and (iv) Details of subcontractor "quality management systems in place. <p>Supply details in an attachment and label it "Resources".</p>	<p>Weighting 10%</p>
<p>C) Price</p> <p>Tenderer to provide information as per pricing schedule unless otherwise stated in the contract, the contract price shall be firm and not subject to rise and fall.</p> <p>Price will be a factor in determining which tender will be accepted.</p>	<p>Weighting 70%</p>
<p>TOTAL WEIGHTING 100%</p>	

1.7 PRICE BASIS

All prices offered under this Request are to be fixed for the term of the Contract. Tendered prices must include Goods and Services Tax (GST).

Unless otherwise indicated prices tendered must include delivery, unloading, packing, marking and all applicable levies, duties, taxes and charges. Any charge not stated in the Tender, as being additional will not be allowed as a charge for any transaction under any resultant Contract.



2 CONDITIONS OF TENDERING

2.1 LODGEMENT OF TENDERS AND DELIVERY METHOD

The Tender must be lodged by the Deadline.

The Tender is to be:

- (a) placed in a sealed envelope clearly endorsed with the tender number and title as shown on the front cover of this Request; and
 - (b) delivered by hand and placed in the Tender Box at 2 Arthur Road, Wagin WA 6315 (by the Tenderer or the Tenderer's private agent) or sent through the mail to the Chief Executive Officer, PO Box 200, Wagin WA 6315.
- or
- (c) Submitted via WALGA equotes.

Electronic mail Tenders and facsimile Tenders will not be accepted by the Principal.

Tenderers must ensure that they have provided at least two signed copies of their Tender one to be marked "original" the other to be marked "copy". Any brochures or pamphlets must be attached to the original.

2.2 REJECTION OF TENDERS

A Tender will be rejected without consideration of its merits in the event that:

- (a) it is not submitted before the Deadline; or
- (b) it is not submitted at the place specified in the Request.

A Tender may also be rejected if it fails to comply with any other requirements of the Request.

2.3 ACCEPTANCE OF TENDERS

Unless otherwise stated in this Request, Tenders may be for all or part of the Requirements and may be accepted by the Principal either wholly or in part. The Principal is not bound to accept the lowest Tender and may reject any or all Tenders submitted.

2.4 DISCLOSURE OF CONTRACT INFORMATION

Documents and other information relevant to the contract may be disclosed when required by law under the *Freedom of Information Act 1992* or under a Court order.

All Tenderers will be given particulars of the successful Tenderer(s) or advising that no Tender was accepted.

2.5 INSPECTION

Tenderers may arrange for a site inspection of all seal works.

Please contact Allen Hicks, Manager of Works mow@wagin.wa.gov.au or 0427 611 252 to arrange a site inspection.

NOTE: Failure to arrange a site inspection will not render the Tenderer ineligible to Tender.

2.6 PRECEDENCE OF DOCUMENTS

In the event of there being any conflict or inconsistency between the terms and conditions in this Request and those in the General Conditions of Contract, the terms and conditions appearing in this Request shall have precedence.

Should a conflict become apparent between any clauses contained within this Request, then the provisions of the Schedule(s), followed by the Specifications, Special Conditions of Contract and the General Conditions of Contract shall have precedence in that exact order.

2.7 TENDERERS TO INFORM THEMSELVES

Tenderers will be deemed to have:

- (a) examined the Request and any other information available in writing to Tenderers for the purpose of tendering;
- (b) examined all further information relevant to the risks, contingencies, and other circumstances having an effect on their Tender which is obtainable by the making of reasonable enquires;
- (c) satisfied themselves as to the correctness and sufficiency of their Tenders including tendered prices which will be deemed to cover the cost of complying with all the Conditions of Tendering and of all matters and things necessary for the due and proper performance and completion of the work described therein;
- (d) acknowledged that the Principal may enter into negotiations with a chosen Tenderer(s) and that negotiations are to be carried out in good faith; and
- (e) satisfied themselves they have a full set of the Request documents and all relevant attachments.

2.8 ALTERATIONS

The Tenderer must not alter or add to the Request documents unless required by these Conditions of Tendering.

The Principal will issue an addendum to all registered Tenderers where the Principal considers matters of significance make it necessary to amend or supplement the issued Request documents before the Deadline.



2.9 OWNERSHIP OF TENDERS

All documents, materials, articles and information submitted by the Tenderer as part of or in support of a Tender will become upon submission the absolute property of the Principal and will not be returned to the Tenderer at the conclusion of the Tender process provided that the Tenderer be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

2.10 CANVASSING

If a Tenderer, whether personally or by an agent, canvasses any of the Principal's Commissioners or Councillors (as the case may be) or Officers or agents or Principal's Representatives with a view to influencing the acceptance of any Respondent, then regardless of such canvassing having any influence on the acceptance of such Submission, the Principal may at its discretion omit the Respondent from consideration.

2.11 IDENTITY OF THE TENDERER

The identity of the Tenderer and the Contractor is fundamental to the Principal. The Tenderer will be the person, persons, corporation or corporations named as the Tenderer and whose execution appears on the Offer Form in the prescribed format within the Tenderers Offer of this Request. Upon acceptance of the Tender, the Tenderer will become the Contractor.

2.12 COSTS OF TENDERING

The Principal will not be liable for payment to the Tenderer for any costs, losses or expenses incurred by the Tenderer in preparing their offer.

2.13 TENDER OPENING

All Tenderers and members of the public may attend or be represented at the opening of Tenders.

The names of the persons who submitted a Tender by the due Deadline will be read out at the tender opening. No discussions will be entered into between Tenderers and the Principal's officers present or otherwise, concerning the Tenders submitted.

The Tender opening will be held on as soon as practicable after the Deadline.



