**Request for Tender**

Financial ERP System

Closing date:

20 December 2016

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# **Cover Sheet and Reference Schedule**

|  |  |
| --- | --- |
| Item | Details |
| Tender Number | FINANCE2016 |
| Enquiries | Rachel Strevens  (03) 9651 9633  Rachel.strevens@vpa.vic.gov.au |
| Questions or Requests | To be made by 15 December 2016 |
| Place for lodgement | Tender Box  Victorian Planning Authority  Level 25, 35 Collins Street  MELBOURNE VIC 3000 |
| Submission Requirements | Must include 3 hardcopies and one electronic copy |
| Closing Date and Time | 20 December 2016 by 4pm |
| Issue Date | 7 December 2016 |

**Tenders must be lodged in the tender box.**

**Emailed tenders or tenders sent by facsimile will not be accepted.**

**Late tenders will not be accepted.**

# **Part A Conditions of Tendering**

## Rules Governing the RFT and the Tendering Process

### Application of these rules

Participation in the Tendering Process is subject to the rules contained in this part (Part A).

All persons (whether or not they submit a Tender) having obtained or received this RFT may only use it, and the information it contains, in compliance with the rules set out in this part.

All Tenderers are deemed to accept the rules contained in this part (Part A).

The rules contained in this part (Part A) of the RFT apply to:-

* the RFT and any other information given, received or made available in connection with the RFT;
* the Tendering Process; any communications (including the Tender Briefing) relating to the RFT or the Tendering Process;

### Structure of RFT

The RFT consists of the following parts:

**Part A** – **Conditions of Tendering** sets out the rules applying to the RFT documents and to the Tendering Process. These rules are deemed to be accepted by all Tenderers and by all persons having received or obtained the RFT.

**Part A-1- Selection Criteria** provides the key criteria by which the tenders will be assessed. Additional criteria, not listed, may also apply. Short-listing may be undertaken using one or more of the listed criteria.

**Part B** – **Specification** describes the goods, services and/or any other requirements in respect of which the Agency invites Tenders from interested persons.

**Part C** – **Proposed Contract** contains the terms and conditions in compliance with which the Agency desires the goods, services and or other requirements set out in Part B, to be provided.

**Part D** – **Tenderer’s Response** specifies the information to be provided in a Tender and may also specify any information to be provided by a Tenderer by other means. Part D includes templates to be completed and included in a Tender.

**Part E** – **Ethical Employment Statement** contains the statement to be completed by shortlisted Tenderers demonstrating their ability to satisfy the ethical employment standard. You do not need to complete and return Part E unless shortlisted. **Part F** – The Victorian Industry Participation Policy (VIPP) applies to Government procurement activities above the threshold values of $3 million or more in Metropolitan Melbourne or state-wide, and $1 million or more in Regional Victoria. You do not need to complete online VIPP plan unless requested to do so.

### Interpretation

In this Request for Tenders, unless a contrary intention is apparent ‑

**“Agency”** means the government department or agency (as specified in the **Reference Schedule**) responsible for the Tendering Process.

**“Closing Time”** means the time specified in the **Reference Schedule**.

**“Contractor”** means an entity (including a natural person, a corporation or a partnership) with whom the Agency enters into an agreement as a result of this Tendering Process.

**“Evaluation Criteria”** means the criteria set out in the appendix to this Part A of the RFT.

**“Intellectual Property Rights”** includes copyright and neighbouring rights, and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**“Products”** means any goods and products (including intangible products such as computer software) to be provided by the Contractor.

**“Project Manager”** means the person so designated in the **Reference Schedule**.

**“Proposed Contract”** means the agreement and any other terms and conditions contained in or referred to in Part C of this RFT.

**“Request For Tenders”** or **“RFT”** means this document comprising parts A, B, C, D, E and F and any other documents so designated by the Agency.

**“Services”** means the services to be provided by the Contractor.

**“Specification”** means any specification or description of the Agency’s requirements contained in Part B of this RFT.

**“Reference Schedule”** means the schedule so designated and attached to this Part A of the RFT.

**“State”** means the Crown in right of the State of Victoria.

**“Statement of Compliance”** means the statement forming part of a Tender indicating the Tenderer’s compliance with the Specification and the Proposed Contract.

**“Tender”** means the document lodged in response to the RFT containing an offer to provide services, goods or products satisfying the Specification.

**“Tenderer”** means a person or organisation that submits a Tender.

**“Tender Briefing”** means a meeting (the details for which are specified in the **Reference Schedule**) that may be held by or on behalf of the Agency to provide information about the RFT and the Tendering Process.

**“Tendering Process”** means the process commenced by the issuing of a Request for Tender, Proposal or Quotation and concluding upon formal announcement by Agency of the successful Tenderer(s) or earlier termination or abortion of the process.

### RFT

### Status of RFT

The RFT is not an offer. The RFT is an invitation for persons to submit a proposal for the provision of the services, goods or other requirements set out in the Specification (Part B).

### Accuracy of RFT

The Agency does not warrant the accuracy of the content of the RFT and the Agency shall not be liable for any omission from the RFT.

### Additions and amendments to RFT

The Agency reserves the right to change any information in the RFT.

### Representatives

No representation made by or on behalf of the Agency in relation to the RFT (or its subject matter) will be binding on the Agency unless that representation is expressly incorporated into the contracts ultimately entered into between the Agency and the Contractor.

### Confidentiality

All persons (including Tenderers) obtaining or receiving the RFT and any other information in connection with the RFT or the Tendering Process must keep the contents of the RFT and such other information confidential.

The Agency may require persons and organisations wishing to access (including but not limited to obtaining a copy of) this RFT or certain parts thereof or to additional materials (as referred to below in item 4.7) to execute a deed of confidentiality (in a form required by, or satisfactory to, the Agency) before access is granted.

### License to use and intellectual property

Persons obtaining or receiving the RFT and any other documents issued in relation to the Tendering Process may only use the RFT and such documents only for the purpose of preparing a Tender.

Intellectual Property Rights in the RFT and any other documents provided in connection with the Tendering Process are owned by the Agency except as indicated otherwise.

### Availability of additional materials RFT

Additional materials may be accessed in the manner set out in the **Reference Schedule**.

### Communications during the tendering process

### Project manager

All communications relating to the RFT and otherwise to the Tendering Process must be directed to the Project Manager.

### Requests for clarification or further information

Any questions or requests for further information or for clarification of the RFT (or any other document issued in connection with the Tendering Process) must be submitted to the Project Manager. Questions and requests must be submitted to the Project Manager in writing, preferably by email-.

The Agency may restrict the period during which it will accept questions or requests for further information or for clarification.

Except where the Agency is of the opinion that issues raised apply only to an individual person or organisation, questions submitted and answers provided will be made available on the tenders website to all persons without identifying the person or organisation having submitted the question.

### Unauthorised communications

Communications (including promotional or advertising activities) with staff of the Agency or consultants assisting the Agency with the Tendering Process are not permitted except with the prior, written consent of the Project Manager.

During the Tendering Process, Tenderers must not direct any advertising or promotional activities to any staff of the Agency involved in, or any consultants assisting the Agency with, the Tendering Process.

Tenderers must not otherwise engage in any activities that may be perceived as, or that may have the effect of, influencing the outcomes of the Tendering Process in any way.

Unauthorized communications with such persons may, in the absolute discretion of the Agency, lead to disqualification of a Tenderer.

### Improper assistance

Tenderers must not seek or obtain the assistance of employees, agents or contractors of the Agency or the State in the preparation of their Tenders. The Agency may, in its absolute discretion, disqualify a Tenderer that it believes to have sought or obtained such assistance.

### Anti-competitive conduct

Tenderers and their respective officers, employees, agents and advisers must not engage in any collusion, anti-competitive conduct or any other similar conduct with any other Tenderer or any other person in relation to the preparation, content or lodgement of their Tender.

### Complaints about the tendering process

Any complaint about the RFT or the Tendering Process must be submitted to the Project Manager in writing immediately. The written complaint statement must set out:

* the basis for the complaint (specifying the issues involved);
* how the subject of the complaint (and the specific issues) affect the person or organisation making the complaint;
* any relevant background information; and
* the outcome desired by the person or organisation making the complaint.

### Submission of tenders

### Lodgement

Tenders must be lodged only by the means set out in the Reference Schedule.

Where the Reference Schedule requires Tenders to be lodged in hard copy, packages containing the Tender must be marked with the information set out in the Reference Schedule and must be placed in the tender box at the address which is also set out in the Reference Schedule.

Where the Reference Schedule requires Tenders to be lodged by electronic mail (email), the receipt will be determined in accordance with the provisions of Division 3 of Part 2 of the Electronic Transactions (Victoria) Act 2000.

Where the Reference Schedule requires Tenders to be lodged via the Internet through the website nominated in the Reference Schedule, Tenderers are deemed to accept the online User Agreement applying to that website and must comply with the requirements set out in that website.

### Late tenders

Tenders lodged after the Closing Time will be disqualified from the Tendering Process.

However, if there is explicit and conclusive evidence that late lodgment resulted from mishandling by the Agency, a Tender will be deemed to have been lodged before the Closing Time.

### Tender documents

### Format and contents

Tenderers must provide the information requested in the format required.

Tenderers are required to provide the information in Parts D.

Shortlisted Tenderers will be required to provide the information in Parts E and F. Tenderers may wish to prepare Parts E and F in order to ensure that they can respond to a request by the Agency within the applicable timeframes, but should not submit it unless required to do so by the Agency.

The Agency may in its absolute discretion reject a Tender that does not include the information required or is not in the format required.

Unnecessarily elaborate responses or other presentations beyond what is sufficient to present a complete and effective proposal are not desired or required. Elaborate artwork and expensive visual and other presentation aids are not necessary.

Word limits where specified should be observed and the Agency reserves the right to exclude the excess.

Persons wishing to submit a Tender shall fully inform themselves in relation to all matters arising from the RFT including the Agency’s requirements.

### Illegible content, alternation and erasures

Incomplete Tenders may be disqualified or evaluated solely on the information contained in the Tender.

The Agency may disregard any content in a Tender that is illegible.

### Preparation of tenders

The Agency will not be responsible for, nor pay for, any expense or loss that may be incurred by Tenderers in the preparation of their Tenders.

### Disclosure of tender contents and tender information

The State will not disclose tender contents and tender information, except:

1. as required by law;
2. for the purpose of investigations by the Australian Competition and Consumer Commission or similar government authorities;
3. to external consultants and advisers of the Agency engaged to assist with the Tendering Process; or
4. general information from Tenderers required to be disclosed by government policy.

Tenders will be treated as confidential.

### Disclosure of tender information

Notwithstanding any copyright or other intellectual property right that may subsist in the Tender, the Tenderer, by submitting the Tender licenses the Agency to reproduce the whole or any portion of the Tender for the purposes of the Tendering Process.

In submitting a Tender, the Tenderer accepts that the Department may publish (on the internet or otherwise):

* the name of the successful or recommended Tenderer(s)
* the value of the successful Tenderer(s)
* the Contractor’s name together with the provisions of the Contract generally

The Tenderer also accepts that contact details such as Contractor’s name, contract price and details of the goods and services contracted to be supplied may be disclosed to other government departments or agencies (state or federal) for comparative or benchmarking purposes.

### Use of tenders

All Tenders become the property of the Agency.

Tenderers license the Agency to reproduce the whole, or any portion, of their Tenders for the purposes of evaluation.

### Period of validity

All Tenders must remain valid for a minimum of 90 days from the Closing Time. The period of validity of a Tender may be extended by mutual agreement between the Agency and the Tenderer.

### Status of tender

Each Tender constitutes an offer by the Tenderer to the Agency to provide the services required under, and otherwise to satisfy the requirements of, the Specification (Part B of this RFT) on the terms and conditions of the Proposed Contract (subject to the Statement of Compliance).

The Agency reserves the right to accept a Tender in part or in whole.

### Compliance with specification and proposed contract

### Compliance with specification

Under Part D of this RFT a Tenderer shall submit a tabulated statement showing in order of the relevant clauses, its level of compliance with Part B – Specification.

The following definitions are to be used when preparing responses to the Specification.

*Complies*

This means:

* In the case of a clause which is of an informative nature only, that the clause has been read and understood; and
* In the case of a clause which specifies outputs or a characteristic or performance standard to be met by the goods or services to be provided, that the offer is to provide the specified outputs or characteristics or standard.

Where appropriate, the Tenderer should state or describe how the requirement is to be met.

*Partially Complies*

This means that the outputs or a characteristic or performance standard can only be met subject to certain conditions. Where this is the case and the Tenderer is prepared to make good on the outputs or characteristic or performance standard, the Tenderer shall state or describe the manner in which the non-compliance is to be made good.

*Does Not Comply*

This means that the outputs or characteristic or performance standard of the clause is not met by the offer. Full details of the non-compliance must be stated.

*Significantly Exceeds Requirements*

This means that the Tenderers offer significantly exceeds the specified requirements. Tenderers must state or describe in what way their offer exceeds the requirements as this may have some bearing on the evaluation of the offer.

### Compliance to the conditions of contract

Under Part D of this RFT a Tenderer shall submit a tabulated statement with numbering corresponding to the relevant clauses, detailing its level of compliance with Part C – Conditions of Contract.

The following definitions are to be used when preparing responses to the Conditions of Contract.

*Complies*

This means that the Tenderer accepts the contractual provision in every respect (including the wording of the provision).

