

Expression of Interest: Port of Albany Cultural Welcome

SCOPE OF WORKS

Southern Ports, in partnership with Tourism WA, is seeking Expressions of Interest (EOI) from Aboriginal artists to create an original Cultural Welcome artwork at our Port of Albany.

WHO WE ARE

Southern Ports is a State Government-owned port authority in regional Western Australia, operating three ports at Albany (Kinjarling), Bunbury (Goomburrup) and Esperance (Kepa Kurl), with a support office in Perth (Boorloo). Collectively, we handle more than 35 million tonnes of trade a year through our ports.

We work with purpose to facilitate trade, drive operational excellence, and manage critical port infrastructure, whilst caring for our people, our communities, our environment, and our places. We are focused on creating strong and connected port communities and regions.

THE BRIEF

Southern Ports is seeking EOIs from a local Aboriginal artist or a group of artists who live in the Great Southern region create an artwork that will provide a cultural welcome for cruise ship visitors at the Port of Albany.

Southern Ports would welcome the creation of an artwork that is:

- inclusive of local language
- integrates travel and trade
- connects to the port waters and surrounding King George Sound (Mammang-Koort) and Princess Royal Harbour.

Due to the expansive nature of the Port of Albany, the artwork will need to be large in scale, such as a mural. It is also important to note the artwork will be installed outside and must be able to withstand the coastal climate.

Southern Ports will work with the artist/s on the artwork form, size and details after the artist has been selected.

Deliverables

The finished artwork will need to be completed by **Monday, 10 March 2025**.

The selected artist/s will be required to provide the following in the specified timeframe:

- an artwork concept prior to commencement
- the completed original artwork in the agreed format

- a statement/story that describes the artwork and how it represents the vision and a short biography and photograph of the artist/s (and agreement to publish these materials in/on Southern Ports and Tourism WA platforms, and in the media and other third-party channels)

The artist/s agree to be available for the launch of the artwork and any media related to the project coordinated by Southern Ports and/or Tourism WA.

FEES

The budget for the Cultural Welcome artwork project is up to \$50,000 inclusive, materials, artist fees, copyright, and details on the installation of the artwork. Southern Ports will work with the selected artist/s to coordinate the installation of the artwork.

HOW TO APPLY

Artists are invited to submit an EOI that addresses the above brief via email to:
procurement@southernports.com.au

Applications **must** include:

- detailed quote for the project detailing the deliverables detailed above.
- artist statement about yourself, including your full name, your mob, and/or your connection to Country
- your contact details – including your address, contact phone number and email address
- proof that you live within the Great Southern and have connections to Aboriginal communities within the region.
- examples of your work (e.g. artwork, photographs, or imagery) that shows us your artistic style
- confirmation you can meet our timeline

Please detail any special/cultural conditions or restrictions relating to the artwork or its use.

EVALUATION PROCESS

Southern Ports will assess the Expressions of Interest, including eligibility, ability to work to the required timeframe, and proposed fees. Southern Ports will be engaging with Wagyl Kaip Southern Noongar Aboriginal Corporation to be part of the evaluation process.

Southern Ports will notify all applicants of the outcomes of their response to the EOI process in writing.

CONTACT INFORMATION

For more information, please contact:

Shannan Beal
Community Relations and Partnerships Manager
E: Shannan.beal@southernports.com.au

This Expression of Interest will close at 4.00pm on Wednesday, 6 November 2024.



SOUTHERN PORTS

ALBANY BUNBURY ESPERANCE

Expression of Interest (EOI) Conditions

DOCUMENT CONTROL

Version	Description	Reviewed by	Approved by	Issue Date

AUDIT

This Guideline shall be reviewed or revised:

- where a Risk Assessment or Audit identifies a need to review
- when legislative changes impact this Procedure
- following a significant incident involving this Procedure
- at least every two years.