3 SPECIFICATION

3.1 SCOPE

The Requirements under this specification details the procedures for the supply and delivery of bitumen products to various locations within the Shire of Wagin and the spraying of bitumen to the Principal's requirements.

The estimated quantity of products to be supplied for this Tender is as follows:

Hot Bitumen

Dongolocking Road 2 coat seal widening 7mm & 14mm aggregate – Approximately 6,200 m²

Bullock Hills Road 2 seal widening 7mm & 14mm aggregate – Approximately 6,800 m²

Beaufort Road 2 coat seal widening 7mm & 14mm aggregate – Approximately 1,440 m²

Jaloran Road 2 coat seal 7mm & 14mm aggregate – Approximately 8,820 m²

Cemetery Driveway 2 coat seal 7mm & 14mm aggregate – Approximately 1,052 m²

Airfield Runway 2 coat seal 7mm & 14mm aggregate – Approximately 6,740 m²

Vernon Street reseal 10mm aggregate – Approximately 5,222 m²

Wendell Street reseal 10mm aggregate – Approximately 267 m²

Unicorn Street reseal 10mm aggregate – Approximately 1,500 m²

Vernal Street reseal 10mm aggregate – Approximately 1,827 m²

Victor Street reseal 10mm aggregate – Approximately 924 m²

Approximately 6 visits for all seal works

3.2 GOVERNING AND APPLICABLE STANDARDS

3.2.1 DEFINITIONS

In this clause:

'AS' means Australian Standard

'MRWA' means Main Roads Western Australia

3.2.2 DEFINITIONS

Except where otherwise stated, the Works shall be in accordance with current issue, including amendments of the relevant standards and publications nominated below:

- AS 1141 Methods for Sampling and Testing Aggregates;
- AS 1152 Specifications for Test Sieves
- AS 1160 Bitumen Emulsions for the Construction and Maintenance of Pavements;
- AS 1672.1 Limes for Building
- AS 1726 Geotechnical Site Investigations
- AS 2008 Residual Bitumen for Pavements;
- AS 2106 Determination of the Flashpoint of Flammable Liquids (Closed Cup)
- AS 2341 Methods for testing Bitumen and Related Road Making Products
- AS 2157 Cutback Bitumen;
- AS 2809 Road Tank Vehicles for Dangerous Goods
- AS 3568 Oils for Viscosity Reduction in Bitumen;

MRWA Traffic Management for the Works on Roads Code of Practice
MRWA Raw Materials Specification 71-06-135;
Austroads NAS-70 Bitumen Sprayers;
Austroads SDT 10 Bitumen Sprayer Calibration.

3.3 BITUMEN SUPPLY

Bituminous products for sprayed bituminous surfacing works shall be purchased in accordance with the relevant product and manufacturing standards and delivered to site in suitable quantities using appropriately licensed transport.

The following clauses detail the conformance criteria for bitumen products to be used in sprayed bituminous surfacing.

3.3.1 BITUMINOUS BINDERS

All bitumen used as neat, cutback or for manufacturing bitumen emulsion shall be a straight run, slightly blown or blended product prepared from crude bituminous base oils. The bitumen shall be homogeneous. It shall not foam when heated to 205°C. The formation of a thin layer of bubbles during heating will not be regarded as foaming.

The manufacturer or supplier shall demonstrate compliance with bitumen property requirements by supplying copies of the relevant test reports that relate to the batch quantity or stored volume and by carrying out testing in accordance with the requirements and frequencies in this specification.

The manufacturer or supplier shall make all necessary arrangements with the purchaser concerning load sizes, rates of supply, loading temperatures and all other required processes and documentation.

Class 170 Bitumen

Bitumen properties shall conform to the specification for Class 170 residual bitumen shown in AS 2008.

Bitumen Emulsion

The properties of the bitumen used for manufacturing bitumen emulsion shall conform to the requirements for Class 170 Residual Bitumen set out in AS 2008.

The grade of bitumen emulsion to be manufactured shall be Cationic Rapid Setting Emulsion CRS 170/60 conforming with the requirements of Table 1 of AS 1160, unless otherwise specified.

Cutback Bitumen

Where cutback bitumen for use in Primer seal or Prime binder treatments is required, the bitumen component shall be Class 170 bitumen conforming to AS 2008 and the solvent shall be Medium Curing Cutting Oil (MCC) which has been manufactured and supplied without change as Aviation Turbine Fuel (Jet A1 or equivalent) and mixed in the proportions as nominated by the responsible party in the contract documents.

3.4 PRE BITUMEN SPRAYING

3.4.1 BITUMEN DELIVERY, HANDLING, HEATING AND CIRCULATING

At all times, those responsible for supply, loading, transporting, heating, circulation, blending, transfer and sampling and delivery of bitumen, bitumen emulsion and cutback bitumen shall observe the provisions and be licensed to perform delivery and heating in accordance with the Dangerous Goods Regulations 1992 and where required are



advised to follow the principles as detailed in the AUSTRROADS "Bitumen Sealing Safety Guide" publication:

- Heating of bitumen between the loading and delivery sites shall be minimised to those frequencies to enable arrival on site at the required temperature and, except in emergency circumstances, and generally at times and locations as required to ensure driver compliance with the Fatigue Management and Heavy Haulage guidelines.
- The heating and circulating of bitumen shall be done only by competent experienced and trained personnel. Road tankers used for delivery shall be suitably insulated or lagged and have suitable and calibrated thermometers located sufficiently to enable representative temperature readings of the product in the tank.

Under no circumstances shall the bitumen temperature be raised greater than 205°C or the maximum safe handling temperature for a cutback bitumen.

Any bitumen emulsion heated in excess of 80°C, after leaving the place of manufacture, shall not be used and shall be removed from site by the carrier at no cost to the purchaser.

