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NSW Procurement is a Business Unit of the NSW Department of Finance and Services

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## Conditions of Tender

(Guide Note: Insert Contract Name)

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For the purposes of this RFT, inquiries should be directed to the Contact Officer nominated in Part B of this RFT.

Other matters should be directed to:

Director Contracts  
NSW Procurement  
Government Services Division  
NSW Department of Finance and Services  
McKell Building  
2-24 Rawson Place  
Sydney NSW 2000  
Tel: (02) 9372 8953  
Fax: (02) 9372 7533

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<Insert Contract Name>

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## PART B Conditions of Tender

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### 1 Definitions

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Unless the context indicates otherwise, the following terms, where used in Parts A-C of this RFT, shall have the meanings set out below.

“**ABN**” means an Australian Business Number as provided in GST law.

“**Addendum**” means an addition to this RFT made by the Board before Closing Date and Closing Time.

“**Agreement**” means the proposed agreement to be made between the Principal and the Contractor and executed by way of a Deed, in the form of Part D (and Part E if applicable) to this RFT.

“**Alternative Tender**” A Non-Conforming Tender that is intended to offer a different method of meeting the object and intent of the requirement.

*(Guide Note: insert the following definition of ANZ-SME Content where a procurement for goods and services is over \$700,000).*

“**ANZ-SME Content**”: the value added content sourced from Australia or New Zealand based small and medium enterprises. ANZ-SME content includes ANZ value added in supply chains by SMEs where such value addition can be demonstrated. It excludes overseas-based value addition and/or imported content. Goods not manufactured in New Zealand but imported via New Zealand and offered in a tender are not considered ANZ goods.

“**Board**” - The State Contracts Control Board established under the Public Sector Employment and Management Act 2002 whose responsibilities include:

- (a) Inviting and accepting tenders;
- (b) Determining the conditions under which tenders are invited or accepted;
- (c) Entering into contracts on behalf of the Crown in right of the State of New South Wales; and
- (d) On-going contract administration and management, and includes the duly authorised delegates of the Board, including officers of NSW Procurement.

“**Closing Date and Closing Time**” means the Closing Date and Closing Time for receipt of tenders specified in the cover sheet of this RFT.

“**Code**” means the NSW Government Code of Practice for Procurement as amended from time to time, together with any other codes of practice relating to procurement, including any amendments to such codes that may be applicable to the particular RFT. The Code can be viewed and downloaded from: [http://www.nswprocurement.com.au/Government-Procurement-Frameworks/Files/code\\_of\\_prac-curr.aspx](http://www.nswprocurement.com.au/Government-Procurement-Frameworks/Files/code_of_prac-curr.aspx)

“**Conforming Tender**” means a tender that conforms in all material aspects to:

- (a) the Statement of Requirements;
- (b) the terms and conditions of Part D, and Part E if applicable,
- (c) other parts of this RFT, and
- (d) is in the prescribed form.

“**Contractor**” means a tenderer who has entered into an Agreement with the Principal.

“**Deed**” means a form in which a contract can be recorded which requires execution under the parties’ seal.

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“**GST**” means a goods and services tax and has the same meaning as in the GST Law.

“**GST Law**” means any law imposing a GST And includes A New Tax System ( Goods & Services Tax) Act 1999 (C’th) or if that Act does not exist, means any Act imposing, or relating to a GST and any regulation made under those Acts.

“**GST Free Supplies**” and “Input Taxed Supplies” have the same meaning as in the GST Law.

“**Non-Conforming Tender**” means a tender that does not conform in all material aspects to:

- (a) the Statement of Requirements;
- (b) the terms and conditions of Part D, and Part E if applicable;
- (c) other Parts of this RFT;
- (d) is not in the prescribed form.

“**NSW Procurement**” A business unit of the NSW Department of Finance and Services representing the Board and authorised to arrange and administer contracts on behalf of the Board.

[\(Guide Note: insert the following definition of Price Preference Schemes where a procurement for goods and services is over \\$700,000\).](#)

“**Price Preference Schemes**”: Australian and New Zealand Price Preference Margin (ANZPPM) and the Country Industries Preference Scheme (CIPS).