Contents

DOCUMENT CONTROL	2
AUDIT	2
EOI CONDITIONS	4
1 DEFINITIONS AND INTERPRETATION	4
1.1 Definitions Generally	4
1.2 Interpretation	5
1.3 Port Act.....	6
2 INVITATION	6
3 Registration and Lodgement of EOI Response	7
4 EOI Documents	7
4.1 EOI Documents	7
4.2 Construction and use of EOI Documents	7
4.3 Briefing	7
4.4 Communications in respect of EOI Documents	7
4.5 Southern Ports does not warrant information provided.....	7
5 Conditions	8
5.1 Submission of EOI Response	8
5.2 Cancellation and Variation	8
5.3 Southern Ports' Rights	9
5.4 Evaluation.....	9
5.5 Request for additional information	9
5.6 Selection of Preferred Respondent.....	9
5.7 Agreement with these EOI Conditions	9
5.8 Agreement by Respondent	10
5.9 Withdrawal of EOI Response	10
5.10 EOI Validity.....	10
5.11 Conflict of Interest	10
5.12 No Bribe, Inducement or Offer of Employment	11
6 OWNERSHIP AND CONFIDENTIALITY	11
6.1 Ownership	11
6.2 Disclosure of EOI Response Information	11
6.3 No disclosure of Confidential Information	11
6.4 Permitted disclosure.....	11
6.5 Use of Confidential Information.....	12
6.6 Agreement only disclosed to those as necessitated	12
6.7 Party disclosing to take steps to ensure confidential nature is maintained.....	12
7 LEGISLATIVE REQUIREMENTS	12
7.1 Legislative Requirements.....	12
7.2 Environmental, Social, and Governance (ESG) Requirements	12
7.3 Feedback or Complaints	12
7.4 Governing Law and Jurisdiction	13

EOI CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions Generally

In the EOI:

Aboriginal Business means any organisation or entity that is owned or run by an Aboriginal interest, including not-for-profit organisations, and registered on a suitable directory, defined by the Department of Finance as being both the Aboriginal Business Directory Western Australia [<https://abdwa.icn.org.au/>] and Supply Nation's Indigenous Business Direct [<https://supplynation.org.au/>].

ADE means a business that primarily exists to provide the services of persons with a disability and that business is a registered ADE. A complete list of approved ADEs is available from the Australian Disability Enterprises website [<http://www.buyability.org.au/directory>].

Addendum means any additional information issued by Southern Ports in relation to the EOI, after the initial advertising date.

Assignee means any third party to whom the rights, interests, benefits or obligations pursuant to these EOI Conditions may be assigned or otherwise transferred to by the Respondent pursuant to these EOI Conditions.

Associates means:

- (a) in the case of the Respondent, Respondent Personnel, agents and invitees of the Respondent; and
- (b) in the case of Southern Ports, all officers and employees of Southern Ports.

Authority means an Australian federal, state or local governmental authority, department, commission, public authority, agency, minister, statutory corporation or instrumentality.

Briefing means the briefing (if any) specified in clause 4.3 of these EOI Conditions, being either mandatory or non-mandatory, for the purpose of providing Respondents the opportunity to develop and lodge a competitive and compliant EOI Response.

Business Day means a day other than Saturday, Sunday or a public holiday in Perth, Western Australia.

Closing Time means the time and date specified on Tenders WA as the closing time for the submissions.

Confidential Information means:

- (a) all information exchanged between the parties in connection with this EOI;
- (b) information that is by its very nature confidential; or
- (c) information that the receiving party knows or ought to know is confidential, but does not include information:
- (d) that is or becomes public knowledge other than by breach of these EOI Conditions;
- (e) that is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
- (f) that has been independently developed or acquired by the receiving party.

EOI means the Expression of Interest issued by Southern Ports for the supply of goods, services and/or works.

EOI Conditions means this document.

EOI Documents means the documents listed in clause 4.1 and any other documents incorporated in the EOI Documents by reference, including any addenda.

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

EOI Process means the process set out in clause 2 of these EOI Conditions.

EOI Response means the information submitted by the Respondent in response to the EOI.

EOI Validity Period means the period specified in clause 5.10 of these EOI Conditions.

Intellectual Property Rights means intellectual property rights of every kind, including but not limited to copyright (including future copyright), designs, patents, inventions, trademarks (whether registered or unregistered), know-how, reputation, trade secrets and goodwill.

Legislative Requirements means:

- (a) any law applicable to the requirements of the EOI and the Respondent's Activities, including acts, ordinances, regulations, by-laws and other subordinate legislation;
- (b) approvals (including any condition or requirement under them); and
- (c) fees and charges payable in connection with the foregoing.