3.5 POST BITUMEN SPRAYING

Measure all quantities and keep a record. (Volumes in litres and areas sprayed)

4 GENERAL CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT

**FOR THE SUPPLY OF GOODS AND THE
PROVISION OF GENERAL SERVICES**



4.1 CONSTRUCTION OF CONTRACT

The Contract shall be governed by the laws of the State of Western Australia and the parties hereby submit to the exclusive jurisdiction of the courts of that State.

4.2 DEFINITIONS

4.2.1 In the Contract, except where the context otherwise requires:

'Clause' means a clause of these General Conditions.

'Contract' means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor.

'Contract Price' means:

- (a) the monetary consideration stated in the Contract for the sale of the Goods to the Principal whether expressed as a lump sum or price per unit or by weight or volume or otherwise;
- (b) where payment is to be made on a Lump Sum Basis, the sum which is stated in the contract to be payable to the Contractor for the supply of the Services by the Contractor and the performance of the obligations of the Contractor under the Contract;
- (c) where payment is to be made on a Schedule of Rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the Schedule of Rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in the Schedule of Rates;
- (d) where payment is to be made on a Lump Sum and a Schedule of Rates Basis, the aggregate of the sums referred to in paragraphs (a), (b), (c) and (d) above,

but excluding any additions or deductions, which may be required to be made pursuant to the Contract.

'Contractor' means the party named in the Contract as the seller of the Goods and the supplier of the Services the subject of the Contract.

'Date for Delivery' means:

- (a) where the Contract or Order specifies a date for delivery, that date; or
- (b) where the Contract or Order specifies a period of time for delivery, the last day of that period.

'Goods and Services' means the goods the subject of the Contract or such of them as shall be described in the Order and the whole of the services, tasks, work and requisites to be supplied rendered provided or performed by the Contractor including all variations provided for by the Contract as more fully set out in the Contract.

'Local Government' means any local government established under the *"Local Government Act 1995"* or the Principal.

'Officer' means any officer or person authorised by the Principal to act on its behalf for the purpose of the Contract.

'Order' means a purchase order from the Principal to the Contractor requiring the supply of specific Goods and Services.

'Principal' means the Local Government known as The Shire of Wagin.

'**Specification**' means any Special Conditions, Technical Specification, Drawings and Schedules forming part of the Contract; and such Specification shall be read with these General Conditions as an integral part of the Contract, but in the event of any inconsistency between the Specification and these General Conditions the former shall (unless the Contract otherwise provides) prevail.

4.2.2 Unless the context otherwise requires, the singular includes the plural and vice versa. The clause headings of the General Conditions of Contract shall not in any way affect their interpretation. Any one gender includes all genders.

4.3 EVIDENCE OF CONTRACT

4.3.1 The Contract shall be evidenced by the Special Conditions of Contract, General Conditions of Contract, Specifications, Tender, Letter of Acceptance and all things referred to therein.

The precedence of documents in the event of a conflict or inconsistency shall follow the sequence as detailed above.

4.3.2 Should any part of the Contract be held in law to be invalid, that part shall be severed from the Contract and the remainder of the Contract shall have full force and effect.

4.4 NOTICES

4.4.1 Any notice or other communication under the Contract shall be in writing and signed and shall be given or served by:

- (a) Hand delivery or prepaid post to the address of the recipient specified in the Contract or at such other address as may from time to time be notified in writing to the party giving the notice by the intended recipient but in any event to the last notified address: or
- (b) Facsimile transmission to the facsimile number of the recipient specified in the Contract or at such other number as may from time to time be notified in writing to the party giving the notice by the intended recipient but in any event to the last notified number.

4.4.2 A printed or copied signature will be sufficient for the purpose of sending any notice or other communication.

4.5 CONTRACTOR TO HAVE INFORMED ITSELF

4.5.1 The Contractor shall be deemed to have:

- (a) Examined carefully and to have acquired actual knowledge of the contents of the Drawings, Specification, Schedules, Bills of Quantities (if any), Conditions of Tendering, these General Conditions of Contract and the Special Conditions of Contract (if any) and any other information made available in writing by the Principal to the Contractor for the purpose of tendering; and
- (b) Examined the site and its surroundings (if applicable); and
- (c) Satisfied itself as to the correctness and sufficiency of its tender and that its price covers the cost of complying with all its obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the contract; and
- (d) Obtained and properly examined all information relevant to the risks, contingencies and other circumstances that may have had an effect on its tender and which was obtainable by the making of reasonable enquiries.

4.5.2 Failure by the Contractor to do all or any of the things it is deemed to have done under this clause will not relieve the Contractor of its liability to perform and complete the Contract in accordance with the terms and conditions thereof.



4.6 COMPLYING WITH STATUTORY REQUIREMENTS

- 4.6.1 The Contractor shall comply with the requirements of all Acts of the Parliament of the Commonwealth and with the requirements of the provisions of all Acts of the Parliament of the State of Western Australia and with the requirements of all ordinances, rules, regulations, by-laws, orders, codes of practice and proclamations made or issued under any such Act and with the lawful requirements of public and other authorities in any way affecting or applicable to the Services or the performance of the Contract.
- 4.6.2 Without limiting in any way the generality of the foregoing, the Contractor shall duly and punctually observe, perform and comply with the provisions of the "Occupational Health, Safety and Welfare Act 1984" and all improvement notices, prohibition notices and codes of practice (if any) issued thereunder and having application to this Contract.
- 4.6.3 If, in the opinion of the Contractor, the provisions of any document forming part of the Contract are at variance with any such requirements, the Contractor shall give written notice to the Principal specifying the departure from such provisions which he considers necessary to comply with such requirements.
- 4.6.4 If such a requirement necessitates a change to the work under the Contract, the Principal may order a variation. Except to the extent that a variation is ordered by the Principal as set forth above, the Contractor shall bear the cost of complying with the requirement.