“**Principal**” means the party executing the proposed Agreement with the successful tenderer.

“**Services**” means the services and their associated goods or the services only sought under this RFT, as detailed in the Statement of Requirements.

[\(Guide Note: insert the following definition of SME where a procurement for goods and services is over \\$700,000\).](#)

“**SME**”: small and medium enterprise(s). For the purposes of Local Jobs First Plan, the term ‘SME’ refers to small and medium enterprises from NSW, other States and Territories of Australia or New Zealand, with up to 500 full time equivalent employees. For this definition of SME, grouping provisions apply. If the SME is controlled by another legal entity (e.g. a Parent Company), the 500 employee figure is aggregated across both entities. i.e., subsidiaries of larger companies are classified according to their parent company employee levels.

“**Statement of Requirements**” means the detailed description of the goods and services contained in Part F.

“**State Contracts Control Board**” is the Board.

[\(Guide Note: insert the following definition of Value Addition where a procurement for goods and services is over \\$700,000\).](#)

“**Value Addition**”: the value of the firm’s output (price) minus the value of all its inputs purchased from other firms.

## **2 Tender Preparation**

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### **2.1 Tenderer to inform itself**

Before submitting its tender, a tenderer must:

- 2.1.2 Examine all information relevant to the risks and contingencies and other circumstances having an effect on its Tender; and
- 2.1.3 Satisfy itself:
  - (a) that the tender, including the tender price is correct; and

- 
- (b) that it is financially and practically viable for it to enter into and perform the proposed Agreement.

## 2.2 Information Supplied in Part F

*(Guide Note: Use this clause 2.3 only where there are concerns on the reliability of data supplied in Part F, which can impact on the tender, and delete in other circumstances. Tenderers may raise issues with this clause).*

The information contained in Part F has been provided with due care for the tenderer's guidance, but is not guaranteed as being completely accurate. The Board shall not be held liable for any errors or omissions contained in Part F.

## 3 Eligibility to Tender

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### 3.1 Legal Entity of Tenderer

- 3.1.1 Tenders must be submitted by a legal entity or, if a joint tender, by legal entities, with the capacity to contract. The Principal will only enter into an Agreement with such legal entity or entities.
- 3.1.2 The Board may ask a tenderer to provide evidence of its legal status or capacity to contract. If tenders from entities propose to contract in their capacity as trustees, such evidence may include copies of the relevant trust deeds. Any evidence requested is to be provided within 3 working days of the request.

### 3.2 Financial Capability of Tenderer

- 3.2.1 The Board reserves the right to reject any tender if the Board judges the tenderer not to have appropriate financial capability.
- 3.2.2 Where the Board forms the view that the tenderer does not have the appropriate financial capability, the Board reserves the right to make acceptance of any tender conditional upon the tenderer entering into a bank, parent company or personal guarantee, or an unconditional performance bond in a form satisfactory to the Board.

### 3.3 ABN Requirements

- 3.3.1 The Principal will not enter into an Agreement with a company that does not have an Australian Business Number and is not registered for GST. Normally, tenderers must be registered for GST and state their ABN in their tender.
- 3.3.2 Tenders from tenderers that do not have an ABN and/or are not registered for GST, such as tenderers commencing business in Australia, may be considered at the Board's discretion if the tenderer demonstrates that it will obtain an ABN and GST registration before entering into an Agreement with the Principal. Such tenderers must state how and when they intend to obtain an ABN and register for GST in their tender response.

## 4 Tender Process

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### 4.1 Provisional RFT Program *(Optional)*

Given below is the Board's provisional RFT program. The Board may, at its absolute discretion, amend the provisional RFT program.

Milestone	(dd/mm/yy)
RFT issue	»
Tenderer briefing	»
RFT Close Date	»
Execution of Agreement	»
Transitioning requirements completed	»
Commencement of supply of Services	»

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## 4.2 Tenderer Briefing *(Optional)*

- 4.2.1 A tenderer briefing will be held on the date, time, and place, indicated below. The contact officer/s of NSW Procurement – will be available at that time to answer any queries regarding this RFT and the tender process generally. Names of persons attending the tenderer briefing must be provided to the contact officer 3 working days prior to the date. No more than 2 persons from each tenderer will be permitted to attend the tenderer briefing.