Minister means the Western Australian governmental minister responsible under the Port Act from time to time.

Port Act means the *Port Authorities Act 1999 (WA)* and the *Government Trading Enterprises Act 2023 (WA)*.

Request Process means the process set out in clause 2 of these EOI Conditions.

Respondent means any person who submits an EOI Response.

Respondent Personnel means all officers, employees, contractors and subcontractors employed or engaged by the Respondent in the business the subject of the EOI and the Respondent's operations generally.

Respondent's Activities means all things or tasks which the Respondent is, or may be, required to do to comply with its obligations under these EOI Conditions.

Southern Ports means Southern Ports Authority ABN 30 044 341 250.

Southern Ports Representative means the person specified in in the EOI details in Tenders WA.

Specification means the specification for the supply specified, or referred to, in the EOI.

Tenders WA means the WA Tendering System [<http://www.tenders.wa.gov.au/>] providing direct access to early tender advice to suppliers and notice of advertising of Southern Ports supply opportunities.

1.2 Interpretation

In the EOI and these EOI Conditions:

- (a) headings are for convenience only and do not affect interpretation;
and unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) person includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

- (e) a reference to a document (including these EOI Conditions) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of the EOI, and a reference to the EOI includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) a person, body or authority which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person, body or authority in its place, is taken to refer to the person, body or authority established or constituted in its place or by which its functions have become exercisable;
- (k) with respect to anything in the EOI or these EOI Conditions that requires Southern Ports consent or approval, Southern Ports may, unless otherwise expressly provided for, grant or withhold its consent or approval in its absolute discretion and may grant its consent or approval subject to conditions as it sees fit;
- (l) measurements of physical quantities shall be taken to be in Australian legal units of measurement within the meaning of the National Measurement Act 1960 (Cth) and, where any conversion is required from other units to Australian legal units of measurement, the "Conversion Factors" from Australian Standard AS/NZS 1376-1996 shall be used;
- (m) any reference to time is to local time in Perth, Western Australia;
- (n) includes in any form is not a word of limitation; and
- (o) a reference to \$ or dollar is to Australian currency.

1.3 Port Act

All of Southern Ports' rights, powers, defences, immunities, indemnities or limitations of liability in the Port Act augment Southern Ports' rights and powers in these EOI Conditions and the parties agree that nothing in or arising out of these EOI Conditions in any way:

- (a) diminishes Southern Ports' rights, powers, defences, immunities, indemnities or limitations of liability under the Port Act;
- (b) fetters any discretions that Southern Ports has under the Port Act; or
- (c) precludes Southern Ports from accessing, relying upon or using any of its rights, powers, defences, immunities, indemnities or limitations of liability in the Port Act in relation to any matter concerning the Port, the Respondent or any matter arising out of or relating to this EOI.

To the extent of any inconsistency between anything in the Port Act and this EOI, the Port Act will always prevail and override the terms of this EOI.

Southern Ports will not be in breach of these EOI Conditions or be liable, and the Respondent must not make any claim against Southern Ports, consequent upon any act or omission that is in accordance with, or contemplated by, provided for in or arising out of its statutory powers and functions.

2 INVITATION

Southern Ports invites prospective Respondents to participate in the procurement process for the provision of goods, services, and/or works as detailed in the EOI Documents.

The procurement process shall consist of two main stages; EOI Process and Request Process.

During the EOI Process, interested Respondents are invited to submit their capabilities and interest in participating in the supply opportunity. The purpose of this stage is to establish a restricted bid list comprising qualified and suitable Respondents who will be invited to participate in the subsequent Request Process.

Following the EOI Process, Respondents from the restricted bid list will be invited to submit detailed proposals through the Request Process. This stage will involve the submission of comprehensive bids outlining technical solutions, pricing, and any other relevant details as specified in the tender documents.

It is important to note that Southern Ports reserves the right to decline any or all EOIs, adjust requirements, and may choose not to proceed with the Request Process at its sole discretion.

3 REGISTRATION AND LODGEMENT OF EOI RESPONSE

To participate in the EOI Process and to be considered for inclusion in the restricted bid list, prospective Respondents are required to submit an EOI Response via email in response to the EOI as specified in clause 5.1 of these EOI Conditions. Southern Ports reserves the right to reject any EOI Response that does not comply with the lodgement procedures outlined in these EOI Conditions.