4.7 ASSIGNMENT AND SUBCONTRACTING

The Contractor shall not without the prior written approval of the Principal:

- (a) Assign the Contract, or any part thereof or any payment thereunder. Approval to assign shall be on terms and conditions determined by the Principal.
- (b) Subcontract the whole or any part of the Contract. Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Contract.

4.8 INDEMNITY

- 4.8.1 The Contractor shall indemnify and keep indemnified the Principal against all loss of or damage to the property of the Principal and from and against any claim, demand, action, suit or proceeding that may be made or brought by any person against the principal or employees, professional consultants or agents of the principal or any of them in respect of personal injury to or the death of any person whomsoever or loss of or damage to any property whatsoever arising out of or as a consequence of the sale or delivery of the goods or the supply or provision of the services by the contractor or its employees, agents or subcontractors and also from any costs and expenses that may be incurred in connection with any such claim, demand, action, suit or proceeding.
- 4.8.2 Notwithstanding the preceding paragraph, the Contractor shall not be rendered liable for personal injury to or the death of any person or loss of or damage to property resulting from any breach by the principal of any provision of the Contract or any negligent act or omission of the Principal, or the employees, professional consultants or agents of the principal nor for any claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto.

4.9 PATENT RIGHTS / COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

- 4.9.1 The Contractor warrants that neither the Goods or Services nor any design, documents or methods of working provided by the Contractor will infringe any patent, registered design, trademark or name, copyright or other protected right.
- 4.9.2 The Contractor shall indemnify and at all times keep the Principal indemnified against any action, claim, demand, costs or expenses arising from or incurred by reason of any infringement or alleged infringement of any letters patent, design, trade mark or name, copyright or other protected right in respect of any goods, articles, services, equipment, machinery, plant or thing, system or method of performing, using, fixing, working or arrangement used, fixed, provided or supplied by the Contractor.
- 4.9.3 All payments and royalties payable in respect of any such letters patent or other protected right, shall be included by the Contractor in the Contract and shall be paid by itself to the person, persons, or body to whom they may be due or payable.
- 4.9.4 In the event of any claim being made or brought against the Principal in respect of any of the matters stated in this clause, the Contractor shall be immediately notified thereof. The Contractor shall, with the assistance if required of the Principal, but at the Contractor's sole expense, conduct all negotiations for the settlement of the same or any litigation that may arise there from and in the event of the failure by the Contractor so to do, the Principal shall have power to suspend payment of any money due to the Contractor under the Contract until such claim has been satisfied, settled, or withdrawn. Should any money due, or which may thereafter become due, to the Contractor, or which may have been deposited by the Contractor as security under the Contract, be insufficient to satisfy or settle any such claim and such claim has not been satisfied or withdrawn at the date when the Contract would otherwise have been completed, the balance outstanding in respect of the claim shall be a debt due by the Contractor to the Principal.

4.10 SPECIFIED BRANDS OF GOODS

Where a particular brand of Goods is specified in the Contract, no other brand shall be supplied unless otherwise approved in writing by the Principal.

4.11 PRICE VARIATIONS

- 4.11.1 Contract prices shall be firm unless otherwise stated in the Contract.
- 4.11.2 Where Contract prices are variable, and the Contractor wishes to claim for a variation in price during the term of the Contract, then the Contractor shall give the Principal full details of the make-up of the claim, including all applicable information as to the cost of materials, direct labour, overheads, profit and such other cost components as the Principal may require to verify any claim for variation. All applications for variation must show in statement form the existing approved Contract prices, the proposed price increase and proposed new Contract price on an item by item basis and shall be accompanied by all relevant determinations and documents in support of the claim.
- 4.11.3 Where the Contract price is the price ruling at date of performance of the Services the Contractor shall produce to the Principal evidence to verify each claim for payment.
- 4.11.4 Where trade list prices form the basis of the Contract the Contractor shall identify the trade list referred to by date, number or other suitable reference.
- 4.11.5 Reductions affecting the Contract rates shall be notified by the Contractor to the Principal immediately they occur and the Contractor shall repay to the Principal the full amount of any overpayment made by the Principal within fourteen (14) days of the reduction being authorised by the Principal.

- 4.11.6 Applications for variation of variable Contract prices or rates by the Contractor shall be submitted in writing to the Principal as far in advance as practicable of the date from which the variation is sought to commence.
- (a) All variations approved by the Principal shall operate from a date determined by the Principal, which shall not be earlier than the date of the formal application for variation.
 - (b) The onus shall be upon the Contractor to prove to the satisfaction of the Principal all details of any variation claimed.
- 4.11.7 In all matters of price variations (up or down) the Contractor shall make available to the Principal within the time specified by the Principal such information, records, facts and figures as the Principal shall require. Failure to supply the required information, records, facts and figures shall entitle the Principal to refuse the variation.
- 4.11.8 Where the variation is to be determined on the basis of decisions by the Australian Competition and Consumer Commission such variations will be effective on the date nominated by the Australian Competition and Consumer Commission and will be binding on all parties. Should the Australian Competition and Consumer Commission cease to operate during the period of the Contract, a new variation arrangement will be negotiated by mutual agreement. If agreement cannot be reached, the Contract may forthwith be determined by either party by written notice to the other.

4.12 QUALITY OF GOODS AND SERVICES

- 4.12.1 All Goods and Services shall conform to the Specification and the standards specified in the Contract.
- 4.12.2 Where no standards are specified in the Contract, the Goods and Services shall comply with the appropriate and current standard of the Standards Association of Australia and if there is no such standard then with the appropriate and current standard of the British Standards Institution, the International Standards Organisation or such other standard as the Principal shall consider appropriate.
- 4.12.3 If no standards are applicable, the Goods supplied shall be suitable for their purpose as stated in the Contract and fully capable of their intended use and the Services shall be of the highest standard and carried out promptly with all due skill, care and diligence.