Location:       »  
Date:            »  
Time:            »

## 4.3 Contact Officer

- 4.3.1 Tenderers should refer requests for information or advice regarding this RFT to:

Client Support Centre *(Insert T&C Officer Name)*  
P: 1800 NSW BUY  
E: [nswbuy@services.nsw.gov.au](mailto:nswbuy@services.nsw.gov.au)

- 4.3.2 Any information given to a tenderer to clarify any aspect of this RFT will also be given to all other tenderers if in the Board's opinion the information would unfairly favour the inquiring tenderer over other tenderers.

## 4.4 Conformity of Tenders

- 4.4.1 The Board seeks Conforming Tenders.
- 4.4.2 Non-Conforming Tenders may be excluded from the tender process without further consideration at the Board's discretion.

## 4.5 Alternative Tenders

- 4.5.1 Tenderers may, if they choose, submit an Alternative Tender. Alternative Tenders will only be considered if submitted in conjunction with a Conforming Tender. An Alternative Tender must be clearly marked "Alternative Tender".

## 4.6 Submission of Tenders

- 4.6.1 Prices, responses and other information provided in the tender are to be in writing and in English. The tender price must be in Australian dollars.
- 4.6.2 Tenderers must complete all of Part C of this RFT, as directed and must not amend any of the questions provided.
- 4.6.3 Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.
- 4.6.4 All tenders must be provided

Electronic: the file formats and versions below:

*(Guide note: Officer is required to include here instructions as to which file formats and versions will be acceptable, including any on CD-ROM, and whether pdf files are acceptable).*

Please refer a number of file formats have already been prescribed in clause 4.6.5.

Hard Copy *(Optional)*

*(Guide note: Officer is required to include here instructions as to the formats of hard copy tenders required)*

- 4.6.5 Tenderers must ensure that all excel or word attachments can be opened and viewed by Microsoft Excel 2003 or Microsoft Word 2003. Other formats for the

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attachments are only to be submitted if an arrangement has first been made with the Contact Officer prior to lodgment of the tender.

- 4.6.6 It is recommended that electronic files be kept as small as practical and the lodgement files below an optimum size of 7 MB, as the limitations of the Internet and communications may affect the successful transmittal and receipt of large files.

#### 4.7 Tender Lodgement

Tenders must be fully received by the Closing Date and Closing Time.

A Tender must be lodged into the designated secure tender box/es, and must be submitted electronically to the electronic tender box for this RFT via the NSW Department of Finance and Services *tenders* website at: <https://tenders.nsw.gov.au/commerce> (Login in as a system user, locate the web page for this RFT, and follow the on screen instructions to lodge the tender).

The lodgement can only be made by a registered system user of the NSW Government eTendering system.

Hard Copy or Facsimile Lodgement (*Optional*)

- (a) Delivery into the Physical Tender Box at:
- Tender Box
  - NSW Department of Finance and Services
  - Level 3 Mckell Building (Ground floor west)
  - 2-24 Rawson Place Sydney NSW
- (b) The tender must be able to be lodged into the physical tender box deposit slot of 400mm by 90mm, and must be lodged during normal McKell Building opening hours of 7:30am to 6:30pm Monday to Friday (excluding Public Holidays).
- (c) No receipt can be given however written acknowledgement of delivery of a container may be given by prior arrangement. Contact Tenders Office on (02) 9372 8900.
- (d) If the tender is larger in physical size and cannot be broken down, or delivery personnel require a signature as evidence of delivery the tender must be delivered between 8:30am and 4:30pm Monday to Friday (excluding Public Holidays) and only by prior arrangement. Contact Tenders Office on (02) 9372 8900. NSW Department of Finance and Services personnel will not take delivery of containers that present an OH&S risk in terms of size or weight.
- (e) Tenders must be clearly marked with the RFT number – “XXXXX – XXXX”.