*Does Not Comply*

This means that the Tenderer does not accept the contractual provision. If the Tenderer does not comply with a particular contractual provision then the Tenderer must:

* indicate that it does not comply;
* give reasons for non-compliance; and
* set out any proposed amendments that would render the provision acceptable to the Tenderer.

### General

Indefinite responses such as “noted” as a statement of compliance or “to be discussed” or “to be negotiated” are not acceptable.

Where there is no response to any clause or provision of the Request for Tender document, the Tenderer may be deemed not to comply with the stated requirement.

Where the Tenderer is unwilling to accept a specified condition, the non-acceptance must be clearly stated. Prominence must be given to the statement – it is not sufficient that the statement should only appear as part of an attachment to the Tender, or be included in a general statement of the Tenderer’s usual operating conditions.

An incomplete submission may be disqualified or assessed solely on the data received with the Tender.

### Alternate tender

The Tenderer may submit an alternative proposal provided that it is clearly identified as an “Alternative Tender”. An Alternative Tender may not require the feature or features specified due to inherent design or capability in the operation of the goods or services, or provide the goods or services in a manner different to that specified.

Tenderers are encouraged to offer options or solutions which may (for example in a novel or innovative way) contribute to Agency’s ability to carry out its business in a more cost-effective manner. These may be related to the outputs; or functional, performance and technical aspects of the requirement; or opportunities for more advantageous commercial arrangements. These options will be considered commercial in confidence.

Where a Tenderer submits an offer which meets the requirements in an alternative and practical manner, it shall include any supplementary material, together with associated prices, which demonstrates in detail that such an alternative will fully achieve and/or exceed all the specified requirements, together with references as to why the additional features may be advantageous.

The Agency reserves the right to consider such offers on their merits or not to consider them further.

### Evaluation of tenders

### Evaluation process

Tenders will be evaluated against the Evaluation Criteria.

Unless the Evaluation Criteria explicitly so require, the Agency is not in any way bound to shortlist, to select as successful, or to accept the Tender offering the lowest price.

### Clarification of tender

Where in the opinion of the Agency, a Tender is unclear, the Agency may seek clarification from the Tenderer. Failure to supply clarification to the satisfaction of the Agency may render the Tender liable to disqualification.

The Agency is under no obligation to seek clarification of anything in a Tender and the Agency reserves the right to disregard any clarification that the Agency considers to be unsolicited or otherwise impermissible.

### Shortlisting

The Agency is in no way bound to include a shortlisting stage in its evaluation process.

Should the Agency choose to include a shortlisting stage in its evaluation process, the Agency is not, at any time, required to notify Tenderers or any person or organisation interested in submitting a Tender.

### Best and final offers

Tenderers or, where the Tendering Process involves a shortlisting process, shortlisted Tenderers may be invited, as part of the Tendering Process, to submit a best and final offer in relation to all or certain aspects of their respective Tenders.

If the Agency chooses to give Tenderers the opportunity to submit a best and final offer, it is under no obligation to give notification before the Closing Time that such opportunity will be given.

### Successful tenders

### Negotiation of contract

Selection as a successful Tenderer does not give rise to a contract between the successful Tenderer and the Agency. No legal relationship will exist between the parties until a contract is executed.

Successful Tenderers will be required to enter into a contract based on the Proposed Contract (contained in Part C of this RFT).

### Pre-contractual negotiations

The Agency may, in its absolute discretion, decide not to enter into pre-contractual negotiations with a successful Tenderer.

A Tenderer is bound by its Tender (including the Statement of Compliance to the Proposed Contract) and, if selected as a successful Tenderer, must be prepared to enter into a contract on the basis of the Tender without negotiation.

### Negotiation of obligation to enter into contract

The Agency is under no obligation to enter into a contract with a successful Tenderer or any other person. The Agency is under no obligation to appoint a successful Tenderer or Tenderers.

### Discussions with tenderers and other persons outside of the tendering process

After the Tendering Process has concluded, the Agency may seek from any Tenderer variations to the offer contained in its Tender or may seek supplementary offers in respect of any changes the Agency may make to the originally stated requirements contained in the Specification.

The Agency reserves the right to enter into any such discussions and negotiations at its absolute discretion (which includes dealing with any Tenderer as it deems fit) without the need to correspond with other Tenderers during this post Tendering Process period.

The Agency may at any time negotiate with any person who is not a Tenderer and enter into a Contract in relation to the services that are the subject of this RFT with that person on such terms as the Agency in its absolute discretion considers appropriate.

### Ethical purchasing policy

The Victorian Government's Ethical Purchasing Policy applies to Tendering Processes and contracts for the purchase of goods and services valued at or above $100,000 (including the establishment of whole-of-government contracts and standing offer arrangements) which commenced on or were entered into after 1 January 2004. The policy will also be applied to purchases under $100,000 for products and services in industries which are considered by the Agency to be high risk, such as textiles, clothing and footwear, cleaning and security services. Information about the Ethical Purchasing Policy is detailed on the Victorian Government Purchasing Board web site at www.vgpb.vic.gov.au.

The Ethical Purchasing Policy provides that the State will not enter into a contract to which the policy applies with any Tenderer that cannot satisfy the ethical employment standard.

The ethical employment standard is the requirement for persons that supply or propose to supply goods and services to the Victorian Government to demonstrate to the reasonable satisfaction of the government buyer, and in accordance with the requirements of the Ethical Purchasing Policy, that the relevant contracting or tendering entity meets its obligations to its employees under Applicable Industrial Instruments and Legislation at the time a contract is awarded and continues to meet such obligations during the term of that contract. Details of Applicable Industrial Instruments and Legislation are set out in the Ethical Purchasing Policy.

It is a condition of all Tendering Processes to which the Ethical Purchasing Policy applies that all shortlisted Tenderers will be required to complete an Ethical Employment Statement (RFT Part E) in the timeframe specified by the Agency. A Tenderer who does not submit an Ethical Employment Statement when required to do so by an Agency will be disqualified from the Tendering Process. The Agency will assess whether a Tenderer satisfies the ethical employment standard in accordance with the Process Guidelines for Government Buyers. The assessment will be based on:

* any findings against the Tenderer by a court, tribunal, commission or board of a breach of an applicable industrial instrument (award or agreement binding on the Tenderer), including a finding of a breach in a non-confidential consent order, in the preceding 24 months
* any convictions under applicable legislation (detailed in the Ethical Purchasing Policy) in the preceding 24 months
* any current proceedings or prosecutions in respect of a breach of an applicable industrial instrument or an offence under applicable legislation
* remedial measures implemented to ensure future compliance with applicable industrial instruments and legislation.
* The assessment will consider:
  + the seriousness of breaches or offences which are the subject of an adverse finding or conviction
  + the number of adverse findings or convictions
  + whether there is a pattern of continued breaches or convictions (including, for the purposes of determining a pattern of continued breaches only, whether there are any current proceedings or prosecutions before a court, tribunal, commission or board)
  + whether remedial measures are commensurate with the breach or offence and in the reasonable opinion of the Agency, can be reasonably expected to prevent such breach or offence from recurring

The information in a Tenderer's ethical employment statement will be used to assess whether the Tenderer satisfies the ethical employment standard. If, in the Agency’s assessment, the Tenderer does not satisfy the ethical employment standard, the Tender will be liable to be disqualified. Tenderers will be provided with an opportunity to submit additional information or an explanation about information contained in their ethical employment statement before disqualification of their Tender occurs.

The name of the disqualified Tenderer will be placed on a register maintained by the Department of Treasury and Finance (the Ethical Employment Reference Register) for a period of 24 months from the date the Tenderer is disqualified from the Tendering Process.

Once a Tenderer is offered a contract to which the Ethical Purchasing Policy applies, it must continue to satisfy the ethical employment standard during the period of the contract. Contract conditions will allow a department to request further ethical employment statements from the Contractor. The contract will also permit the termination of a contract if a Contractor does not satisfy its disclosure obligations or maintain the ethical employment standard during the term of the contract.

The name of any Contractor who has had a contract with the State entered into after 1 January 2004 terminated on the grounds that they did not continue to satisfy the ethical employment standard during the term of that contract will be placed on the Ethical Employment Reference Register for a period of 24 months from the date the termination of the contact takes effect.

Victorian Government departments may access the Ethical Employment Reference Register for the purpose of determining whether the Tenderer has not met the ethical employment standard for other Tendering Processes, i.e. has not satisfied the standard in the past. A Tenderer whose name is on the Ethical Employment Reference Register will not be excluded from other government business opportunities solely on the basis that its name appears on the register.

Where there is no shortlisting process (for example, if there is a small number of bidders in the initial Tendering Process), Agencies will determine the appropriate Tenderers to complete RFT Part E.

### Victorian industry participation policy statement (VIPP)

The Victorian Industry Participation Policy (VIPP) seeks to maximise opportunities for Australian, New Zealand and Victorian suppliers (Local Suppliers) to compete for government business on the basis of best value for money over the life of the goods or services. The VIPP is implemented by Victorian Government departments and agencies to help drive local industry development.

A VIPP plan is required for a procurement activity when the following three criteria have been met:

1. the procurement activity is wholly or partially funded by the State Government

2. the procurement activity meets or exceeds either:

* + $1 million in regional Victoria
  + $3 million in metropolitan Melbourne or for state-wide activities

3. the procurement activity contains contestable goods or services.

Information in relation to this policy is detailed in Part F of the RFT and on the Department of State Development, Business and Innovation (DSDBI) website www.dsdbi.vic.gov.au/vipp

All shortlisted bidders when advised by the Agency that they have been shortlisted, must prepare a VIPP Plan. While shortlisted bidders should not submit a VIPP Plan unless and until requested to do so by the Agency, they are encouraged to engage with Industry Capability Network (ICN) Victoria early in the tender preparation process to avoid undue delays in preparing a VIPP Plan should they be requested to do so. Contact details for ICN are provided below in Part F.

The commitments made in a bidder’s VIPP plan will be considered a key selection criterion as part of the tender evaluation process.

The contents of a successful Tenderer’s VIPP statement may be included in the agreement to be entered into between that Tenderer and the Agency.

### Additional rules

Any rules (governing the RFT or the Tendering Process) in addition to those set out in this Part A, are set out in the Reference Schedule.

### Tenderer warranties

By submitting a Tender, a Tenderer warrants that:

1. in lodging its Tender it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the Agency, its officers, employees, agents or advisers other than any statement, warranty or representation expressly contained in the RFT documents;
2. it did not use the improper assistance of Agency employees or ex-employees, or information unlawfully obtained from the Agency in compiling its Tender;
3. it is satisfied as to the correctness and sufficiency of its Tender, including, where relevant Part E and F;
4. it has examined this RFT, and any other documents referenced or referred to herein, and any other information made available in writing by the Agency to Tenderers for the purposes of submitting a Tender;
5. it has sought and examined all necessary information which is obtainable by making reasonable enquiries relevant to the risks and other circumstances affecting its Tender;
6. it has otherwise obtained all information necessary for the preparation of its Tender;
7. it is responsible for all costs and expenses related to the preparation and lodgement of its Tender; any subsequent negotiation; any other action or Tender in relation to this RFT or of the evaluation process; and any future process connected with or relating to the Tendering Process;
8. it otherwise accepts and will comply with the rules set out in this Part A of the RFT; and
9. it will provide additional information in a timely manner as requested to clarify matters identified in the response to RFT.

# **Part A-1 Evaluation Criteria**

In evaluating Tenderer’s Responses, the Agency will have regard to:

1. each of the specific evaluation criteria identified in the table below; and
2. the overall value for money proposition presented in the Tenderer’s Response.

In this context, “value for money” is a measurement of benefits represented by a Tenderer’s Response, including:

1. quality levels;
2. performance standards; and
3. price.

Value for money will be assessed on a ‘whole of life’ basis (including the transitioning-in, the contract term and the transitioning-out phases of the relationship between the Agency and a Tenderer), with a view to long-term sustainability of the value for money proposition and with a focus on ensuring that value for money outcomes are promoted and protected following the conclusion of any contract that may result from this RFT.

In evaluating the Tenders, the VPA may assign a particular weighting to any or all of the criteria specified in the table below. The VPA is under no obligation to advise tenderers of such weightings.

|  |
| --- |
| Evaluation Criteria |
| Demonstrable understanding and compliance with specification |
| Proposed methodology is logical and clear and will deliver the requirements of the specification |
| Prior experience and qualifications in providing similar services, particularly in similar circumstances |
| Capacity of the team to deliver the services to the timelines and budget |
| Price |
| VIPP (if applicable) |
| Other considerations:   * Any other matters which the VPA, at its absolute discretion, considers relevant to the assessment of the tender and the delivery of the Goods and/or Service |

The basis for scoring the above criteria will be:

0 – failed to address

1 – unlikely to meet needs

2 – requires support

3 - adequate

4 – exceeds the criteria

5 – significantly exceeds the criteria

The following criteria are not scored. Bidder either complies or does not comply.

**Commercial**

* Financial viability
* Risk and insurance
* Quality standards
* Compliance to conditions of contract
* Conflict of interest
* Health, safety and environment

**Ethical purchasing policy**

* Breaches of industrial instruments and industrial relations legislation
* Breaches of occupational health and safety legislation
* Remedial measures to rectify breaches

# **Part B Specification**

## Definitions

In this specification the words and expressions set out in this clause have the following meanings unless the context admits otherwise:

VPA means the Growth Areas Authority, trading as the Victorian Planning Authority.