4.13 SUPPLY OF GOODS AND SERVICES BY ORDER

- 4.13.3 The Contractor shall fulfil all Orders for Goods and Services placed by the Principal during the term or currency of the Contract.

Where the Contract is for the supply of Goods by reference to:

- (a) 'Variable Quantities', the Principal shall not be required to purchase all or any Goods listed EXCEPT such of the Goods as may be ordered by the Principal.
- (b) 'Approximate Quantities', the quantities stated shall be regarded as an estimate only of the quantity which may be required. The Principal shall not be bound to purchase the exact nominated quantity of Goods, but the quantity ordered may vary within a margin not exceeding 25 percent above or below the nominated approximate quantity and any such variance shall not affect the unit price of the Goods.
- (c) 'Fixed Quantities', the Principal shall purchase the actual quantity shown.
- (d) The Principal may order requirements of any one type or item of the Goods either in one single lot or instalments or in such quantities as may be required.

4.13.3 Where the Contract is for the supply of Services by reference to:

- (a) A list of Services and prices in a Schedule to the Specification, the Principal shall not be required to take or accept all or any of the Services listed EXCEPT such of the Services as may be ordered by the Principal from time to time during the period of the Contract.
- (b) Where the quantity or value set out in any Schedule to the Specification is described as 'approximate' it shall be regarded only as an estimate of the quantity or value which may be required under the Contract and the Principal shall not be required to take or accept the said nominated approximate quantity or value of Services.
- (c) The right is reserved for the Principal to order its requirements of any one type or item of the Services either at one time or in instalments or in such quantities as may be required from time to time.
- (d) Nothing herein contained shall oblige the Principal to take or accept all its needs or requirements of the Services solely from the Contractor nor shall be taken to confer any exclusive right upon the Contractor to provide the Services to the Principal. The Principal shall be free at all times to obtain the Services or any part of them from any other source provider or supplier thereof except Services the subject of an existing order to the Contractor.

4.14 DELIVERY OF GOODS AND SERVICES

- 4.14.1 The Contractor shall deliver the Goods and Services in full to the locations and at the times stated in the Contract or Order as the case may be. In this respect time shall be of the essence of the Contract.
- 4.14.2 Upon it becoming evident to the Contractor that delivery of the Goods and Services is likely to be delayed beyond the Date for Delivery, the Contractor shall promptly notify the Principal in writing. Such notification shall not release the Contractor from its obligation to deliver by the Date for Delivery or from any other obligation under the Contract, unless the Principal otherwise agrees in writing. The Contractor shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.
- 4.14.3 The Contractor shall be entitled only to such extensions of time for compliance with the Contract as the Principal, upon the written application of the Contractor, may in its absolute discretion grant in writing. If delivery cannot be provided within 14 days of notice, the Principal reserves the right to access supply from an alternative provider.

4.15 EXPENSES OF DELIVERY OF GOODS

Unless otherwise provided in the Contract, the Contractor shall pay all delivery, packaging, freight, insurance, and other charges whatsoever, in connection with the delivery of the Goods and the return of any Goods wrongly supplied.

4.16 RECEIPT AND ACCEPTANCE

- 4.16.1 Delivery, receipt and completion of the Goods and Services shall not of itself constitute acceptance of the Goods or Services by the Principal, with acceptance being subject to the approval of the Officer.
- 4.16.2 The Principal shall be deemed to have accepted the Goods and Services when:
 - (a) the Officer notifies the Contractor that the Goods and Services have been accepted; or



- (b) when after the lapse of 14 days the Principal retains the Goods without notifying the Contractor that the Goods have been rejected PROVIDED THAT where it is a term of the Contract that the Goods be installed and/or commissioned that the Principal shall not be deemed to have accepted the Goods unless the Goods are satisfactorily installed and/or commissioned within the period stipulated in the Contract or, if no period is stipulated, within a reasonable period.
- 4.16.3 The risk of any damage, deterioration, theft or loss of the Goods after delivery but prior to acceptance shall remain with the Contractor except where the damage, deterioration, theft or loss results from a negligent act or omission of the Principal or its agents or employees.
- 4.16.4 Where prior to acceptance, the Goods are found to be defective or not in accordance with the Contract, the Principal may reject any or all of the Goods (the Rejected Goods).

4.17 REJECTION AND REMOVAL OF GOODS

- 4.17.1 The Officer shall notify the Contractor in writing within a reasonable time of the rejection of Goods and may direct that the rejected Goods be removed and either replaced or rectified by the Contractor at the Contractor's expense within such reasonable time as the Officer may direct.
- 4.17.2 Should the Contractor fail to duly and properly remove, replace or rectify the rejected Goods within the time specified in the notice of rejection the Principal shall be entitled to:
- (a) Exercise a general lien upon the Goods to cover all costs, fees and expenses of the Principal; and
 - (b) Sell the rejected Goods; or
 - (c) Have the Goods redelivered at the Contractor's risk and expense to the Contractor's premises, where the Contractor shall afford every facility to accept redelivery of the rejected Goods.
- 4.17.3 The Principal shall not be responsible for the care or custody of any rejected Goods.
- 4.17.4 Where the Contractor fails to deliver the Goods by the Date for Delivery, or where Goods are rejected and the Contractor fails to replace the rejected Goods or to deliver Goods conforming to the Contract forthwith upon written notice to do so, the Principal;
- (a) (a) Shall have the right to purchase from another supplier substitute Goods of the kind and quality ordered; or
 - (b) (b) Where it is not possible or practicable to purchase from another supplier substitute Goods of the kind or quality ordered, purchase Goods which in the opinion of the Principal are most suitable, even though such Goods be of a superior kind and quality.

In both cases any extra cost or expense incurred over and above the Contract Price, shall be a debt due from the Contractor to the Principal.