4 EOI DOCUMENTS

4.1 EOI Documents

The EOI Documents comprise all documents, including these EOI Conditions, provided to the Respondent by Southern Ports for the purpose of submitting an EOI Response, including any Addenda.

4.2 Construction and use of EOI Documents

The EOI Documents must be read and construed together. The documents comprising the EOI Documents are intended to be mutually explanatory.

4.3 Briefing

Not used.

4.4 Communications in respect of EOI Documents

All communication and requests for information by the Respondent in connection with the EOI must be made electronically to the Southern Ports Representative via email to procurement@southernports.com.au.

All requests for information must be lodged at least 5 Business Days prior to the Closing Time to allow sufficient time for Southern Ports to respond.

Under no circumstances should a Respondent contact any of Southern Ports Associate (other than the nominated Southern Ports Representative) to discuss any aspect of the EOI or associated EOI Documents.

4.5 Southern Ports does not warrant information provided

Southern Ports does not make any representation or provide any warranty or duty of care (express or implied) as to the accuracy, completeness, correctness, reasonableness or reliability of the contents of the EOI or any EOI Documents.

5 CONDITIONS

5.1 Submission of EOI Response

Respondents should submit their EOI Responses via the following email address:
procurement@southernports.com.au.

Any EOI Response which:

- (a) is not submitted in full before the Closing Time; or
- (b) is incomplete at the Closing Time;

will be excluded from consideration unless the Respondent can provide conclusive evidence of mishandling of the EOI Response.

If the Respondent submits the EOI Response electronically, then the Respondent must ensure that any EOI Documents required to be completed and returned are submitted in their native file format provided (if any). Any additional files provided to support the Respondent's EOI Response must be in one of the following file format and extensions:

.doc/docx*	.pub*	.pdf#	.txt	.rtf	.ppt/pptx	.xls/xlsx*
------------	-------	-------	------	------	-----------	------------

* Microsoft Compatible

Adobe Compatible

NB: Zipped Files Acceptable

If the Respondent submits the EOI Response electronically, the Respondent agrees that:

- (a) receipt of the EOI Response 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 Southern Ports computer records that the EOI Response was received;
- (b) if any files uploaded as part of the EOI response contains a virus then, notwithstanding any disclaimer made by the Respondent in respect of viruses, the Respondent must pay to Southern Ports all costs incurred arising from, or in connection with, the virus;
- (c) electronic lodgement of the EOI Response may take time and the Respondent must make its own assessment of the time required for full transmission of its EOI Response;
- (d) Southern Ports will not be responsible in any way for any loss, damage or corruption of the electronic copy of the EOI Response;
- (e) if the EOI Response becomes corrupted, illegible or incomplete as a result of transmission, storage, encryption or decryption, then Southern Ports may request the Respondent to provide another copy of the EOI Response either electronically or in hard copy or both;
- (f) if Southern Ports requests the provision of another copy of the EOI Response, then the Respondent must;
 - (i) provide the copy in the form or forms requested within the period specified by Southern Ports;
 - (ii) provide a statutory declaration that the copy is a true copy of the EOI Response which was electronically submitted by the Respondent and that no changes to the EOI Response have been made after the initial attempted electronic submission; and
 - (iii) provide a copy of the electronic tender lodgement service receipt for the initial attempted electronic submission.

5.2 Cancellation and Variation

Southern Ports reserves the right, at any time and from time to time, to cancel, vary, supplement, supersede or replace the EOI or any part of the EOI.

If Southern Ports cancels, varies, supplements, supersedes or replaces the EOI, then Southern Ports will advise each Respondent in writing, and the Respondent shall not have any recourse against Southern Ports whatsoever including for claims for any costs or expenses incurred up to and including the date that the EOI or any part of the EOI is cancelled, varied, supplemented, superseded or replaced.

5.3 Southern Ports' Rights

Southern Ports is under no obligation to progress any EOI Response and may reject any EOI Response or all EOI Responses, in Southern Ports discretion, including:

- (a) if an EOI Response fails to comply with these EOI Conditions;
- (b) if an EOI Response fails to comply with any of the requirements set out in the EOI;
- (c) if an EOI Response contains information or representations that are false or misleading;
- (d) 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 2001* (Cth);
- (e) in respect of a Respondent which consists of a consortium, if there is a change of membership of the consortium members; or
- (f) if Southern Ports decides to cancel the EOI due to changes of policy or for commercial reasons.