## Purpose

The Victorian Planning Authority (VPA) is seeking proposals to purchase a new or upgraded finance system due to increased business needs. The VPA currently uses Microsoft Dynamics SL 2011. The proposed finance system will be capable of providing all areas of accounting functionality (including General Ledger, Accounts Payable/Receivable, Bank Reconciliation, BAS) as well as additional modules for enhanced business efficiency (such as timesheets, project costing, procurement, budgeting and reporting). It should be robust, scalable, intuitive and customisable in order to adapt to changing business requirements. It needs to have a simple and effective interface capacity for alignment with other systems such as Micropay Meridian.

The services which the VPA require are outlined in the Project Scope and the Draft Work Program below.

## Background

The VPA is an independent statutory authority that was established in 2006 as the Growth Areas Authority (GAA), under the Planning and Environment Act 1987. The Authority was renamed the Victorian Planning Authority in August 2016, and now operates extensively across Victoria including regional areas. The VPA is governed by a Board and reports directly to the Minister for Planning.

The VPA’s role is to undertake land use and infrastructure planning in key strategic areas that are of significance to the state, including designated growth areas, urban renewal areas, and regional centres. The VPA has a broad, facilitative role to work with councils, other government agencies and the planning and development industry to help deliver the government’s metropolitan planning strategy.

The VPA currently consists of approximately 95 staff (mostly professional planners) split across a number of departments, and includes 3 dedicated accounting staff. Operations are costed over approximately 250 projects each differing in size and complexity, so an effective job cost ledger is a critical part of the VPA’s finance system. Funding is received from a variety of different sources including but not limited to the Department of Environment, Land, Water and Planning (DELWP), private landowners and developers. Expenditure in 2016/17 is anticipated to be approximately $23 million.

The VPA is committed to continuously improving the way it conducts business and is therefore exploring options to implement a new Finance ERP system to improve both business efficiency and reduce risk. Implemented in 2011 (with limited subsequent upgrades), the present accounting suite is outdated with reference to the technological advances in recent years. The current system is housed on a recently upgraded server with an operating system of MS Server 2008 R2, with the database housed on a different server. It is expected that any in-house solution would be able to operate effectively on the current VPA system, we currently use a desktop SOE.

In addition, the VPA has operated on a Payroll system via Micropay Meridian since July 2010. A document management system (TRIM) is current utilised by the VPA to store documents in line with government and public policy guidelines. A finance system which integrates with these and other systems is preferred.

## Project Timing

The contract is expected to commence in March 2017 and to be operational from 1 July 2017, after a staged rollout and implementation period.

An indicative Draft Work Program is set out in Section 6. Respondents are requested to indicate a suggested timeline as part of their response with the final timing subject to negotiation.

## Project Scope

The VPA is interested in implementing a modern and efficient finance ERP system in a cost-effective manner. The VPA is open to either a cloud-based solution or an on premise solution that is able to utilise existing hardware. At this stage the VPA has no preference in relation to whether it will select a cloud-based solution or an on premise solution, therefore, if you offer both solutions, it would be beneficial to make a submission based on both modes of delivery which highlight the price differences and also the benefits of each mode.

A partial list of requirements for the finance system is set out below. Our expectation is that the preferred system will be able to meet most, if not all, of these requirements. Tenderers must identify any requirements that they are unable to meet, or can only partially meet, including any additional hardware or software required to operate the proposed solution.

While these are minimum requirements for current business needs, the VPA is interested in a single solution that has the capacity to grow with business needs through the ability to add additional modules in future if required. For example, a system with additional module add-ons such as payroll, contract management and fixed assets etc. would be highly regarded.

*Cloud-based solution*

If you are proposing a cloud-based solution you will need to address requirements 4.5.1 and 4.5.2 listed below.

*On premise solution*

If you are proposing an on premise solution, you will need to address requirements 4.5.1 and 4.5.3. In addition, you will need to provide a list of the minimum hardware specifications. The preference is to make use of existing hardware.

### General requirements

**4.5.1.1 System Requirements**

1. The solution should provide a single look and feel across all modules
2. Data entry must be logical and aligned with work processes to streamline data entry processes
3. Data fields must contain validation processes.
4. Provides an integrated workflow engine for managing the referral and approval of transactions automatically, including the ability to make available supporting documentation for viewing
5. Integration with the Microsoft Office Suite, currently v2013
6. Incorporates online help, videos, training guides for all processes and users
7. Ability to retain and enquire on transaction history
8. Possesses logical and appropriate screen layout and sequencing to simplify and streamline data entry processes
9. Ability to provide flexible user-definable fields extensively throughout the system which can be used for reporting and analysis

**4.5.1.2 Security**

1. Ability to integrate with Active Directory and offer a single sign on process from a VPA workstation
2. Ability to provide a role/group based security model and allow one or more roles to be allocated to user accounts
3. Ability to configure users’ access privileges at a module, function and transaction level and be able to grant read/write, read-only or no access
4. Ability to automatically log out users after a set period of inactivity
5. Any passwords maintained in the proposed solution should be stored in an encrypted manner in accordance with Victorian State Government Guidelines
6. Ability to disable user accounts after a set number of unsuccessful login attempts
7. Ability to provide intuitive security administration screens to allow non-technical staff to manage user accounts, configure user roles and administer system security

**4.5.1.3 Business Intelligence**

1. Ability to provide an integrated Business Intelligence capability
2. Ability for end-users to design and save reports through an intuitive report writing tool
3. Ability to provide security at report level to allow only authorised user groups to view and create particular reports
4. Ability to drill down into transactional or master data or source document images from reports or enquiry screens
5. Ability to filter enquiry and report results by defined period such as year to date, current financial period, current quarter etc. Reports should also be able to be filtered by user specified dates and periods
6. Ability to subtotal transactions by defined periods such as financial year, period, calendar month etc.
7. Ability to export reports to various formats including MS Excel, MS Word, HTML and PDF
8. Ability to schedule and publish reports using a variety of distribution options such as email and network folders
9. Functionality to incorporate graphs in the reporting tool e.g. to track variance across periods and trend analysis
10. Ability to add comments and annotations to reports
11. Ability to specify wild cards for search, enquiry and report parameters
12. Ability to deliver report output via a web browser without the need for any additional infrastructure or add-ins

**4.5.1.4 Audit**

1. Ability to maintain an audit trail for all changes made to transactions and master file records. The audit trail should allow the organisation to identify the user ID of the person responsible for the change, the time and date the change was initiated and the change that was made
2. Ability to maintain an audit trail for all security changes performed within the system e.g. user role changes, role definition changes and user access changes

**4.5.1.5 Chart of Accounts Capability**

1. Ability to provide a multidimensional chart of accounts with a segmented account structure. Please indicate the maximum number of segments/dimensions available
2. Ability to define relationships between accounts so that transactions can be reported and viewed at all levels of the organisation
3. Ability to restrict accounts to specific cost centres and control what account segment combinations are allowed
4. Ability to restrict user access to accounts through account level security capability
5. Ability to maintain multiple views of the chart of accounts to support multiple reporting structures
6. Ability to restructure the chart of accounts e.g. due to organisational restructures or changes in statutory reporting requirements
7. Ability to inactivate accounts so they can no longer be used for posting
8. Ability to support subsidiary ledgers for the capturing of transactions at a level below the General Ledger e.g. projects and payroll
9. Ability to define subsidiary ledger structures with the same capability available in defining the General Ledger Chart of Accounts structures
10. Ability to define new subsidiary ledgers at any time and have them available for transaction processing

**4.5.1.6 Transaction Processing**

1. Ability to support standard accounting periods such as weekly, four week monthly, calendar monthly, or any user defined accounting periods
2. Ability to post to closed periods or financial years based on security levels
3. Ability to reopen closed periods or financial years based on security levels
4. Ability to post adjustment entries to prior periods or financial years
5. Ability to setup recurring journal entries
6. Ability to allocate overheads by distributing transactions across ledger accounts using predetermined ratios
7. Ability to allow for the upload of batches from Microsoft Excel
8. Ability to allow automatic batch upload of transactions from Micropay, such processing should be scheduled to be performed automatically or by a user defined basis
9. Ability to provide approval workflows to ensure that journals over a certain amount are authorised prior to posting
10. Ability to manage delegation limits for journal authorisations
11. The system must ensure all transactions are entered and balanced on a double entry basis
12. Ability to provide accrual and reversal journal entries, which automatically reverse in the following period or in a period specified by the user
13. Ability to edit and void journal entries based on security levels. Journals should not be deleted, for audit purposes
14. Ability to allow journals to be created from previously posted journals
15. Ability to provide simple month-end and year-end processes
16. Ability to allow for the input and storing of non-financial statistical data
17. Ability to drill-down to originating transactions (e.g. purchase order etc.) from journal entries

**4.5.1.7 GST and BAS Processing**

1. Ability to support Australian GST standards
2. Ability to automatically generate a BAS based on transactions captured within the system. Please specify whether this is managed by the core functionality of the system or by a third party add-on.
3. Ability to integrate with the Australian Government websites via Standard Business Reporting (SBR) for upload of BAS statements. Please specify whether this is managed by the core functionality of the system or by a third party add-on
4. Full Australian Tax Office compliance preferred

**4.5.1.8 Reporting**

1. Ability to produce standard financial reports including Profit & Loss, Balance Sheet and Cash Flow reports
2. Ability to produce standard financial reports which demonstrate the current financial positions of the organisation to the same period year to date for the previous year
3. Ability to produce and Income and Expenditure report detailing all income and expenditure accounts for the current period and year to date
4. Ability to report on a range of functional and hierarchical structures including those based on the standard account structure as well as different ledger structures based on the organisation’s internal and external reporting obligations
5. Ability to produce ad-hoc reports extracted from any of the fields contained in the system for any period(s)

**4.5.1.9 Bank Reconciliation & Integration**

1. Ability to download bank statements and import them into the finance system for reconciliation, please provide a list of supported banks
2. Ability to automatically match bank transactions based on a set of predefined rules
3. Ability to securely integrate with Australian banking systems for transaction processing
4. Interface with General Ledger, Receivables and Payables modules to provide real-time updates for bank reconciliation
5. Ability to clearly identify bank reconciliation exceptions (unidentified transactions)
6. Ability to electronically create journal entries, within the Bank Reconciliation module, from unmatched bank transactions such as bank fees
7. Ability to view current status of transactions (withdrawals and deposits)
8. Ability to un-reconcile bank reconciliations for adjustments and corrections

**4.5.1.10 Accounts Receivable**

4.5.1.10.1 Master File

1. Ability to automatically generate customer account numbers
2. Ability to attach notes or scanned files to debtor master file records
3. Ability to group and categorise debtors for reporting and analysis
4. Ability to maintain audit trails for master file changes
5. Ability to accept and report multiple payment types such as credit card, cheque, cash, direct debit and EFT
6. Ability to search for customers by a range of different attributes

4.5.1.10.2 Transaction Processing

1. Ability to automatically generate unique invoice numbers for each invoice
2. Ability to allocate an invoice to multiple GL accounts/cost centres
3. Ability to automatically post Accounts Receivable transactions to the General Ledger
4. Ability to process part payments for an invoice
5. Ability to customise invoice forms with provision for ‘dynamic’ free text
6. Ability to the Finance system to produce statements with appropriate level of detail and relevant ageing
7. Ability to preview and print invoices, credit notes and statements both individually and in batches
8. Ability to maintain each customer’s preference for receiving invoices
9. Ability to process multiple invoices from a single payment receipting oldest invoice first
10. Ability to process credit notes and claims with appropriate reason codes and authorisation. Reason codes should be configurable and allow users to input comments
11. Ability to create notes or attach scan documents to transaction records
12. Functionality to manage the credit collection process with note taking facility (e.g. to be able to record follow ups)
13. Ability to write-off customer debts after proper authorisation. This process should allow users to capture notes and comments.
14. Ability to automatically receipt payments against invoices
15. Ability to enquire on outstanding invoices by a range of parameters

4.5.1.10.3 Reporting

1. Ability to produce an Outstanding Invoices report to identify invoices that have not been paid
2. Ability to produce a Customer History report to list all of the transactions relevant to a debtors for the period defined by the user

**4.5.1.11 Accounts Payable**

4.5.1.11.1 Master File

1. Ability to record both the company name and trading names of suppliers
2. Ability maintain multiple delivery addresses for each supplier
3. Ability to record suppliers’ ABN vendor master file
4. Ability to maintain a supplier master file and record key information and attributes for each creditor
5. Ability to search for suppliers by a range of different attributes
6. Ability to implement role based security where the maintenance of the creditor master file is segregated from the processing of invoices
7. Ability to make unused creditors inactive
8. Ability to attach notes or scanned files to creditor master file records
9. Ability to prevent the creation of duplicate suppliers using the supplier name and ABN
10. Ability to provide an audit trail to track changes made to supplier master file details
11. Ability to setup and manage one off or temporary suppliers
12. Ability to maintain both supplier records and employee records on the vendor Masterfile. The solution should offer the ability to differentiate whether the supplier master record is a vendor or employee
13. Ability to interface with the Purchasing module and match purchase orders to invoices
14. Ability to record GST amounts on each invoice entered into the system
15. Ability to automatically calculate the GST codes and accounts
16. Ability for users to record extensive descriptions for each invoice and invoice line item
17. Ability to reverse or adjust transactions. This process should allow amounts to be applied back to purchase orders.
18. Ability to detect and disallow duplicate or repeated entry of supplier invoices and credit notes
19. Ability to process transactions in a period when the previous period has not be closed
20. Ability to accept multiple invoices from one purchase order

4.5.1.11.2 Invoice Processing

1. Ability to attach scanned suppler invoices to invoice records.
2. Ability to view all outstanding invoices or view outstanding invoices for each supplier.
3. Ability to enquire on outstanding invoices by a range of parameters e.g. by supplier.
4. Ability to automatically send remittance advice via e-mail or fax. Otherwise just printed (if email or fax number not available).
5. Ability to create EFT payments and be able to generate EFT files to be imported into banking system.
6. Ability to place a supplier or individual invoices on hold for invoice processing and/or payment processing.
7. Ability to manually include and exclude invoices in a given cheque/EFT payment run prior to payment generation.
8. Ability to approve content of cheque/EFT run prior to the generation of cheques or EFT files.
9. Ability to make ad-hoc payments for urgent invoices by producing cheques and EFT payments outside of a bulk payment run.
10. Cheque numbering sequence preserved and prevention of duplicate cheque numbers with appropriate controls and security.
11. Ability for users to identify the payment method (i.e. cheque or EFT) for past invoice payments.