4.18 DEFICIENT GOODS

- 4.18.1 Where after acceptance, the Goods are subsequently found not to be in accordance with the Contract or of an inferior quality, or differing from those ordered (whether by sample or quality), ("the deficient Goods"), the Principal may notify the Contractor of the deficiency, and require the Contractor to forthwith:

- (a) Remove the deficient Goods from the Principal's premises and at the Contractor's expense either to replace them with Goods conforming to the Contract or to rectify them to conform; or
 - (b) Refund the price paid and thereupon to remove the deficient Goods from the Principal's premises;
- 4.18.2 Upon a refund of the price paid for the deficient goods, property therein shall revert to the Contractor.
- 4.18.3 Any expense incurred by the Principal shall be a debt due from the Contractor to the Principal.
- 4.18.4 The Principal shall not be entitled to exercise any rights under this clause in respect of any defects or deficiencies that ought to have been apparent on reasonable examination of the Goods prior to acceptance.
- 4.18.5 Where the deficient Goods are not forthwith replaced or rectified by the Contractor as aforesaid the Principal may exercise the powers contained in Sub-Clauses 4.17.2, 4.17.4 and 4.30.2 as if the same referred to the deficient Goods under the provisions of this Clause and the provisions of Sub-Clauses 4.17.2, 4.17.3, 17.4 and 4.30.2 were set out herein.

4.19 FAILURE TO PROVIDE GOODS AND SUPPLY SERVICES

Where a state of emergency exists or where the Contractor is unable or fails (for whatever reason) to supply and provide the goods and services at any time or in any place the Principal may without being liable in any way to the Contractor obtain or acquire such Goods and Services as it requires during the state of emergency or at that time or in that place (as the case may be) from any other supplier or provider thereof. The existence of a state of emergency shall be determined by the Principal in its sole discretion.

4.20 POWER TO ACT FOR THE PRINCIPAL

Anything to be done or performed by the Principal may be done and performed by any person duly authorised by the Principal.

4.21 WARRANTIES

The Contractor shall obtain all warranties specified in the Contract including any warranties that are obtained by any subcontractor and shall ensure that the Principal will have the benefit of the said warranties.

4.22 VARIATION TO CONTRACT TERMS

None of the terms of the Contract shall be varied, waived, discharged or released either at law or in equity, except by the express written agreement of the Principal.

4.23 SPECIAL PRICING AND OFFERS

- 4.23.1 Any special price, licence fee, rate or charge in relation to the Goods and Services, or goods and services of a like nature which is offered by the Contractor to any Local Government and which is lower than under the Contract, shall be made available to the Principal and all purchasers.
- 4.23.2 The Contractor, through the period within which that special price, licence fee, rate or charge is being offered, shall only be bound to comply with the above, where the purchase is of similar circumstances and under substantially the same terms and conditions.

4.24 PAYMENT

- 4.24.1 Unless otherwise provided in the Contract all payments shall be made within 30 days of receipt of the Contractor's invoice or claim, provided that the Goods and Services have been accepted and approved by the Officer.
- 4.24.2 Failure by the Principal to pay the amount payable at the due time, will not be grounds to invalidate or avoid the Contract.
- 4.24.3 The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price unless otherwise provided in the Contract.
- 4.24.3 No Work shall be performed by the Contractor without a valid Purchase Order from the Principal, except in emergency situations as advised by the Principal's
- 4.24.3 Contractor invoices shall detail the specifics of the Works being charged, together with the relevant line item off the price schedule and the Purchase Order number.

4.25 SUSPENSION OF PAYMENTS

Should the Contractor refuse or neglect to carry out the instructions of the Principal in regard to any matter connected with the Contract, the Principal may suspend all payments to the Contractor until such instructions have been complied with.

4.26 DEDUCTION OF CHARGES OR DEBTS

- 4.26.1 Without limiting the Principal's rights under the any of the foregoing clauses hereof any debt due from the Contractor to the Principal may be deducted by the Principal from any moneys which may be or thereafter become payable to the Contractor by the Principal, and if such moneys are insufficient for this purpose, then from the Contractor's security under the Contract. Nothing in this clause shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.
- 4.26.2 The Contractor hereby acknowledges and agrees that all moneys becoming payable by the Contractor in respect of the Contract and all costs, expenses, losses, and damages hereinbefore mentioned, and for which the Contractor shall become liable at any time under the Contract, may be deducted and paid by the Principal from any sum or sums due, or which may become due, to the Contractor under or in respect of any other contract or contracts which may be subsisting between the Contractor and the Principal for the time being.

4.27 STAMP DUTY

The Contractor shall pay all stamp duties in connection with the Contract.

4.28 GOODS AND SERVICES TAX

4.28.1 For the purposes of this clause:

- (a) "GST" means goods and services tax applicable to any taxable supplies as determined under the GST Act.
- (b) "GST Act" means "A New Tax System (Goods and Services Tax) Act 1999" and (where the context permits) includes the Regulations and the Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing with GST applying for the time being in the State of Western Australia.



- (c) "Supply", "taxable supply" and "tax invoices" have the same meanings as in the GST Act.
- 4.28.2 Where the supply of the Goods and Services or any part thereof is a taxable supply under the GST Act:
- (a) The Contract Price shall be inclusive of all applicable GST at the rate in force or the time being.
- (b) The obligation of the Principal to pay the Contract Price or any instalment thereof, and the right of the Contractor to recover the Contract Price or any instalment thereof, shall be subject to and conditional upon the prior issue by the Contractor and the prior receipt by the Principal of a tax invoice in respect of the Contract Price, or the relevant instalment thereof, which complies in all respects with the GST Act.
- (c) This provision applies notwithstanding any other provision of the Contract or any legislation or rule of law to the contrary, but does not apply if the Contractor is not registered for GST, and is not required to be so registered, under the GST Act.
- 4.28.3 The Contractor shall at all times observe, perform and comply with all applicable provisions of the GST Act relative to the supply of the Goods and Services under the Contract.