5.4 Evaluation

Southern Ports will appoint an evaluation panel to evaluate each EOI Response using the evaluation methods and associated evaluation criteria and weightings (if any) specified in the EOI.

In evaluating an EOI Response, Southern Ports may take into account any information regarding the Respondent that Southern Ports has in its possession or receives from any source, including information about the past or current performance of the Respondent under any other contract with Southern Ports or otherwise.

5.5 Request for additional information

After the Closing Time, Southern Ports may:

- (a) request additional information from the Respondent in relation to the content of the EOI Response for the sole purpose of clarifying the EOI Response; and
- (b) request information from the Respondent regarding the financial capacity of the Respondent, and if so requested, the Respondent must promptly provide such information to Southern Ports.

5.6 Selection of Preferred Respondent

Southern Ports 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 EOI Conditions continue to apply until such time as a Request may be issued. Southern Ports does not warrant a Request will be issued.

5.7 Agreement with these EOI Conditions

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

5.8 Agreement by Respondent

In submitting an EOI Response, the Respondent agrees that:

- (a) all information in its EOI Response and all EOI information is true and correct at the time of its submission;
- (b) it relies entirely on its own enquiries in relation to all matters in respect of the EOI and the EOI Conditions;
- (c) it has examined and understood the EOI, the EOI Conditions and any other information available to the Respondent in respect of the EOI;
- (d) if specified as mandatory in the EOI, that it has attended the Briefing (if any) for the purposes of being able to develop and lodge a competitive and compliant EOI Response, and where relevant, inspect conditions and matters pertaining to the EOI;
- (e) it has examined all information relevant to the risks, contingencies and other circumstances having an effect on its EOI Response which is obtainable by the making of reasonable enquiries, which enquiries the Respondent has made;
- (f) it does not rely on any warranty or representation of Southern Ports or any person actually or ostensibly acting on behalf of Southern Ports;
- (g) it has not made 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 Southern Ports to rely on must be set out in full in the Respondent's EOI Response;
- (h) it has not paid or received and will not pay or receive any secret commission in respect of the EOI;
- (i) it has not colluded and will not collude with any other person in respect of the EOI;
- (j) it has not entered and will not enter into any unlawful arrangement with any other person in respect of the EOI;
- (k) it has not sought and will not seek to influence any decision in respect of the EOI by improper means; and
- (l) it will pay its own costs and expenses in connection with:
 - (i) obtaining, as necessary for the purpose of submitting an EOI Response, copies of the latest versions of standards, specification, conditions of contract and such other publication which are incorporated in the EOI Documents by reference;
 - (ii) the preparation and submission of its EOI Response;
 - (iii) attendance at any Briefing; and
 - (iv) any discussions, enquiries or negotiations with, or provision or consideration of further information to Southern Ports, whether before or after the submission of any EOI Response

5.9 Withdrawal of EOI Response

The Respondent may withdraw its EOI Response at any time, by notifying Southern Ports in writing.

5.10 EOI Validity

Unless the Respondent withdraws its EOI under clause 5.9, the Respondent's EOI will be valid for 6 months.

The EOI Validity Period may be extended or further extended by Southern Ports by advising each Respondent in writing from time to time during the EOI Validity Period.

5.11 Conflict of Interest

The Respondent must disclose to Southern Ports 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 EOI by the Respondent. Southern Ports may, in its

discretion, accept or reject the EOI Response if Southern Ports considers that the Respondent has, or could reasonably be considered to have, an actual, potential or perceived conflict of interest in relation to the EOI.

5.12 No Bribe, Inducement or Offer of Employment

The Respondent must not, without the prior written consent of Southern Ports, directly or indirectly approach or communicate with any Associate of Southern Ports having any connection or involvement with the EOI, with respect to:

- (a) an offer of employment; or
- (b) 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 Associate of Southern Ports in connection with the EOI.

6 OWNERSHIP AND CONFIDENTIALITY

6.1 Ownership

The EOI, and any documents contained within, including Intellectual Property Rights, remain the property of Southern Ports.