4.5.1.11.3 Reporting

1. Ability to produce a Creditor Ageing report
2. Ability to produce an Outstanding Invoices report to identify invoices that have not been paid
3. Ability to produce a Payment Summary report to subtotal Account Payable transactions by various parameters including project, business unit, department and General Ledger account.
4. Ability to produce a Supplier History report to list all of the transactions relevant to a creditor for the period defined by the user.
5. Ability to produce a Duplicate Invoice report to identify potential duplicate invoices based on creditor, date, invoice number and dollar amount.
6. Ability to produce an On Hold report to list all of the suppliers or invoices that are on hold within the system.
7. Ability to produce ‘Payments Over X’ reports to identify payment transactions which have a total greater than a user specified value.

**4.5.1.12 Budgets/Forecasts**

1. Ability for driver based budgeting
2. Ability for budgets to be formulated at any level of the organisation’s account structure.
3. Ability to maintain an unlimited number of budget and forecast versions.
4. Ability to budget periodically / quarterly / annually.
5. Ability to budget on non-financial statistical data.
6. Ability to imports using MS Excel via 'drag and drop'.
7. Ability to export to MS Excel
8. Ability to create rolling budgets that spans across multiple financial years.
9. Ability to spread budget amount across the year equally per period or based on variable allocation method.
10. Ability to spread expense or income figures across the year equally per period or based on variable allocation method.
11. Ability to perform “what if” analysis to help determine budget figures and produce long term projections.
12. Ability to set budgets based on different algorithms and calculations (e.g. prior year actuals, percentage increase, fixed amount increase, etc.).
13. Ability to support phasing during budgeting.
14. Ability for budgets to incorporate the overhead of shared services.
15. Ability to interface with the current Payroll system for automatically importing payroll information such as staffing levels.
16. Ability to provide version control over multiple versions of the budget and retain previous versions.
17. Ability to allow entry of budgets and subsequent approval via user-defined workflow processes.
18. Ability to track budget status (e.g. draft, pending review, approved).
19. Ability for budgets to remain as inactive until it has been approved.
20. Ability for revised budgets to go through change approval process.
21. Ability to perform an audit trail on budget changes.
22. Ability to manage version control of budgets.
23. Unlimited number / versions budgets and forecasts
24. Ability for individual cost centre budgets to be rolled up to a consolidated budget.
25. Ability to consolidate budgets according to entity structure of the company or chart of accounts.
26. Ability to roll budget figures up or down.
27. Ability to forecast at all levels of the chart of accounts.
28. Ability to run multi-year budgets and pre-populate budgets with prior year actuals.
29. Ability to report on actual to budget to forecast figures.
30. Ability to perform cash flow forecasting.
31. Ability to perform re-forecasting and update budget throughout the year.
32. Ability for each department to create their own forecast based on historical trends and forecast demands.
33. Ability to set budget caps and include a flag for any breaches.
34. Ability to monitor actuals to budgets and provide alerts for when budgets are exceeded.
35. Ability to provide traffic light dashboard functionality on actual to budget real-time monitoring.
36. Ability to report on ‘actual’ versus ‘budget’ versus ‘last year’ to determine variances.

**4.5.1.13 Procurement/Purchasing**

1. Ability to support punch-out purchasing (eProcurement) through the electronic integration with supplier systems and websites.
2. Automate the purchasing function by providing a workflow to step through the process of raising a purchase requisition, to approval, converting to a purchase order, managing the shipment and matching it against the invoice.
3. Ability to setup approval hierarchies and approval limits for requisitions and purchase orders.
4. Ability to enforce comments for requisitions that have failed to be approved.
5. Ability to convert purchase requisitions to purchase orders.
6. Ability to attach scanned and email quotes for purchase orders.
7. Ability to control and account for variations between invoice and purchase orders.
8. Ability to link one purchase order to multiple invoices and vice versa.
9. Ability to enforce mandatory fields when creating requisitions or purchase orders.
10. Ability for a purchase order to have multiple line items and multiple GL codes.
11. Ability to make a part receipt and make part payment against a purchase order.
12. Ability to control and account for variations between invoice and purchase orders. Variations should be subject to an approval process and linked to an original purchase order.
13. Ability for system to generate purchase order numbers.
14. Ability to generate a report which details both unmatched and partially matched purchase orders to track commitments and manage cash flows.
15. Ability for users to record extensive descriptions for each line item of a purchase order.
16. Ability to print purchase orders.
17. Ability to set fax, email or hardcopy as preferred purchase order communication method for each supplier.
18. Ability to determine method and date of purchase orders sent to vendors.
19. Ability to create a purchase order by copying from an existing purchase order or from using a purchase order template.
20. Ability to create repeating/standing purchase orders
21. Ability to allocate costs of each purchase order line item to multiple GL accounts.
22. Ability to change purchase order costing during delivery acknowledgement and invoice matching.
23. Ability to provide enquire on all purchase orders and search for orders by a number of parameters including purchase order number, supplier number, supplier name or order date. Users should be able to filter between open, closed and all purchase orders.
24. Ability to easily navigate from the purchase order enquiry screen to the Account Payable enquiry screen to view invoices and payments applicable to a purchase.
25. Ability to produce an Outstanding Commitments report. User should be able to view outstanding commitments (approved open purchase orders) by vendor, department, project and buyer.
26. Ability to produce an Order Status report to identify the status of open purchase orders. i.e. this report should indicate where the order is within the purchasing workflow e.g. awaiting approval, invoice received, goods received etc.
27. Ability to drill down from financial transactions to the underlying inventory transactions

**4.5.1.14 Projects**

1. Ability to setup project phases within a project e.g. Pre-planning, Consultation, Approval
2. Ability to setup projects tasks within each phase of the project
3. Ability to setup relationships between projects
4. Ability to assign account codes at all levels of the project for postings of project accounting transactions into general ledger
5. Ability to drill down from a general ledger enquiry to an underlying project accounting transaction
6. Ability to record a budget for each project
7. Ability to spread project budget over multiple years
8. Ability to spread employee costs across multiple projects
9. Ability to for employees to record time against projects via a timesheet entry
10. Ability to trigger email notifications to project managers if timesheets are not completed
11. Ability to attach project documentation and notes against each project
12. Ability to allocate purchase orders, invoices and credit notes to multiple projects via the use of project codes
13. Ability to enquire on project expenses and view purchase orders, invoices and credit notes
14. Ability to track budget revisions against initial budget throughout the life of the project
15. Ability to record project specific attributes for statistical reporting
16. Ability to conduct year-end close off whilst still enabling reporting across different years

### Cloud-based platform specific requirements

**4.5.2.1 System requirements**

1. Ability to deploy functionality via a standard browser, preferably Internet Explorer 11
2. Ability to force all connectivity to SSL
3. Ability to deploy via the browser without the need for additional software components having to be installed on the client
4. Ability to deploy the solution via a Cloud based platform solely located within Australia, and all data to be retained within Australia only
5. Ability to deploy the solution via a Cloud based platform with high availability
6. Regular data backups, nightly. Backups to be retained using the same security as the live system.
7. Data must be retained for at least seven years

**4.5.2.2 Security**

1. Demonstrated capability for VPA to retrieve all data in a useable, machine readable format
2. Ability to convert the cloud system to an on premise system if required
3. Demonstrated business continuity plan for customers
4. Data must be encrypted in accordance with Victorian State Government Guidelines
5. Multi-factor authentication, minimum of two factor using one or more of the following:
   * IP addressing
   * RSA key
   * Google authenticator
   * Microsoft authenticator
   * SMS authentication
   * Or other second factor authentication process

### On-premise specific requirements

**4.5.3.1 System requirements**

1. Ability to operate in a Windows server environment
2. Ability for system updates to be installed by local technical staff

## Methodology/Project Plan

Tenderers will need to submit a summary of their proposed project plan in Part D. This should outline recommended stages and timeframes to ensure that the new financial system will be operational by 1 July 2017. This will include the migration of data from Microsoft Dynamics, a testing stage, training and the final implementation. Preferred tenderers may be required to submit a detailed project plan to be approved prior to being awarded the contract.

## Milestones

Tenderers will need to submit a table outlining project milestones in line with 4.6 Methodology/Project Plan in Part D. This table should indicate the proportion of the total project fee tendered to be attributed to each completed milestone.

## Relationship Management

|  |  |
| --- | --- |
| Management administration | |
| VPA Project Officer | Rachel Strevens |
| Title | Finance Manager |
| Address | Level 25, 35 Collins Street |
| Telephone | (03) 9651 9633 |
| Email | Rachel.strevens@vpa.vic.gov.au |

## Contract Management

The Contractor is accountable to the Chief Executive Officer, Peter Seamer, for the delivery of services specified in this brief. Contract management and administration matters will be handled by the Director, Corporate Services, Ed Small.

The Contractor is to execute the VPA’s standard contract for the purchase of services Part C attached which includes a confidentiality agreement. Any proposed departures from these standard conditions are to be agreed at the time of the submission of the Contractor’s proposal.

## Pricing

The prices offered for this service need be in the form outlined in section 6.6, detailing the estimated hours, and the fee against each deliverable, GST inclusive. Pricing per module, with core and optional modules identified, as well as pricing per license and maintenance fees to be to be detailed, along with ongoing consultancy rates. The Contractor is to detail any other additional expenses that may be incurred.

# **Part C VPA Contract**

STANDARD CONDITIONS OF CONTRACT

The Growth Areas Authority (trading as the Victorian Planning Authority)

-and-

[Consultant]

AGREEMENT FOR PROFESSIONAL SERVICES OF CONSULTANCY

Financial ERP System

## Agreement for Professional Services

**THIS AGREEMENT** is made the day of 2016

**BETWEEN**

**The Growth Areas Authority (trading as the Victorian Planning Authority)** (the “Authority”)

**AND**

[ ] **(A.C.N )** of [ ]

**WHEREAS**

1. The Authority has called for tenders for the provision of the Project Services;
2. The Contractor has offered to supply such Project Services and the Authority and the Contractor have agreed upon the provision of the Project Services upon the terms and conditions contained in this Agreement.

### Interpretation

5.1.1.1 In this Agreement unless the context otherwise requires:

**“Agreement”** means this agreement and includes the Schedules and any annexures or documents incorporated by reference;

**“Authority”** means the Authority of the State named in the description of the Parties at the commencement of this document and any reference to the Authority shall be read and construed as a reference to the Crown in right of the State of Victoria;

**“Authority’s Representative”** means the person nominated in Schedule 1 who shall represent the Authority for the purposes of this Agreement or such other person who may subsequently be appointed in writing by the Authority and notified to the Contractor;

**“Business Day”** means a day that is not a Saturday, a Sunday or a public holiday appointed under the Public Holidays Act 1993 including any day appointed by the Minister under Section 7 (1) (a) of the Act applicable to the Melbourne metropolitan area;

**“Code of Practice”** means a code of practice as defined in, and approved under, the *Information Privacy Act 2000* (Vic);

**“Commencement Date”** means the date so identified in Schedule 1;

**“Completion Date”** means the date so identified in Schedule 1;

**“Contractor”** means the person so named in the description of the Parties at the commencement of this document;

**“Contractor’s Representative”** means the person appointed by the Contractor to represent the Contractor for the purposes of this Agreement and so identified in Schedule 1 or such person as may subsequently be appointed by the Contractor and notified to the Authority in writing;

**“Contractor’s Staff”** means the persons named in Schedule 1 as the professional staff who will provide the Project Services or such persons who the Authority’s Representative shall otherwise agree may be engaged in the provision of the Project Services;

**“Fixed Project Fee”** means a fixed lump sum fee payable to the Contractor for the provision of the Project Services under clause 8 and Schedule 3;

**“GST”** means any tax imposed under any GST Law and includes GST within the meaning of the GST Act;

**“GST Act”** means the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) as amended;

**“GST Law”** means the GST Law as defined in the GST Act and includes any Act of the Parliament of Australia that imposes or deals with GST;

**“GST Related Tax Reform”** includes any changes, reductions or abolition of any State, Territory or Commonwealth taxes, excise, fees or imposts including, but not limited to, financial transactions tax, wholesale sales tax, stamp duty, debits tax, associated with the introduction of the GST Law;

**“Information”** means all information or data however held, stored or recorded including drawings, plans, specifications, calculations, reports, models, concepts, source codes, files, computerised data, photographic recordings, audio or audio visual recordings;

**“Information Privacy Principles”** means the Information Privacy Principles set out in the *Information Privacy Act 2000* (Vic.);

**“Intellectual Property”** includes all proprietary rights in relation to Information including copyright and neighbouring rights, and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

**“Invitation for Expression of Interest”** means the document issued by the Authority seeking expression of interest for the provision of the Project Services which document is incorporated into Schedule 2 to this Agreement; “**Performance Standards**” means the standards set out in clause 10 (b);

**“Project Brief”** means the document included in the Invitation for Expression of Interest which describes the Project Services to be performed by the Contractor;

**“Project Fees”** means the fees payable to the Contractor by way of Responses to Invitation of Expression of Interest Rates, or a Fixed Project Fee;

**“Project Fee Cap”** means the maximum fee payable to the Contractor for the provision of the Project Services under clause 8 and identified in Schedule 3;

**“Project Services”** means the services described in Clause 6, in the Invitation for Expression of Interest, in the Response to the Invitation to the Expression of Interest (the Tender), and in Schedule 2, which are to be performed by the Contractor in accordance with this Agreement;

**“Systems or Equipment”** means any systems or equipment used by or on behalf of the Contractor for the purpose of the provision of the Project Services or in support of the provision of the Project Services and includes any software, data base, hardware or other systems or equipment containing any of them or any micro-processing technology;

**“State”** means the Crown in right of the State of Victoria;

**“Tax Invoice”** has the same meaning as in the GST Act;

**“Tender”** means the Contractor’s response to the Invitation for Expression of Interest which response is incorporated into Schedule 2 to this Agreement;

**“Tendered Rates”** means the Contractor’s rates for the provision of the Project Services which rates are set out in Schedule 3;

**“Term”** means the term of this Agreement from the Commencement Date to the Completion Date or such further period as the parties may mutually agree to in writing.