#### **Or Lodgement to the Facsimile Tender Box at Ph: (02) 9372 8974 (*Optional*):**

Tenders which are sent by facsimile and which are not completely received at the specified location by the close of tenders may be excluded from consideration for acceptance even if transmission or receipt is delayed due to the receiving facsimile machine being engaged, faulty or otherwise inoperative.

If a tenderer intends to submit by facsimile it must consider the following:

The facsimile machine only allows one tender to be lodged at a time and is at its peak on the morning when tenders and tenders close. Due to the volume received on those closing dates, the Board cannot guarantee the level or speed of access to these facilities at that time and tenderers should consider lodging in good time having regard to this.

#### 4.8 Electronic Tenders

- 4.8.1 A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW).

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- 4.8.2 A tenderer, by electronically lodging a tender, is taken to have accepted conditions shown in the Conditions and rules on the NSW Department of Finance and Services *tenders* website at <https://tenders.nsw.gov.au/commerce>.
- 4.8.3 A tenderer must follow the following directions:
- (a) A RFT for which electronic lodgement is available through the website can be identified by the blue “Lodge a Response” link on the web pages for the RFT.
  - (b) To lodge a tender electronically, the files containing the tenderer’s response must be up-loaded through the website to the NSW Government *eTendering* system. Access to the up-loading process is through the blue “Lodge a Response” link, then following the steps and instructions on the NSW Department of Finance and Services *tenders* website and any instructions which may have been supplied with the RFT documents, advertisement or invitation.
- 4.8.4 A tenderer must observe the following format for lodgements:
- (a) An electronically lodged tender must be lodged in a file format required by the RFT.
  - (b) If a tenderer compresses files, it must be possible to decompress them using WinZip. A tenderer must not submit self-extracting (\*.exe) zip files.
  - (c) A tenderer must not change pre-existing text in the RFT other than to insert the required information.
  - (d) The file/s name/s must have an extension and not have invalid characters or file names/loading path names too long for the system, as detailed on the NSW Department of Finance and Services *tenders* website.
- 4.8.5 Signatures are not required for an electronic tender. A tenderer must ensure that a tender response is authorised by the person or persons who may do so on behalf of the tenderer and appropriately identify the person and indicate the person’s approval of the information communicated.
- 4.8.6 Electronically submitted tenders may be made corrupt or incomplete, for example by computer viruses. The Board may decline to consider for acceptance a tender that cannot be effectively evaluated because it is incomplete or corrupt. Tenderers must note that:
- (a) To reduce the likelihood of viruses, a tenderer must not include any macros, applets, or executable code or files in a tender response.
  - (b) A tenderer should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.
- The Board will not be responsible in any way for any loss, damage or corruption of electronically submitted tenders.
- 4.8.7 If a tenderer experiences any persistent difficulty with the NSW Department of Finance and Services *tenders* website in submitting a tender or otherwise, it is encouraged to advise the Contact Officer promptly in writing.
- (a) If there is an extended defect or failure of the NSW Department of Finance and Services *tenders* website or *eTendering* system and the Board is advised, the tender Closing Date and Closing Time may be extended provided that, in the view of the Board, the RFT process will not be compromised by such an extension.
  - (b) Tenders must be fully received by the Closing Date and Closing Time.
- 4.8.8 Tenderers may break down the lodgement of large tenders into smaller packages if clearly identified e.g. package 1 of 3; 2 of 3; 3 of 3.

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4.8.9 If a tenderer provides multiple lodgements, the latest tender received will be the tender to be evaluated, unless the tenderer provides clear directions to whether the lodgement is:

- (a) an alternative tender,
- (b) supporting information
- (c) a further part of a tender that has had previous lodgement.

#### **4.9 Tender Validity Period**

4.9.1 The Tender will remain open for acceptance by the Principal for a period of ..... (insert) months from the Closing Date and Closing Time for tenders.

#### **4.10 Late Tenders**

4.10.1 Late tenders should not be considered, except where the Board is satisfied that the integrity and competitiveness of the tendering process has not been compromised. The Board shall not penalise any supplier whose tender is received late if the delay is due solely to mishandling by the Board.