6.2 Disclosure of EOI Response Information

The Respondent agrees and acknowledges that its EOI Response and its EOI Information are subject to the *Freedom of Information Act 1992 (WA)* and may also be disclosed by Southern Ports under a court order or upon request by Parliament or any committee of Parliament or if otherwise required by law.

By submitting an EOI Response, the Respondent releases Southern Ports from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting from the disclosure of its EOI Response and its EOI Information under this clause by Southern Ports.

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 EOI.

Subject to this clause and to the provisions of the *Financial Management Act 2006* and the *Auditor General's Act 2006*, Southern Ports will not make public any part of the EOI Response or any EOI Information that the Respondent expressly and reasonably nominates in its EOI Response as confidential. However, Southern Ports may require the Respondent to withdraw any claim to confidentiality in respect of any part of the EOI Response or any EOI Information as a condition of participating in the Request Process.

6.3 No disclosure of Confidential Information

Each party must ensure that neither it nor any of its Associates discloses any Confidential Information to any third party without the prior consent of the other parties.

6.4 Permitted disclosure

A party or any of its Associates is permitted to disclose Confidential Information to any third party without the prior consent of the other parties:

- (a) where that disclosure:
 - (i) is to employees, legal advisers, auditors, financiers, insurers or other consultants (including technical and engineering advisers and consultants) of the party requiring the information for the purposes of the EOI and these EOI Conditions;
 - (ii) is with the consent of the party who supplied the information;

- (iii) is required by law (other than information of the kind referred to in section 275(1) of the *Personal Property Securities Act 2009* (Cth)) or the listing requirements of any registered stock exchange upon which the shares of the party are listed;
- (iv) is strictly and necessarily required in connection with legal proceedings related to the EOI and these EOI Conditions;
- (v) in the case of Southern Ports, is to the Minister;
- (vi) is required to be disclosed to any government agency whether in connection with the granting of any licence or otherwise;
- (vii) is made to a third party who is a potential Assignee or transferee of any rights or obligations of a party in this agreement and who has signed an undertaking to keep any disclosed information confidential;
- (b) if the information was received from a third party, provided:
 - (i) the disclosure of that information by the third party was on terms that do not restrict or limit the recipient's use of that information; and
 - (ii) the disclosure of that information by the third party did not, to the recipient's knowledge, contravene an obligation of confidence owed by that third party to any person; or
- (c) if the disclosure of the relevant information is expressly dealt with elsewhere in these EOI Conditions.

6.5 Use of Confidential Information

Neither party may use Confidential Information which is commercially sensitive for any purpose that is not contemplated by these EOI Conditions.

6.6 Agreement only disclosed to those as necessitated

Each party must take all steps reasonably necessary to ensure that the Confidential Information obtained is known only to such persons who need to acquire such knowledge in the course of their duties.

6.7 Party disclosing to take steps to ensure confidential nature is maintained

A party making a permitted disclosure pursuant to this clause 6 must take all reasonable steps to ensure that the person to whom disclosure is made keeps confidential all Confidential Information disclosed.

7 LEGISLATIVE REQUIREMENTS

7.1 Legislative Requirements

In submitting a EOI Response, the Respondent must ensure that it and the Respondent's Associates comply with all applicable Legislative Requirements.

7.2 Environmental, Social, and Governance (ESG) Requirements

Southern Ports may evaluate Respondents for Environmental, Social, and Governance (ESG) factors during the initial EOI stage as outlined in the EOI Documents; however, these considerations will not be deemed requisites to participate in any subsequent Request Process. They will be comprehensively assessed and factored into the subsequent Request Process.

7.3 Feedback or Complaints

The Respondent must promptly notify Southern Ports of any feedback or complaints about a specific procurement process in writing to the Procurement Manager, to be lodged by email to procurement@southernports.com.au.

Within 14 days after the receipt, the Procurement Manager, or its delegate, will arrange for a review of the notice.

The Procurement Manager, or its delegate, will advise the Respondent of the outcome of the review, and any outcome will be final.

7.4 Governing Law and Jurisdiction

The EOI and these EOI Conditions are governed by and must be construed according to the law applying in Western Australia.

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to these EOI Conditions; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.4(a).