5.1.1.2 A recital, schedule, annexure or a description of the parties forms part of this Agreement.

5.1.1.3 In this Agreement unless a contrary intention appears words importing a gender include any other gender and words in the singular include the plural and vice versa.

5.1.1.4 In this Agreement unless a contrary intention appears a reference to:

(a) “dollars” or “$” is a reference to the lawful currency of Australia;

(b) any legislation shall include any Act of Parliament and any subordinate legislation, rule, regulation, order or instrument made thereunder and shall include any statutory modification, substitution or re-enactment of such legislation;

(c) an individual or person includes a corporation, partnership, joint venture, association, governments, local government authorities and agencies;

(d) a recital, clause, schedule or annexure is a reference to a recital, clause, schedule or annexure to this Agreement; and

(e) a party to this Agreement includes the executors, administrators, successors and permitted assigns of that party.

5.1.1.5 Clause headings in this Agreement are for convenience of reference only and have no effect in limiting or extending the language of the provisions to which they refer.

5.1.1.6 In this Agreement if a word is defined cognate words and phrases have corresponding definitions.

5.1.1.7 If a party to this Agreement consists of more than one person those persons shall be jointly and severally bound under this Agreement.

5.1.1.8 This Agreement shall be subject to and construed in accordance with the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the courts of that State.

### Entire Agreement

This Agreement constitutes the entire agreement between the Authority and the Contractor in relation to the Project Services and any previous correspondence is expressly excluded. The Authority and the Contractor declare that there are no extraneous agreements, representations or undertakings either express or implied which affect this Agreement.

### Inconsistency

Where there is a variation or inconsistency between the provisions of the Schedules to this Agreement and the provisions of clauses 1 to 28 of this Agreement the provisions of clauses 1 to 28 shall prevail.

### Commencement and completion

5.1.4.1 The Contractor shall commence the Project Services on the Commencement Date and complete the Project Services by the Completion Date.

5.1.4.2 Time shall be of the essence in the provision of the Project Services.

### Liquidated damages

If the Contractor fails to –

(a) complete the provision of Project Services by the Completion Date; or

(b) fails to meet any specified delivery date nominated in Schedule 2;

Liquidated damages at the rate specified in Schedule 1 shall be paid by the Contractor to the Authority. The Parties agree that the liquidated damages specified constitute a fair and reasonable pre-estimate of the loss that will be suffered by the Authority.

### The project services

5.1.6.1 The Contractor shall provide the Project Services which shall conform to the Performance Standards and meet all other requirements set out in Schedule 2 and the Project Brief.

5.1.6.2 In addition to complying with the other provisions of this Agreement the Contractor shall comply with all statements or representations as to its performance or the provision of the Project Services contained in the Tender.

5.1.6.3 The Contractor shall carry out its obligations and duties and provide the Project Services in order to complete the provision of the Project Services to the reasonable satisfaction of the Authority’s Representative and shall exercise all due care skill and judgement and at all times act in accordance with all applicable professional standards, principles and practices.

5.1.6.4 The Contractor shall have regard to such requirements as may be conveyed to it by the Authority’s Representative and shall comply with all reasonable directions of the Authority’s Representative.

5.1.6.5 The Contractor shall permit the Authority’s Representative to enquire of, to confer with and counsel the Contractor and the Contractor’s Staff and shall do all that is within its power to facilitate any and all appropriate enquiries, conferences and counselling.

5.1.6.6 The Contractor shall provide the Authority’s Representative at intervals of not less than fourteen days with written reports as to the progress of the Project Services.

5.1.6.7 The Contractor shall supply to the Authority’s Representative such information as to the progress of the Project Services as he may from time to time reasonably require.

### Variation of termination of project services

5.1.7.1 The Authority may at any time, by giving written notice to the Contractor, terminate the provision of the Project Services and the Contractor shall on receipt of such notice immediately cease all work under the Agreement and take all appropriate action to mitigate any loss or prevent further costs being incurred with respect to the provision of the relevant Project Services. If the Authority elects to terminate under this clause 7.1 it shall pay the reasonable fees and expenses of the Contractor (based upon the Tendered Rates) for all work satisfactorily performed by the Contractor in accordance with the terminated Project Services but not any loss of prospective profits. In no circumstances shall the fees payable for terminated Project Services exceed the fees that would have been paid had the relevant Project Services been completed.

5.1.7.2 The Authority may at any time give written notice to the Contractor proposing a variation to the scope of the Project Services. The Contractor shall within five Business Days provide a written proposal as to varied costs that will apply for the provision of the varied Project Services. The Authority may accept the varied cost proposal within five Business Days of receipt from the Contractor but in the absence of such acceptance this Agreement shall continue as if no proposal under this clause 7.2 had been made.

### Fee for project services

5.1.8.1 The Authority will pay the Project Fees to the Contractor for the provision of the Project Services satisfactorily provided in accordance with this Agreement.

5.1.8.2 The Tendered Rates are fixed for the Term in accordance with the process outlined in the Invitation for Expressions of Interest Part B Section 5.

5.1.8.3 If a Fixed Project Fee is specified in Schedule 3 the Project Fees shall be that fixed lump sum fee. Payment at the Tendered Rates may also be subject to a Project Fee Cap and, if so, Project Fees shall not exceed that Project Fee Cap.

5.1.8.4 Progress payments will only apply if specified in Schedule 3 and will only be made in accordance with that Schedule.

5.1.8.5 The Project Fees are inclusive of all costs and expenses of the Contractor whether foreseen or unforeseen, including without limitation, insurance, duties, imposts and taxes and the GST (if any) which shall be paid by the Contractor.

5.1.8.6 The Contractor warrants that the Contractor has not in fixing the Project Fees and will not throughout the Term engage in “Price Exploitation” within the meaning of section 75AU of the Trade Practices Act 1974 (Commonwealth) and that all cost savings arising from the GST Related Tax Reform, resulting directly or indirectly in a reduction in cost to the Contractor of providing the Project Services, have been passed through to the Authority.

### Invoicing and payment

5.1.9.1 The Contractor shall give to the Authority’s Representative an invoice in respect of the Project Services as soon as practicable after, and, in any event, within thirty (30) days of the completion of the delivery of the Project Services.

5.1.9.2 Where Schedule 3 provides for progress payments, invoices for such payments may be submitted in arrears in accordance with the payment provision set out in the Schedule.

5.1.9.3 The invoice shall comply with the requirements of the GST Law (as a Tax Invoice) and shall, unless inconsistent with the GST Law, specify –

(a) the Contractor’s Australian Business Number;

(b) the Project Fee due to the Contractor and the basis for its calculation;

(c) the amount of any GST paid or payable by the Contractor with respect to the Project Fee;

(d) the date of delivery of the Project Services to which the invoice relates;

(e) a description (including quantity) of the Project Services delivered;

(f) the Contractor’s address for payment; and

(g) the Authority’s Reference number.

5.1.9.4 All invoices shall be certified for payment by the Authority’s Representative prior to payment. No invoice shall be certified for payment unless the Authority’s Representative is satisfied that the Project Services for which payment is sought have been satisfactorily completed.

5.1.9.5 Subject to certification under clause 9.4, the Authority shall pay the Project Fees to the Contractor within thirty (30) days of the receipt of the invoice.

5.1.9.6 Payment of an invoice is not:

(a) evidence or an admission that the Project Services have been provided in accordance with the Project Brief;

(b) evidence of the value of the Project Services provided;

(c) an admission that the Project Services invoiced were satisfactorily performed or expenses properly incurred;

(d) an admission of liability; or

(e) acceptance or approval of the Contractor’s performance;

but must be taken only as payment on account.

5.1.9.7 The Authority may set off against any sum owing to the Contractor any amount owing by the Contractor to the Authority.

### Contractor’s warranties

The Contractor hereby warrants that-

(a) the Project Services shall be carried out personally by the Contractor’s Staff;

(b) the Project Services shall be carried out with all due care and skill and in accordance with the applicable professional standards, principles and practices;

(c) it shall provide such further Information in relation to the provision of the Project Services as reasonably required by the Authority;

(d) the Information contained in the Tender as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor or the Contractor’s Staff is correct;

(e) the Contractor’s Staff are members of the professional body stated in the Tender and it is a condition of this Agreement that the Contractor’s Staff shall remain members whilst performing the Project Services;

(f) it has established and will comply with and maintain during the Term, the quality assurance arrangements set out in Schedule 2; and

(g) it will not enter into any exclusive arrangements with any parties other than the Authority in connection with project for which the Project Services are provided, without the prior written consent of the Authority (which may or may not be provided at the sole satisfaction of the Authority).

### Records

5.1.11.1 The Contractor shall:

(a) maintain full and proper records of the Project Services provided including the disbursements incurred and the number of hours worked by the Contractor’s Staff;

(b) provide copies of these records to the Authority’s Representative when required and allow the authorised representatives of the Authority to have access to and to inspect the relevant records at all reasonable times; and

(c) maintain such records for not less than six years after the Completion Date.

5.1.11.2 The Contractor shall permit an accountant or auditor on behalf of the Authority from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Contractor for the purposes of this Agreement. The Contractor, its servants, agents and subcontractors shall give all reasonable assistance to any person authorised to undertake such audit or inspection. Any information provided, or to which an accountant or auditor has access under this clause, shall be treated as confidential information and shall not be used other than for the purposes of this Agreement or disclosed other than as required at law or to meet any requirements of the Parliament of Victoria.

5.1.11.3 The confidentiality obligations of the parties shall not extend to:

(a) Information already in the public domain other than due to a breach of this Agreement;

(b) any disclosure required by law;

(c) any disclosure reasonably required in order to comply with a request for information made by the Auditor-General for Victoria; or

(d) information reasonably required in order to publish appropriate and comprehensive performance data relating to the Services under this Agreement.

### Contractor’s staff

The Project Services shall be provided by the Contractor’s Staff. Where the Contractor’s Staff are unable to undertake work in respect of the Project Services, the Contractor shall notify the Authority’s Representative immediately. The Contractor shall, if so requested by the Authority’s Representative, provide replacement staff to the reasonable satisfaction of the Authority’s Representative, at no additional charge and at the earliest opportunity.

### Confidentiality, security and privacy

5.1.13.1 The Contractor, under the conditions forming part of the Tender, has consented to the Authority publishing (on the internet or otherwise) the name of the Contractor and the contract value together with the conditions of this Agreement generally. Subject to this right of publication the Authority will treat as confidential all information provided to it in the Tender.

5.1.13.2 All Information provided to the Contractor by or on behalf of the Authority under this Agreement shall be treated as confidential by the Contractor. In clause 13 this Information is referred to as “Confidential Information”.

5.1.13.3 The Contractor agrees that the Contractor or its employees, agents, directors, partners, shareholders or consultants shall not disclose to any person, any Confidential Information or Information relating to the Authority or the affairs of others which may have come to its or their knowledge as a result of this Agreement or performance of the Project Services and shall take all necessary precautions to prevent unauthorised access to such Information.

5.1.13.4 All Confidential Information shall remain the property of the Authority and shall (where possible) be returned to the Authority’s Representative at the completion of the Project Services or upon the expiration or termination of this Agreement.

5.1.13.5 The Confidential Information supplied to the Contractor under this Agreement shall be used only for the provision of the Project Services or as directed by the Authority’s Representative and shall not be used for any other purpose.

5.1.13.6 The Contractor shall not divulge any Information regarding the nature or progress of the Project Services or give any publicity concerning the Project Services except with the written consent of the Authority’s Representative.

5.1.13.7 The Contractor acknowledges that the Authority shall be entitled (in addition to any entitlement to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the Contractor of this clause 13 and without the need on the part of the Authority to prove any special damage.