#### **4.11 Extension of Closing Date and Time**

4.11.1 The Board may, in its discretion, extend the Closing Date and Closing Time.

#### **4.12 Corruption or Unethical Conduct**

4.12.1 Tenderers must comply with the requirements of the NSW Department of Finance and Services Technology and Administration Business Ethics Statement, which is available at the link below and must disclose any conflicts of interests in Part C.

4.12.2 If a tenderer, or any of its officers, employees, agents or sub-contractors is found to have:

- (a) offered any inducement or reward to any public servant or employee, agent or subcontractor of the Board, the Principal, or the NSW Government in connection with this RFT or the submitted Tender;
- (b) committed corrupt conduct in the meaning of the Independent Commission Against Corruption Act 1988;
- (c) a record or alleged record of unethical behaviour; or not complied with the requirements of NSW Department of Finance and Services Business Ethics Statement available at: <http://www.services.nsw.gov.au/about-us/business-ethics>

this may result in the tender not receiving further consideration.

4.12.3 The Board may, in its discretion, invite a relevant tenderer to provide written comments within a specified time before the Board excludes the tenderer on this basis.

4.12.4 If the Board and/or the Principal becomes aware of improper conflict of interests by a successful tenderer after an Agreement has been executed, then the Principal reserves the right to terminate the Agreement.

#### **4.13 Code of Practice for Procurement**

4.13.1 In submitting its tender, the tenderer signifies agreement to comply with the Code.

4.13.2 Failure to comply with the Code may be taken into account by the Board when considering the tenderer's tender or any subsequent tender, and may result in the tender being passed over.

#### **4.14 Prescribed Form of Tender**

4.14.1 The tender, including any Alternative Tender, must comprise a completed Part C and any attachments to Part C, as may be necessary. Any attachments should be labelled to identify those clauses of the RFT to which they relate.

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- 4.14.2 The Tender will be taken to be for the provision of the Services on the terms and conditions stated in Part D (and Part E if applicable) except to the extent that these are amended by the Tender and agreed by the Principal

#### **4.15 Addenda to RFT**

- 4.15.1 If, for any reason the Board, at its sole discretion, requires the RFT to be amended before the Closing Date and Closing Time, an Addendum will be issued.
- 4.15.2 In each case, an Addendum becomes part of the RFT.
- 4.15.3 The Board, during the tender period may issue Addenda altering the RFT. In such cases, it is the obligation of the tenderer to verify if any Addenda were issued prior to closing date, even if a tender has already been submitted.
- 4.15.4 Tenderers must check the web site address, <https://tenders.nsw.gov.au/commerce> and download the Addendum.

#### **4.16 Tenderer's Costs**

The tenderer acknowledges that the Board will not be liable to it for any expenses or costs incurred by it as a result of its participation in this RFT, including where the RFT has been discontinued.

#### **4.17 Custody of Tenders after Receipt**

- 4.17.1 On receipt of tenders lodged electronically to the NSW Government eTendering system, Tenders are encrypted and stored in a secure "electronic tender box."
- 4.17.2 For reasons of probity and security, the Board and its agents are prevented from interrogating the electronic tender box to ascertain whether tenders have been received or for any reason, until after the Closing Date and Closing Time.
- 4.17.3 The e-mail receipt that is sent to the system user lodging the tender after successfully lodging the tender electronically to the NSW Government eTendering system is the only evidence of tender lodgement provided.

#### **4.18 Ownership of Tenders**

- 4.18.1 All tenders become the property of the Board on submission.
- 4.18.2 The Board may make copies of the tenders for any purpose related to this RFT.

#### **4.19 Discontinuance of Tender Process**

- 4.19.1 Where the Board determines that awarding a contract would not be in the public interest, the Board reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of Tenders.

#### **4.20 Variations to Tenders**

- 4.20.1 At any time after the Closing Date of tenders and before the Board accepts any tender received in response to this RFT, a tenderer may, subject to clause 4.20.2, vary its tenders:
- (a) by providing the Board with further information by way of explanation or clarification;
  - (b) by correcting a mistake or anomaly; or
  - (c) by documenting agreed changes to the tender negotiated under clause 5.5 of this Part B.
- 4.20.2 Such a variation may be made either:
- (a) at the request of the Board, or
  - (b) with the consent of the Board at the request of the tenderer; but only if,
    - (i) in the case of variation requested by the tenderer under clause 4.20.1(a)-(b), it appears to the Board reasonable in the circumstances

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to allow the tenderer to provide the information or correct the mistake or anomaly; or

- (ii) in the case of variation under clause 4.20.1(c) the Board has confirmed that the draft-documented changes reflect what has been agreed.