4.29 CUSTOMS AND EXCISE DUTIES

- 4.29.1 The Contract Price shall, unless otherwise stated, be inclusive of all applicable customs excise, levies, duties, taxes and charges at the rates in force at the date of closing of tenders.
- 4.29.2 The Contractor shall, if so requested, provide information as to the Customs Tariff classification, the amount of duty payable, its application to the Contract Price and date or proposed date of importation.
- 4.29.3 The Contractor shall:
- (a) If the Principal so requires, pay any dumping duty or security therefore which may be levied or demanded under the "Australian Customs Tariff (Anti Dumping) Act 1975", in respect of the Goods supplied under the Contract direct to the Principal or to the Australian Customs Service as the case may be.
- (b) Indemnify and keep indemnified the Principal against any liability for such dumping duty or security.

4.30 SETTLEMENT OF DISPUTES

- 4.30.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.
- 4.30.2 Either party may refer to an appropriate independent expert, agreed to by the parties, any Goods and Services for examination and report as to their compliance with the Contract. The decision of the expert shall be final and binding upon both parties, and the expense of such reference shall be paid by the unsuccessful party.
- 4.30.3 Subject to the provisions of 4.30.2, any dispute or unresolved claim arising out of or relating to the Contract or the breach, termination or invalidity thereof ('the dispute') shall first be the subject of conciliation before a conciliator who is either agreed to by the parties or, failing agreement, who is appointed by the President of the Institute of Arbitrators and Mediators (WA Branch).
- 4.30.4 If the dispute has not been resolved within 28 days (or such other period agreed in writing between the parties) after the appointment of the conciliator, the dispute shall be referred to arbitration to be effected

- (a) By an arbitrator mutually agreed upon between the parties; or
- (b) In default of such mutual agreement, by an arbitrator appointed by the President of the Institute of Arbitrators and Mediators,

in accordance with the provisions of the “*Commercial Arbitration Act 1985*”.

4.31 TERMINATION OF CONTRACT

4.31.1 Subject to Clause 4.30, if the Contractor fails to duly and punctually observe perform and comply with any term, condition or stipulation on the part of the Contractor contained or implied in the Contract and such failure continues for a period of 14 days (or such other period as having regard to the circumstances the Principal may reasonably allow) after service on the Contractor of a written notice requiring the Contractor to observe perform and comply with such term, condition or stipulation or otherwise to remedy the breach; or

- (a) If the Contractor (being a corporation) goes into liquidation (except for the purpose of reconstruction or amalgamation) or is otherwise dissolved or if a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Contractor is appointed or if the Contractor enters into any composition or scheme of arrangement with its creditors or if an inspector or like official is appointed to examine the affairs of the Contractor or the Contractor enters into voluntary administration; or
- (b) If the Contractor (being a natural person) commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a Deed of Arrangement for the benefit of its creditors; or
- (c) If the Contractor assigns or subcontracts the Contract or any part thereof without the prior written consent of the Principal; or
- (d) If the Contractor includes in its Tender any statement, representation, fact, matter, information or thing which is false untrue incorrect or inaccurate, whether known to the Contractor or not;

THEN and in any of the said cases, if the Principal considers that damages may not be an adequate remedy, the Principal may by notice in writing to the Contractor forthwith terminate the Contract whether any Orders remain outstanding or not and thereafter the Principal may engage or contract with any person or corporation other than the Contractor to perform and complete the Contract.

4.31.2 The Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal in consequence of any of the abovementioned matters and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered in court by the Principal.

4.32 WAIVER

No forbearance, delay or indulgence by the Principal in enforcing the provisions of the Contract shall prejudice, restrict or limit the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

4.33 ENTIRE AGREEMENT

The Contract supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the Principal and the Contractor relating to the Goods and Services.

4.34 RIGHTS AND REMEDIES

The Principal may exercise the rights herein conferred in addition to all or any other rights or remedies which the Principal shall or may be entitled to against the Contractor whether at law or under the Contract.

4.35 INSURANCE

4.35.1 Without limiting its obligations and responsibilities, the contractor shall take out insurance for the entire contract period under the following headings;

(a) Public Liability:

A Public Liability policy with an Insurer approved by the Australian Prudential Regulation Authority (APRA) as per their list of Insurers Authorised to Conduct New or Renew Insurance Business in Australia.

The policy of Public Liability Insurance taken out by the Contractor is to provide a minimum limit of liability of \$10 million (AU\$10,000,000) in respect of Death, Property Damage and Bodily Injury.

(b) Workers Compensation:

The Contractor shall effect and keep in effect during the currency of the Contract such Insurance as may be necessary to adequately protect the Contractor and the Principal in respect of liability for payment of compensation to any Employee of the Contractor or of a Subcontractor of the Contractor under the *Workers' Compensation and Injury Act 1981* or at Common Law.

(c) Product Liability:

Product liability Insurance taken out by the Contractor is to provide a minimum limit of liability of \$5 million (AU\$5,000,000) in respect of any one occurrence and for an unlimited number of claims.

4.35.2 The contractor is to provide the principle with certificates of currency and/or a copy of the policy wording confirming as laid down within the tender document (if not mentioned, within seven (7) days) that the above insurance policies are in place for the entire contract period.

4.35.3 The contractor at the discretion of the principle may be required to provide the principle with a risk management plan relating to the contract in accordance with AS/NZS 4360-2004 risk management.

4.35.4 The contractor at the discretion of the principle may be required to detail the principle as a joint named insured under some or all of the insurances detailed under clause 4.35.1 and/or detail the principles interest by way of notation on certificates of currency.