5.1.13.8 The Contractor shall require all of the Contractor’s Staff or any other person to whom Confidential Information shall be disclosed to execute a Deed of Confidentiality at the cost of the Contractor. Such Deeds of Confidentiality shall be made available to the Authority at the request of the Authority’s Representative or other authorised representative of the Authority.

5.1.13.9 The Contractor’s and the Authority’s obligations under this clause 13 shall not extend to:

(a) Information already in the public domain other than due to a breach of this Agreement; or

(b) any disclosure required by law.

5.1.13.10 The Contractor shall be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Contractor for the purposes of this Agreement in the same way and to the same extent as the Authority would have been bound by the Information Privacy Principles and any applicable Code of Practice in respect of that act or practice had it been directly done or engaged in by the Authority.

### Conflict of interest

5.1.14.1 The Contractor warrants that it does not hold any office or possess any property, is not engaged in any business, trade or calling and does not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with or might appear to be created in conflict with its duties and interests under this Agreement.

5.1.14.2 The Contractor shall immediately inform the Authority of any matter which may give rise to an actual or potential conflict of interest at any time during the Term and the Authority may regard a conflict of interest as a breach of a fundamental term of this Agreement and may elect to terminate the Agreement under the provisions of clause 17.

5.1.14.3 The Contractor acknowledges that the operation of this clause 14 precludes the Contractor from being engaged by any party other than the Authority in connection with project for which the Project Services are provided, without the prior written consent of the Authority (which may or may not be provided at the sole satisfaction of the Authority).

### Waiver

5.1.15.1 No right or obligation under this Agreement shall be deemed to be waived except upon written acknowledgment signed by each party.

5.1.15.2 A waiver by the Authority will not prejudice any of its rights in respect of any subsequent breach of this Agreement by the Contractor.

5.1.15.3 Subject to clause 15.1, any failure by the Authority to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by the Authority to the Contractor, is not to be construed as a waiver of its rights under this Agreement.

### Intellectual property

5.1.16.1 Warranty by Contractor

The Contractor warrants that it is entitled to use any Intellectual Property which may be used by it in connection with the provision of Project Services under this Agreement.

5.1.16.2 Indemnity by Contractor

The Contractor indemnifies and will at all times keep the Authority and the State indemnified against any action, claim, suit or demand, including a claim, suit or demand for or liability to pay compensation or damages and costs or expenses arising out of or in respect of any breach of any third party’s Intellectual Property rights relating to the provision of Project Services under this Agreement.

5.1.16.3 Material created is State’s Property

The ownership of all Intellectual Property in all Information created as a result of the provision of Project Services shall vest in the State. The Contractor hereby assigns ownership of all Intellectual Property rights in such Information to the State and will ensure that its employees, sub-contractors and agents execute all documents necessary to assign to the State all such rights.

### Termination

5.1.17.1 If a party to this Agreement fails to carry out any of its obligations or duties under this Agreement, the party not in breach may by notice to the party in breach specify the breach and request that the breach be remedied within 14 days after receipt of such notice.

5.1.17.2 If the defaulting party fails to remedy the breach within the period of the notice given under clause 17.1 this Agreement shall be terminated forthwith.

5.1.17.3 If the Contractor:

(a) being a partnership, company or other composite body undergoes a change in its structure which, in the reasonable opinion of the Authority’s Representative, limits the capacity of the Contractor to provide the Project Services or may affect the Contractor in carrying out its obligations and duties under this Agreement; or

(b) goes into liquidation or a receiver and manager or mortgagee’s or chargee’s agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors;

the Contractor must notify the Authority’s Representative immediately, and the Authority may terminate this Agreement immediately by written notice at its absolute discretion, or, if the Contractor is performing the Project Services in stages, the Authority, at any time after the end of a stage and before the Authority’s Representative gives a direction to the Consultant to start the next stage, may terminate this Agreement by giving written notice to the Contractor.

### Nature of engagement

5.1.18.1 The Contractor is engaged as an independent contractor and nothing in this Agreement shall be deemed to constitute the Contractor as an agent or employee of the Authority or the State and the Contractor shall not have any authority to incur and shall not incur any obligation or make or purport to make any representation on behalf of the Authority except with the express written instructions of the Authority.

5.1.18.2 The Contractor acknowledges that it is the employer of all or has otherwise engaged all personnel who will provide the Project Services, including the Contractor’s Staff, and the Contractor shall meet all payment obligations to such personnel and shall pay all statutory taxes, fees, levies or charges applicable with respect to the engagement of or payments made to such personnel. The Contractor shall comply with all reasonable requests for verification of such payment obligations received from the Authority.

5.1.18.3 The Project Fees are inclusive of Pay-roll Tax and if this Agreement is deemed to be an “employment agency contract” under the Pay-roll Tax Act 1971, the Contractor shall pay the Pay-roll Tax on behalf of the Authority with respect to all wages paid or payable as defined in the Act. The Contractor will register with the Commissioner of State Revenue for the purpose of payment of such tax and shall keep all appropriate records of tax paid on behalf of the Authority. The Contractor shall provide monthly reports to the Authority as to the wages declared, the tax paid and the specific employees to whom the wages and payment relate.

5.1.18.4 The Contractor indemnifies and shall keep the Authority indemnified against:

(a) any obligation to make payments to Contractor’s Staff and other personnel engaged in the provision of the Project Services, and

(b) any obligation to pay any related statutory taxes, fees, levies or charges.

### Indemnity

5.1.19.1 The Contractor indemnifies the Authority its employees and agents against all damages, costs, expenses, loss or damage which they may incur or sustain and all actions, proceedings, claims and demands whatsoever which may be brought or made against it or them by any person in respect of or by reason of or arising out of:

(a) the performance by or on behalf of the Contractor of the Project Services;

(b) any negligence or other wrongful act or omission of the Contractor or the Contractor’s Staff or other employees, or sub-contractors or of any other persons for whose acts or omissions the Contractor is vicariously liable;

(c) any negligence or other wrongful act or omission of the Contractor’s visitors, invitees or licensees;

(d) death, injury, loss of or damage to the Contractor, the Contractor’s Staff or its other employees, agents, sub-contractors, licensees, invitees or visitors; and

(e) any breach of this Agreement by the Contractor.

5.119.2 The Contractor’s liability under this clause shall be reduced to the extent to which any action, proceeding, claim or demand arises out of any negligence or other wrongful act or omission of the Authority or its employees or agents.

### Insurance

5.1.20.1 Professional Indemnity Insurance

The Contractor shall effect and maintain a professional indemnity insurance policy for the Term. Such insurance shall be for an amount mutually agreed and not less than that stated in Schedule 1. The policy shall be with an insurer and include terms and conditions reasonably acceptable to the Authority. The Contractor shall maintain a policy of insurance on similar terms for a period of six years after expiration of the Term.

5.1.20.2 Public Liability Insurance

The Contractor shall maintain an appropriate Public Liability policy of insurance covering the Contractor in respect of any claim arising from or related to the provision of the Project Services. Such policy shall be for an amount not less than that stated in Schedule 1 and the insurer shall note on the relevant policy the interests of the Authority under this Agreement.

5.1.20.3 Proof of Policies

The Authority may require the Contractor to provide proof that the policies of insurance required in clauses 20.1 and 20.2 have been effected and maintained. The Authority may terminate this Agreement if the Contractor does not comply with this clause.

### Severability

Any provision in this Agreement which is invalid or unenforceable is to be read down if possible, so as to be valid and enforceable, and if that is not possible the provisions shall, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

### Variation of agreement

A variation of this Agreement shall only be made by agreement in writing by the Parties.

### Disputes

5.1.23.1 Mediation

(a) If any dispute in relation to this Agreement or a Purchase Order Contract arises between the Parties any party to the dispute may by notice to the other party (a “Dispute Notice”) refer the dispute to the Panel for resolution. The Dispute Notice must specify in reasonable detail the nature of the dispute.

(b) The Panel in respect of a dispute shall consist of:

* 1. the Authority’s Representative ; and
  2. the Contractor’s Representative.

(c) If the dispute is referred to the Panel, the Panel shall meet to resolve the dispute within five Business Days of service of a Dispute Notice and a decision of the Panel shall be binding on the Parties.

(d) If the Panel does not resolve the dispute within ten Business Days of service of the Dispute Notice either party may refer the dispute for Expert determination.

5.1.23.2 Expert determination

(a) If a dispute is referred for Expert determination the Panel shall appoint as Expert in relation to that dispute a qualified person considered appropriate by the Panel. If the Panel cannot agree on such appointment within ten Business Days of service of the Dispute Notice the Expert shall be appointed by the President of the Law Institute Victoria.

(b) The Expert shall fix a time for presentation to the Expert by the Parties of their respective positions and shall inform the Parties accordingly. Unless the Parties otherwise agree, the presentation must be no later than five Business Days after the Expert’s appointment.

(c) The Expert must make a determination or finding in respect of the dispute within ten Business Days after the presentation referred to in paragraph 23.2(b)

(d) Any determination of a dispute by the Expert shall include a determination as to the award of costs.

(e) Any determination made by the Expert shall be binding on all Parties.

(f) The Expert shall act as an expert and not as an arbitrator.

5.1.23.3 Performance during dispute resolution

The Parties shall continue to perform their respective obligations under this Agreement pending resolution of a dispute.

5.1.23.4 Interlocutory relief

The Parties shall not oppose any application for interlocutory relief pending resolution of a dispute under this clause 23.

### Sub-contracting or assignment

5.1.24.1 The Contractor shall not without the prior written approval of the Authority subcontract or assign the performance of any of the Project Services to be provided or any rights or obligations under this Agreement. In giving written approval the Authority may impose such terms and conditions as it considers appropriate.

5.1.24.2 The Contractor shall be fully responsible for carrying out the Project Services notwithstanding that the Contractor has sub-contracted or assigned the performance of any part of these Project Services.

### Ethical employment and Victorian Industry Participation

5.1.25.1 The Contractor shall not be in breach of the Commonwealth Affirmative Action (Equal Opportunity for Women) Act 1986 (Commonwealth) during the Term.

5.1.25.2 The Contractor shall comply with the ethical employment conditions set out in Schedule 4.

### Compliance with laws

The Contractor shall ensure that in carrying out the Project Services under this Agreement it shall comply with the requirements of the provisions of all Acts of the Parliament of the Commonwealth and with the requirements of the provisions of all Acts of the Parliament of Victoria and with the requirements of all ordinances, regulations, by-laws, orders and proclamations made or issued under any such Acts or Ordinances and with the lawful requirements of public and other authorities in any way affecting or applicable to the provision of the Project Services.

### Surviving obligations

The obligations of the Contractor under clauses 10, 11, 13, 16, 18, 19, and 20.1 shall survive the termination or expiration of this Agreement.

### Service of documents

5.1.28.1 All notices and documents required to be delivered or served by one Party to this Agreement on the other may be delivered or served by delivering or sending them by pre-paid post, facsimile, pre-paid courier as follows:

(a) to the Authority at the address which is set out in Schedule 1

(b) to the Contractor at the address which is set out in Schedule 1.

5.1.28.2 A notice or document shall be taken to be delivered or served as follows:

(a) in the case of delivery in person, when delivered;

(b) in the case of delivery by post, two business days after the date of posting; and

(c) in the case of facsimile transmission, on receipt by the sender of a transmission report from the despatching machine showing the date of transmission, the relevant number of pages, the correct telephone number of the destination facsimile machine and the result of the transmission as satisfactory,

but if the result of the foregoing is that a Notice would be taken to be given or made on a day which is not a normal business day in the place to which the Notice is sent or is later than 4.00 pm (local time) it will be taken to have been duly given or made at the commencement of business on the next normal business day in that place.

5.1.28.3 The provisions of this clause are in addition to any other mode of service permitted by law.

In witness whereof the Parties have executed this Agreement on the day and year first written above.

Signed by Peter Seamer \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For and on behalf of the **VICTORIAN PLANNING AUTHORITY** in the presence of:

Witness: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXECUTED**

**Contractor**

Director: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For and on behalf of the **Contractor** in the presence of:

Witness: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## SCHEDULE 1 – Agreement

**Item (i) Name of Contractor:**

**Item (ii) Address for service on the State:**

Victorian Planning Authority

Level 25, 35 Collins Street

MELBOURNE VIC 3000

**Item (iii)** The Authority is the Victorian Planning Authority

**Item (iv)** The Authority’s Representative shall be Peter Seamer or the person occupying the position of the Chief Executive Officer, Victorian Planning Authority.

Telephone number: (03) 9651 9600

**Item (v)** **Insurance:**

**Professional Indemnity** $5,000,000 in aggregate

**Public Risk** $10,000,000 per occurrence

**Item (vi)** The **Commencement Date** is XXX

The **Completion Date** is XXX

**Item (vii) Contractor’s Staff:**

**Item (viii) Liquidated Damages** nil

## Project Services

The Project Services are described in the following documents (which documents are hereby incorporated into this agreement) namely:

(a) Project Brief (Part B - Specification);

(b) the Contractor’s Tender Response - Part D;

(c) any published specifications and other representations (including advertised claims) of the Contractor and in relation to the Project Services; and

(d) the following documents which modify the original specifications (insert details of letters):

In interpreting the documents which describe the Project Services, the following order of precedence shall apply to the extent of any inconsistency:

(a) The Agreement;

(b) The Schedules;

(c) The Tender.

**Work Program**

Tenderers must detail an outline of their proposed project plan and methodology for the delivery of this project. It should include comment on the feasibility of the time frames shown and submit the time frames that they propose.