4.20.3 If a tender is varied in accordance with clause 4.20.1(a) or (b), the Board will provide all other tenderers whose tenders have similar characteristics with the opportunity of varying their tenders in a similar way.

4.20.4 A variation of a tender under clause 4.20.1 will not be permitted if in the Board's view:

- (a) it would substantially alter the original tender; or
- (b) in the case of variation under clause 4.20.1(a) or (b), it would result in the revising or expanding of a tender in a way that would give a tenderer an unfair advantage over other tenderers.

## **5 Evaluation Process**

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5.1.1 Tenders will be assessed against the evaluation criteria listed below which are not indicated in order of significance or be given equal weight.

5.1.2 The evaluation criteria for this RFT that do not relate to price will account for  $(x)\%$  of the total evaluation score. The evaluation for this RFT that relate to price will account for  $(100-x)\%$  of the total evaluation score.

5.1.3 Information supplied by the tenderer in Part C will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the evaluation criteria listed in this RFT.

5.1.4 Tenders that do not include a fully completed Part C, in particular those tenders which do not contain sufficient information to permit a proper evaluation to be conducted, or electronic tenders that cannot be effectively evaluated because the file has become corrupt, may be excluded from the tender process without further consideration at the Board's discretion.

5.1.5 The Board may assess an Alternative Tender against the evaluation criteria where submitted with a Conforming Tender.

### **5.2 Evaluation Criteria**

[\(Guide Note: Modify Evaluation Criteria as needed\)](#)

The evaluation criteria for this RFT (which include but are not limited to) are:

- (a) Fitness for purpose including quality, range of products, innovative aspects, product design, performance and warranties;
- (b) Price;
- (c) Delivery requirements;
- (d) Capacity to perform the Agreement including:
  - (i) Production/technical capacity;
  - (ii) Human resource capacity, qualifications, skills and experience;
  - (iii) Financial capacity and stability (including security considerations);
  - (iv) Technical, warehousing, inventory and distribution systems;
  - (v) Maintenance and support service levels including availability of Help Desk for repair and help calls;
  - (vi) Quality assurance systems;
  - (vii) Suitability of sub-contractors;

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- (viii) Previous experience and performance on similar agreements for the Services covered in this RFT or other products and services;
  - (ix) Record of ethical behaviour in service delivery;
  - (x) Compliance with other requirements of the Principal, (including ability to market the proposed Agreement).
- (e) Compliance with the proposed conditions of Part D.
- (f) Compliance with NSW Government procurement policy and other applicable NSW Government policies, including:
- (i) Development of long-term, internationally competitive industry;
  - (ii) Commitment to sustainable long-term industry development;
  - (iii) Development of long-term, strategic alliances;
  - (iv) Export potential and/or import replacement;
  - (v) Value-added activity;
  - (vi) SME involvement;
  - (vii) Regional development activity;
  - (viii) Existing industry development activity and proposed new investment;
  - (ix) Innovation, research and development;
  - (x) Workforce development;
  - (xi) Compliance with OHS&R requirements;
  - (xii) Compliance with NSW Government Environmental Management Systems Guidelines:
- (g) Compliance with relevant legislation and standards.
- (h) Capacity and capability to facilitate electronic commerce through smartbuy® [\(Guide Note: Review this clause if RFT is handled by an agency\).](#)
- (i) Compliance with the Statement of Requirements.

### **5.3 Presentations by Tenderer**

5.3.1 The Board, may during the evaluation of tenders, undertake site inspections of tenderer's or their subcontractor's proposed premises.

5.3.2 The Board, may in its discretion, and as part of the evaluation process, invite any or some of the tenderers to make personal presentations regarding their tender. The tenderer shall make any presentations at its own cost.

5.3.3 Receiving a presentation by a tenderer in no way represents a commitment by the Board to accept any aspect of the tender.