4.36 INDUSTRIAL AWARDS

4.36.1 With respect to all work done in Western Australia under the Contract, the Contractor shall observe, perform and comply in all material respects with all relevant Industrial Awards, Industrial Agreements and orders of Competent Courts or Industrial Tribunals applicable to the Services and the work to be done under the Contract.

4.36.2 Failure by the Contractor to comply with sub clause 4.36.1 hereof shall entitle the Principal by notice in writing to the Contractor to forthwith terminate the Contract, but without prejudice to any other rights or remedies of the Principal.

4.37 NATURE AND QUANTITY OF WORK

The Principal does not give any assurance as to the nature or quantity of work that could be allocated.

4.38 COMPLIANCE WITH AWARDS, REGULATIONS & AGREEMENTS

The Contractor shall comply for the duration of the Contract with any Awards, Industrial Agreements or Productivity Allowances that may become payable or applicable to the site and or the Works and shall ensure that all his Subcontractors do likewise without limiting the foregoing the Contractor shall confirm to all relevant Federal and State Industrial Awards and Regulations such as insurance of workmen's tools, inclusions in rates of pay for Long Service Leave, sick pay, annual leave, leave loadings, lodging expenses, statutory holidays, frame allowance, redundancy payments, superannuation , dirty work, wet under foot, wind, dust, confined space, noise, fumes, reused timber, payroll tax, workers compensation, inclement weather pay, fares, travelling time, site allowances, penalties or requirements by authorities or Unions and all other appropriate and/or like matters together with supplying boots, jackets, settee shirts and any other sundry clothing equipment, safety equipment medical equipment and personnel, messing facilities.

4.39 RECORD KEEPING REQUIREMENTS

All manuals, drawings, computer programs or other records supplied by the Principal to the Contractor during the course of the Contract shall be returned to the Principal upon termination or completion of the Contract.

The Contractor shall ensure that all records relevant to or created in the course of this Contract are held in a safe and secure manner, in line with industry best-practices, ie. Backups completed, paper-records are held in fire-proof environment.

The Principal will be provided access to all records held by the Contractor associated with this Contract within twenty-four (24) hours of written request. Such requests will be in the support of Contract performance measuring, general information resource for the Principal, or to meet Freedom of Information legislation requirements.

4.40 REGISTRATION OR LICENCING OF CONTRACTORS

Contractors shall have a current registration or licence where an act or ordinance of the state of Western Australia requires that a Contractor (as defined by the act or ordinance) be registered or licenced to carry out the work described in the Tender documents.

4.41 PUBLICITY

The Contractor must not make any public statements or releases to the media concerning the Works without the prior written approval of the Principal.

5 TENDERER'S OFFER

5.1 OFFER FORM

The Chief Executive Officer
Shire of Wagin
Arthur Road Wagin WA 6315

I/We (The Tenderer) _____
(BLOCK LETTERS)

of _____
(ADDRESS)

ABN/GST Status _____ ACN (if any) _____

Telephone No: _____ Facsimile No: _____

E-mail (if any): _____

In response to Tender #02 – 2022/23 SUPPLY AND LAY HOT BITUMEN FULL SERVICE

I/We agree that I am/We are bound by and will comply with this Request and its associated schedules, attachments, all in accordance with the Conditions of Tendering contained in this Request signed and completed.

I/We agree that there will be no cost payable by the Principal towards the preparation or submission of this Tender irrespective of its outcome.

The tendered price is valid up to ninety (90) calendar days from the date of the tender closing unless extended on mutual agreement between the Principal and the Tenderer in writing.

The tendered consideration is as provided under the schedule of rates of prices in the prescribed format and submitted with this Tender.

In accordance with the Request supplied to me/us for the purpose of tendering hereby offer the price schedule attached.

Dated this _____ day of _____ 2022

Signature of authorised signatory of Tenderer: _____

Name of authorised signatory (BLOCK LETTERS): _____

Position: _____

Address: _____

Witness Signature: _____

Name of witness: (BLOCK LETTERS): _____

Address: _____



5.2 TENDERER INFORMATION

REGISTERED BUSINESS NAME: _____

A.B.N NUMBER _____

TRADING NAME: _____

REGISTERED BUSINESS ADDRESS: _____

POSTAL ADDRESS: _____

TELEPHONE NO: _____

FACSIMILE NO: _____

NAME & POSITION OF DIRECTORS _____

AUTHORISED TO ACT ON BEHALF _____

OF TENDERER _____

CONTACT PERSON(S) _____



5.3 PRICE INFORMATION

Tenderers must complete the following "Price Schedule". Tenderers should ensure they have read this entire Request Before completing the Price Schedule

All prices offered under this Request are to be fixed for the term of the Contract. Tendered prices must include Goods and Services Tax (GST).

Unless otherwise indicated prices tendered must include delivery, unloading, packing, marking and all applicable levies, duties, taxes and charges. Any charge not stated in the Tender, as being additional will not be allowed as a charge for any transaction under any resultant Contract.

5.3.1 DISCOUNTS

Are you prepared to allow a discount for prompt settlement of accounts?	Yes / No
If you are offering different discounts for different periods, or other discounts such as volume discounts, detail them in an attachment labelled " Discounts ".	"Discounts"

5.3.2 PRICE SCHEDULE – WAGIN

Bitumen

Item	Class	Quantity	Price per m ² (ex GST)	GST Amount	Price per m ² (GST incl)
Hot Bitumen inc Aggregate	Class 98-2	Approx. 31,052 m ²	\$	\$	\$
Hot bitumen inc aggregate	Class Hot/ neat	Approx. 9,740m ²	\$	\$	\$

Note: The metre rate must be for 2 coat seals in total, not per coat.



8. CLOSURE

With no further business to be discussed the Presiding Member closed the meeting at 7.13 pm

I certify that this copy of the Minutes is a true and Correct records of the meeting held on
16 May 2023

Signed 

Presiding Elected Member

Date: 23/5/2023