**Liquidated Damages**

For the purpose of clause 5 liquidated damages (as specified in Schedule 1) shall apply if the Contractor fails to meet the following date or dates for the delivery of the Project Services

## Tendered Rates

See Part D – Registrants response

## Ethical Purchasing Policy

### Definitions

For the purpose of this clause, the following definitions apply.

**Adverse Assessment** means an assessment by the Authority pursuant to the Ethical Purchasing Policy that, in the opinion of the Authority, the Contractor does not satisfy the Ethical Employment Standard.

**Applicable Industrial Instruments and Legislation** means all Applicable Industrial Instruments and all Applicable Legislation.

**Applicable Industrial Instrument** means an industrial instrument (award or enterprise agreement) that specifically applies to the employees of the Contractor and is binding on it.

**Applicable Legislation** means:

* *Federal Awards (Uniform System) Act* 2003 (Vic)
* *Outworkers (Improved Protection) Act* 2003 (Vic)
* *Dangerous Goods Act* 1985 (Vic)
* *Equipment (Public Safety) Act* 1994 (Vic)
* *Occupational Health and Safety Act* 1985 (Vic)
* *Workplace Relations Act* 1996 (Cwlth)
* *Long Service Leave Act* 1992 (Vic)
* similar Acts in States and Territories other than Victoria
* any other legislation designated by the Victorian Government as Applicable Legislation under the Ethical Purchasing Policy from time to time.

**Award** means any award of the Australian Industrial Relations Commission or any tribunal empowered to make industrial awards for Victorian employees or employees in any other State or Territory.

**Enterprise Agreement** means any certified agreement of the Australian Industrial Relations Commission or State industrial authority.

**Ethical Employment Standard** is the requirement for persons that supply or propose to supply goods and services to the Victorian Government to demonstrate to the reasonable satisfaction of the government buyer, and in accordance with the requirements of the Ethical Purchasing Policy, that the relevant contracting or Response to Invitation for Expression of Interest entity meets its obligations to its employees under Applicable Industrial Instruments and Legislation at the time a contract is awarded and continues to meet such obligations during the term of that contract.

**Ethical Employment Reference Register** has the meaning attributed to it in the Ethical Purchasing Policy.

**Ethical Employment Statement** has the meaning attributed to it in the Ethical Purchasing Policy.

**Ethical Purchasing Policy** means the Victorian Government's Ethical Purchasing Policy supporting fair and safe workplaces, which is published on the Victorian Government Purchasing Board web site at [www.vgpb.vic.gov.au](http://www.vgpb.vic.gov.au).

**Full Details** meansdetails of**:**

* the nature of the breach or offence or alleged breach or offence;
* any conviction recorded or adverse finding made in respect of the breach or offence;
* any penalty or orders imposed by a court, tribunal, commission or board in respect of the breach or offence and the maximum penalty that could have been imposed under the Applicable Industrial Instruments and Legislation;
* the name of the court, tribunal, commission or board, the State or Territory in which the proceeding or prosecution is brought, the date on which the proceeding or prosecution was commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, commission or board;
* the name of the entity against which the finding or conviction was made or the proceeding or prosecution was initiated;
* this Contract; and
* further information about any of the above, if required by the Authority

**Law** means the law in force in the jurisdiction in which the obligations under this Contract are to be performed including without limitation, common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-law, ordinances or other legislative or regulatory measures and includes any amendment, modification or re-enactment of them.

### Supplier to satisfy the Ethical Employment Standard

Without limiting or derogating from the Contractor’s obligation to comply with any Law, the Contractor must satisfy the Ethical Employment Standard at all times during the Term of this Contract.

### Satisfaction of the Ethical Employment Standard

The Authority may make an Adverse Assessment if, at any time during the Term of the Contract:

(a) a court, tribunal, commission or board makes a finding of a serious breach of an Applicable Industrial Instrument against the Contractor or convicts the Contractor of a serious offence under Applicable Legislation; or a court, tribunal, commission or board makes a finding of a breach of an Applicable Industrial Instrument against the Contractor or convicts the Contractor of an offence under Applicable Legislation that is part of a pattern of repeated or ongoing breaches or offences; or

(b) the Contractor fails to meet is disclosure obligations under clause1.4

### Obligation to disclose during the term of the contract

The Contractor must, on request by the Authority and within the time period required by the Authority in writing (which must not be less than 30 days) provide an up-to-date Ethical Employment Statement setting out Full Details of:

(a) any adverse finding against the Contractor by a court, tribunal, commission or board in respect of a breach of an Applicable Industrial Instrument;

(b) any conviction by a court, tribunal, commission or board of a offence committed by the Contractor under Applicable Legislation; and

(c) any proceeding or prosecution against the Contractor in respect of a breach of an Applicable Industrial Instrument or a offence under Applicable Legislation instituted since the Commencement Date of the Contract which has not previously been disclosed to the Authority.

The up-to-date Ethical Employment Statement may, at the option of the Contractor, also include details of remedial measures implemented to ensure future compliance with Applicable Industrial Instruments and Legislation.

### Ethical Employment Standard not satisfied

(a) If at any time during the term of the Contract, the Authority notifies the Contractor in writing that it has made an Adverse Assessment pursuant to clause 1.3 the Contractor must, within 14 days of receipt of such notice, or such longer period agreed by the Authority, provide a statutory declaration from a director or company secretary of the Contractor setting out:

* 1. any additional information which in the opinion of the Contractor is relevant to the Adverse Assessment, including the Contractor's grounds for any objection to the Adverse Assessment;
  2. details of any information on which the Adverse Assessment is based which in the opinion of the Contractor is incorrect, incomplete or otherwise unfairly prejudicial to the Contractor;
  3. any existing or planned remedial measures which the Contractor has taken or will be taking to prevent a breach or offence similar to the breach or offence on which the Adverse Assessment is based from recurring.

(b) Following the receipt of the statutory declaration or expiration of the period described in paragraph (a) whichever comes first, the Authority may, in its discretion, do one or more of the following:

* 1. request the Contractor show cause as to why this Contract should not be suspended or terminated with effect from 14 days; and/or
  2. suspend the operation of this Contract for a specified period of up to 6 months with 14 days notice; and/or
  3. terminate this Contract with 14 days notice;

(c) In exercising its discretion under paragraph (b), the Authority will take into consideration:

* 1. whether the Contractor has taken or will take measures which, in the reasonable opinion of the Authority, are commensurate with the breach or the offence on which the Adverse Assessment is based and can be reasonably expected to prevent such breach or offence from recurring; or
  2. whether the Authority is otherwise satisfied that the Contractor has shown good cause why the Contract should not be suspended or terminated,

(d) The remedies under this clause are in addition to and do not limit any other rights or remedies of the State under this document or otherwise at law.

### Ethical employment reference register

The parties acknowledge and agree the following:

(a) If this Contract is terminated pursuant to this clause, the Contractor's name and details (including its Australian Business Number) will be included in the Ethical Employment Reference Register for a period of 24 months from the date termination takes effect.

(b) The Victorian Planning Authority will access the Ethical Employment Reference Register for the purpose of applying the Ethical Purchasing Policy.

(c) Inclusion of any details in the Ethical Employment Reference Register is one factor in the assessment process of whether a tenderer satisfies the Ethical Employment Standard, and will not automatically exclude the Contractor from participation in future Tender Processes.

# **Part D Tenderer’s Response**

Tenderers must provide an electronic copy of the Tenderer’s Response in a format compatible with Microsoft Office 2013, submitted in accordance with the Conditions of Tender.

All responses must be provided within the specified boxes and must respond to the Specification (Part B) and Proposed Contract (Part C) in accordance with the Conditions of Tendering (Part A).

Do not include graphics or data in responses. Where necessary, any graphics or data should be placed at the end of the documents and referred to in the response.

Include the name of the Tenderer in the footer of the Tender.

All documents must be virus checked by the Tenderer before lodgement.

**Victorian Planning Authority**

**Request for Tender for Finance ERP System**

**Reference number:** FINANCE2016

I accept the provisions contained in the Conditions of Tendering.

|  |  |
| --- | --- |
| Tenderer’s Information | |
| Name of Tenderer and address of registered office: |  |
| Place of registration: |  |
| Australian Company Number: |  |
| Australian Business Number: |  |
| Principal office in Victoria (if any): |  |
| Telephone: |  |
| Email: |  |
| Name and title of Tenderer’s authorised agent: |  |
| Signature: |  |
| Date: |  |

## Executive Summary

Please provide a brief executive summary of your response to the tender.

## Understanding/compliance with the specification

A tenderer must provide a tabulated statement showing clearly, and in order of the relevant sections, its level of compliance with Part B (Specification). As outlined in 4.5 Project Scope, tenderers are invited to propose either a cloud-based solution, and on premise based solution or both. Tenderers will be required to address different specification requirements based on which solution they are proposing, this is detailed in 4.5. Refer to Part A (Conditions of Tender) section 2.1.7 for further instructions.

Note: No response is required in respect of a particular section of the Specification where a Tenderer will comply with that section.

*Example:*

|  |  |  |
| --- | --- | --- |
| Understanding/Compliance with the specification | | |
| Section | **Compliance statement**  *The cells in this column need to state one of the following:*   * *Will comply subject to conditions; or* * *Will not comply* | **Explanation/Comment**  *Where the statement in column 2 is “Will comply subject to conditions”, Tenderers should state in this column the applicable conditions and the reason why those conditions are applicable.*  *Where the statement in column 2 is “Will not comply” Tenderers should state in this column the reasons for such non-compliance.*  *In both cases, the nature and extent of non-compliance must be clearly stated.* |

**Alternative Tender**

Where a Tenderer also submits an Alternative Tender, it must include any supplementary material, together with associated prices, which demonstrates in detail that such an alternative will fully achieve and/or exceed all the specified outputs of functional and performance requirements together with references as to why the additional features may be advantageous. The details should be cross referenced to the appropriate clause number in the Specifications.

## Methodology/Project Plan

Please provide details of your approach to the supply of the services.

## Prior experience

|  |  |
| --- | --- |
| Prior experience | |
| Details of your organisation’s knowledge and experience relevant to this project. |  |
| Details of staff and resources to be dedicated to the project, and their experience relevant to this project area. |  |
| Details of your referees (3).  Please provide details, contact names and numbers, and description of the work undertaken for that organisation. |  |
| A brief curriculum vitae for each member of staff you are proposing for the work including details of qualifications and skills. |  |
| Details of each proposed sub-contractor to be engaged in connection with the provision of the project requirements. Also, please define the scope and extent of services to be provided by sub-contractors. |  |

## Capacity

|  |  |
| --- | --- |
| Capacity | |
| Details of the capacity of your team to provide the services to the timescales and budget set out in Part B. |  |
| Explain how your project methodology would enable timescales to be met. |  |

## Price and costings

|  |  |
| --- | --- |
| Price and costings | |
| Please specify your total contract amount as a fixed lump sum, GST inclusive to deliver the Services. |  |
| Please provide pricing per module, with core and optional modules identified as well as pricing per license and maintenance fees. |  |
| Please specify the estimated hours associated with the scope of works and the hourly rates for each member of the team. |  |
| Please provide details of other costs associated with this contract. |  |
| Please provide details of ongoing consultancy rates. |  |

All prices should be inclusive of GST.

## Milestones

Please provide details of project milestones, indicating the proportion of the total project fee tendered to be attributed to each completed milestone.

|  |  |  |
| --- | --- | --- |
| Price and costings | | |
| Milestone (Task) | Lump Sum $ | % of total fixed fee per stage |

## Financial viability

Tenderers are required to demonstrate that they have the financial capacity to provide, over the term of the contract, all the requirements specified in this RFT. Accordingly, you are required to provide the following information.

If the answer to any of the following questions is “yes”, provide an explanation, except point (i) where the answer is “no” an explanation is required.

|  |  |
| --- | --- |
| Financial viability | |
| 1. Are there any significant events, matters or circumstances which have arisen since the end of the last financial year which may significantly affect the operations of the Tenderer? |  |
| 1. Are there any mergers/acquisitions either recent (within the past 12 months) or which are imminent? |  |
| 1. Are there any proceedings, either actual or threatened, against the Tenderer, its parent or associated entities or any director of the Tenderer, or have there been any such proceedings within the past five years? If so, what (if any) remedial action has been taken in respect of such proceedings? |  |
| 1. Are there any bankruptcy actions against a director of the Tenderer, its parent or associated entities, or has there been within the past five years? |  |
| 1. Are there any de-registration actions against the Tenderer, its parent or associated entities on foot, or have there been any within the past five years? |  |
| 1. Are there any insolvency proceedings, actual or threatened (including voluntary administration, application to wind up, or other like action) against the Tenderer, its parent or associated entities on foot, or have their been any within the past five years? |  |
| 1. Is the Tenderer, its parent or associated entities currently in default of any agreement, contract, or order or award that would be likely to adversely affect the financial capacity of the Tenderer to provide the Goods and/or Services contemplated by this RFT |  |
| 1. Are there any other factors which could adversely impact on the financial ability of the Tenderer to successfully perform the obligations contemplated by this RFT? |  |
| 1. Is the Tenderer solvent and able to meet its debts as and when they fall due in the normal course of business? |  |

In addition to the information required above, Tenderers are required to undertake to provide to the Agency (or its nominated agent) upon request all such information as the Agency reasonably requires to satisfy itself that Tenderers are financially viable and have the financial capability to provide the Goods and/or Services for which they are tendering and to otherwise meet their obligations under the Proposed Contract. Please provide your undertaking to comply with this request.