5.3.4 All information obtained during the course of presentation or site inspection may be taken into consideration in the evaluation of tenders.

### **5.4 Acceptance or Rejection of Tenders**

5.4.1 The Board may assess an Alternative Tender against the evaluation criteria when submitted with a Conforming Tender.

5.4.2 The Board expressly reserves the right to accept, in its discretion, either or both of the following:

- (a) Any Alternative Tender or part of an Alternative Tender, when submitted with a Conforming Tender; and
- (b) Any other Non-Conforming Tender or part of a Non-Conforming Tender (not, in either case, being an Alternative Tender or part of an Alternative Tender) that, in the Board's opinion, is substantially a Conforming Tender.

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- 5.4.3 The Board is not bound to accept the lowest tender.
- 5.4.4 If the Board rejects all the tenders received it may invite fresh tenders based on the same or different criteria (specifications and details contained in Alternative Tenders will not be used as the basis for the calling of new tenders).

## **5.5 Post Tender Negotiations**

- 5.5.1 Before making any determination as to acceptance or rejection of Tenders the Board may, at its discretion, elect to conduct limited negotiations with preferred tenderers, including those who have submitted Alternative Tenders or who have submitted Conforming Tenders, to mutually improve outcomes.
- 5.5.2 The Board will generally not enter into negotiations to amend standard conditions of contract contained in Part D, and Part E if applicable.
- 5.5.3 If the Board considers that none of the tenders are fully acceptable either due to the level of non-conformance or because they do not represent sufficient value for money, but considers that full conformity is achievable, negotiations may be conducted with the tenderer that submitted the most conforming tender based on the evaluation criteria. The purpose of the negotiations will be advised by the Board and made clear to the participants before the commencement of negotiation.
- 5.5.4 The Board may at its absolute discretion elect to conduct post tender negotiations under clause 5.5.3 with more than 1 tenderer in the event that it decides that the closeness of the tenders or timing constraints warrants doing so.

## **5.6 Exchange of Information between Government Agencies**

- 5.6.1 Lodgement of a tender will itself be an authorisation by the tenderer to the Board to make available, on request, to any NSW government agency information, including but not limited to, information dealing with the tenderer's performance on any contract that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of contract.
- 5.6.2 The provision of the information by the Board to any other NSW Government agency is agreed by the tenderer to be a communication falling within section 30 of the Defamation Act 2005 (NSW), and the tenderer shall have no claim against the Board and the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the tenderer arising out of the communication
- 5.6.3 In the evaluation of tenders, the Board may take into account any information about the tenderer that the Board receives from any source.
- 5.6.4 To avoid doubt, information that may be collected, exchanged and used in accordance with this provision includes "personal information" about the tenderer for the purposes of the Privacy and Personal Information Protection Act 1998. Lodgement of a tender will be an authorisation by the tenderer to the Board to collect such information from third parties, and to use and exchange such information in accordance with this clause 5.6.

## **6 Method of Acceptance**

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- 6.1.1 Acceptance of a tender or part tender will be subject to the execution of a formal Deed of agreement in the terms of Part D, and Part E if applicable. Until the Principal and the successful tenderer(s) execute a formal Agreement there will be no legally enforceable agreement concluded between them.

## **7 Disclosure Information**

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- 7.1.1 Following the Board's decision, all tenderers will be notified in writing of the outcome of their Tenders.

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7.1.2 Details of this tender and the outcome of the tender process will be disclosed in accordance with the *Government Information (Public Access) Act* (NSW) and the Premier's Memorandum 2007-01.

7.1.3 An outline of these requirements can be found in <http://www.nswprocurement.com.au/Tenders/Disclosure-of-Information.aspx>

## **8 Complaints Procedure**

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It is the NSW Government's objective to ensure that industry is given every opportunity to win Government contracts. Should any entity feel that it has been unfairly excluded from tendering or unfairly disadvantaged by the Conditions in Part D and/or Part E, or the Statement of Requirements in Part F, it is invited to write to:

Chairperson  
State Contracts Control Board  
Level 22, McKell Building  
2-24 Rawson Place  
Sydney NSW 2000