## Risk and Insurance

|  |  |
| --- | --- |
| Risk and Insurance | |
| Schedule of insurance information.  Provide details of all relevant insurances maintained by the Tenderer. | Name of insurance companies:  Policy type:  Policy number(s):  Expiry dates:  Limit of liability:  Relevant exclusions: |
| Risk management strategies  Provide details of all risk management strategies and practices of the Tenderer that would be applicable or relevant in the context of the supply of the Goods or Services. |  |
| Quality standards  Provide details of all quality standards, practices and assurance systems of the Tenderer that would be applicable or relevant in the context of the supply of the Goods or Services. |  |
| Health, safety and environment  Provide a summary of the Tenderer’s HSE Policy and evidence of any third party accreditation that would be applicable or relevant in the context of the supply of the Goods or Services. |  |

## Compliance with the proposed contract

A Tenderer must provide a tabulated statement showing clearly, and in order of the relevant clauses, its level of compliance with Part C (Proposed Contract). Refer section 7.2, Part A (Conditions of Tender) for further instructions.

Note: No response is required in respect of a particular clause of the Proposed Contract where a Tenderer will comply with that clause.

*Example:*

|  |  |  |
| --- | --- | --- |
| Compliance with the proposed contract | | |
| Clause number | **Compliance statement**  *The cells in this column need to state one of the following:*   * *Will comply subject to conditions; or* * *Will not comply* | **Explanation/Comment**  *Where the statement in column 2 is “Will comply subject to conditions”, Tenderers should state in this column the applicable conditions and the reason why those conditions are applicable.*  *Where the statement in column 2 is “Will not comply” Tenderers should state in this column the reasons for such non-compliance.*  *In both cases, the nature and extent of non-compliance must be clearly stated, together with any amendments that would make the relevant clause acceptable to the Tenderer* |

## Conflict of interest

The tenderer warrants that:

it does not have any actual or potential conflicts of interest in connection with the RFT or its Tender;

it does not have any actual or potential conflicts of interest in connection with the RFT or its Tender, except as indicated below;

and it will notify the VPA immediately upon becoming aware of any actual or potential conflict of interest and will provide details of the strategy it has or will put in place to deal with that conflict.

|  |  |
| --- | --- |
| Conflicts of interest | |
| Please provide details of any engagements, obligations or commitments that the Tenderer or any of its partners, staff or consultants have or are likely to acquire which may give rise to any actual or perceived conflict of interest with any of the services that may be required as a result of this Request for Tender process or in connection with the proposed contract. |  |
| Please advise of details of any strategy for identifying, managing and preventing conflicts of interest. |  |

## Ethical Purchasing Policy

|  |  |
| --- | --- |
| Ethical Purchasing Policy | |
| It is a condition of tendering for purchases of goods or services valued at $100,000 or more or where the tenderer participates in a high risk industry that shortlisted tenderers are required to complete an Ethical Employment Statement (RFT Part E) demonstrating that they satisfy the ethical employment standard set out in the Victorian Government Ethical Purchasing Policy ([www.vgpb.vic.gov.au](http://www.vgpb.vic.gov.au)). Shortlisted Tenderers who do not comply with a request to provide Part E within the timeframes specified by the Agency will be disqualified from the Tendering Process.  The names of Tenderers who submit an Ethical Employment Statement and are assessed by the Agency as not satisfying the Ethical Employment Standard will be placed on the Ethical Employment Reference Register.  Response required: Understood and agreed. |  |

## Any other matters

|  |  |
| --- | --- |
| Any other matters | |
| Detail any matters which have not been covered in previous sections, and you believe need to be taken into consideration when your Tender is evaluated. |  |

## Disclosure of contract information

The Conditions of Tender include a provision for disclosure of contract information, refer to Attachment A. Identify any information if your Tender which you consider falls within the following categories and which you consider should not be published.

|  |  |
| --- | --- |
| Disclosure of contract information | |
| 1. Trade secrets |  |
| 1. Unreasonable disadvantage |  |

# **Part E Ethical Purchasing Policy**

The information sought in this RFT Part E relates to RFT Part A – Conditions of Tendering.

|  |  |
| --- | --- |
| Tenderer’s Information | |
| Name of the Tenderer: |  |
| ABN of the Tenderer: |  |
| Name of the Agency: |  |
| RFT Number: |  |
| Description of the RFT: |  |
| Telephone: |  |
| Email: |  |
| Date of submission of this RFT Part E: |  |

## Ethical Purchasing Policy

For a Tender Process to which the Ethical Purchasing Policy applies, shortlisted Tenderers (or, where there is no short listing, such Tenderers as determined by the Agency) are required to complete an Ethical Employment Statement. These statements will be used to assess whether shortlisted Tenderers satisfy the ethical employment standard.

The **ethical employment standard** is the requirement for businesses that supply or propose to supply goods and services to the Victorian Government to demonstrate to the reasonable satisfaction of the agency, and in accordance with the requirements of the Ethical Purchasing Policy, that the relevant contracting or tendering entity meets its obligations to its employees under **Applicable Industrial Instruments and Legislation** at the time a contract is awarded and continues to meet such obligations during the term of that contract.

Details of Applicable Industrial Instruments and Legislation are set out in the Ethical Purchasing Policy located at [www.vgpb.vic.gov.au](http://www.vgpb.vic.gov.au).

When notified by the Agency, shortlisted Tenderers are required to complete sections 1 to 5 of this RFT Part E within the timeframe specified by the Agency.

The Agency may request further details about the information provided by the Tenderer in this Ethical Employment Statement.

The State will not enter into contracts with Tenderers that do not satisfy the ethical employment standard. Such Tenderers will be disqualified from the Tendering Process and their names will be placed on a register maintained by the Department of Treasury and Finance (the Ethical Employment Reference Register) for a period of 24 months from the date the Tenderer is disqualified from the Tendering Process.

The Tenderer will be informed if, in the assessment by the Agency, it has failed to satisfy the ethical employment standard before disqualification occurs. The Tenderer will have an opportunity to provide additional information at that time.

## Background

The Victorian Government's Ethical Purchasing Policy applies to Tendering Processes and contracts for the purchase of goods and services valued at or above $100,000 (including the establishment of whole-of-government contracts and standing offer arrangements) which commenced on or were entered into after 1 January 2004. The policy will also be applied to purchases under $100,000 for products and services in industries which are considered by the Agency to be high risk, such as textiles, clothing and footwear, cleaning and security services. Information about the Ethical Purchasing Policy is detailed on the Victorian Government Purchasing Board web site at [www.vgpb.vic.gov.au](http://www.vgpb.vic.gov.au).

The Ethical Purchasing Policy provides that the State will not enter into a contract to which the policy applies with any Tenderer that cannot satisfy the ethical employment standard.

The **ethical employment standard** is the requirement for persons that supply or propose to supply goods and services to the Victorian Government to demonstrate to the reasonable satisfaction of the government buyer, and in accordance with the requirements of the Ethical Purchasing Policy, that the relevant contracting or tendering entity meets its obligations to its employees under Applicable Industrial Instruments and Legislation at the time a contract is awarded and continues to meet such obligations during the term of that contract. Details of Applicable Industrial Instruments and Legislation are set out in the Ethical Purchasing Policy.

It is a condition of all Tendering Processes to which the Ethical Purchasing Policy applies that all shortlisted Tenderers will be required to complete an **Ethical Employment Statement** (RFT Part E) in the timeframe specified by the Agency. A Tenderer who does not submit an Ethical Employment Statement when required to do so by an Agency will be disqualified from the Tendering Process. The Agency will assess whether a Tenderer satisfies the ethical employment standard in accordance with the Process Guidelines for Government Buyers. The assessment will be based on:

* any findings against the Tenderer by a court, tribunal, commission or board of a breach of an applicable industrial instrument (award or agreement binding on the Tenderer), including a finding of a breach in a non-confidential consent order, in the preceding 24 months
* any convictions under applicable legislation (detailed in the Ethical Purchasing Policy) in the preceding 24 months
* any current proceedings or prosecutions in respect of a breach of an applicable industrial instrument or an offence under applicable legislation
* remedial measures implemented to ensure future compliance with applicable industrial instruments and legislation.

The assessment will consider:

* the seriousness of breaches or offences which are the subject of an adverse finding or conviction
* the number of adverse findings or convictions
* whether there is a pattern of continued breaches or convictions (including, for the purposes of determining a pattern of continued breaches only, whether there are any current proceedings or prosecutions before a court, tribunal, commission or board)
* whether remedial measures are commensurate with the breach or offence and in the reasonable opinion of the Agency, can be reasonably expected to prevent such breach or offence from recurring.

The information in a Tenderer's ethical employment statement will be used to assess whether the Tenderer satisfies the ethical employment standard. If, in the Agency’s assessment, the Tenderer does not satisfy the ethical employment standard, the Tender will be liable to be disqualified. Tenderers will be provided with an opportunity to submit additional information or an explanation about information contained in their ethical employment statement before disqualification of their Tender occurs.

The name of the disqualified Tenderer will be placed on a register maintained by the Department of Treasury and Finance (the **Ethical Employment Reference Register**) for a period of 24 months from the date the Tenderer is disqualified from the Tendering Process.

Once a Tenderer is offered a contract to which the Ethical Purchasing Policy applies, it must continue to satisfy the ethical employment standard during the period of the contract. Contract conditions will allow a department to request further ethical employment statements from the Contractor. The contract will also permit the termination of a contract if a Contractor does not satisfy its disclosure obligations or maintain the ethical employment standard during the term of the contract.

The name of any Contractor who has had a contract with the State entered into after 1 January 2004 terminated on the grounds that they did not continue to satisfy the ethical employment standard during the term of that contract will be placed on the Ethical Employment Reference Register for a period of 24 months from the date the termination of the contact takes effect.

Victorian Government departments may access the Ethical Employment Reference Register for the purpose of determining whether the Tenderer has not met the ethical employment standard for other Tendering Processes, i.e. has not satisfied the standard in the past. **A Tenderer whose name is on the Ethical Employment Reference Register will not be excluded from other government business opportunities solely on the basis that its name appears on the register.**

Where there is no shortlisting process (for example, if there is a small number of bidders in the initial Tendering Process), Agencies will determine the appropriate Tenderers to complete RFT Part E.

## Definitions

**Full Details** means details of:

* the nature of the breach or offence or alleged breach or offence;
* any conviction recorded or adverse finding made in respect of the breach or offence;
* any penalty or orders imposed by a court, tribunal, commission or board in respect of the breach or offence and the maximum penalty that could have been imposed under the Applicable Industrial Instruments and Legislation;
* the name of the court, tribunal, commission or board, the State or Territory in which the proceeding or prosecution is brought, the date on which the proceeding or prosecution was commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, commission or board;
* the name of the entity against which the finding or conviction was made or the proceeding or prosecution was initiated;
* this Contract; and
* further information about any of the above, if required by the Agency.

**Tendering entity** means the legal entity (individual or company) that will enter into a contract with the State at the end of the Tendering Process. Partnerships, unincorporated joint ventures or consortia planning to enter into a contract with the State will need to complete an Ethical Employment Statement for each entity forming part of the bidding team.

|  |  |
| --- | --- |
| Ethical Purchasing Policy | |
| 1. Provide details of any industrial instrument (award or agreement) that specifically applies to the employees of the tendering entity and is binding on it (applicable industrial instruments). |  |
| 1. Provide Full Details of any findings against the tendering entity by a court, tribunal, commission or board of a breach of an applicable industrial instrument, including a finding of a breach in a non-confidential consent order, in the preceding 24 months. |  |
| 1. Provide Full Details of any convictions under the following legislation, proceeding or subsequent legislation, (applicable legislation) in the preceding 24 months:  * *Dangerous Goods Act 1985* (Vic) * *Equipment (Public Safety) Act 1994* (Vic) * *Federal Awards (Uniform System) Act 2003* (Vic) * *Long Service Leave Act 1992* (Vic) * *Occupational Health and Safety Act 2004* (Vic) * *Outworkers (Improved Protection) Act 2003* (Vic) * *Workplace Relations Act 1996* (Cwlth) * Any other legislation designated by the Victorian Government as applicable legislation under the Ethical Purchasing Policy from time to time. |  |
| 1. Provide Full Details of any current proceedings or prosecutions in respect of a breach of an applicable industrial instrument or an offence under applicable legislation. |  |
| 1. Provide details of remedial measures implemented to ensure future compliance with applicable industrial instruments and applicable legislation. |  |

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Attachment A**

Contract Disclosure

The Government has a strong presumption in favour of disclosing contracts and, in determining whether any clauses should be confidential, specific freedom of information principles (including a public interest test) will apply. However, even if certain clauses are excised from public contracts, the Government cannot pre-empt the workings of the Freedom of Information Act 1982 (Vic) or constrain the Auditor General's powers to secure and publish documents as he or she sees fit.

The Conditions of Tendering include a provision for the disclosure of contract information (refer section in Part A of the RFT dealing with “Use of Tenders”).

The provisions of the Proposed Contract in regard to confidentiality and disclosure should also be noted.

This provision is consistent with the Government's presumption of the full disclosure of contracts. Any non-disclosure of contract provisions must be justified by the successful Tenderer by applying the principles for exemption under the provisions of the FOI Act. Section 34(1) of the FOI Act provides that information acquired by an agency or a Minister from a business, commercial or financial undertaking is exempt under the FOI Act if the information relates to trade secrets or other matters of a business, commercial or financial nature and the disclosure would be likely to expose the undertaking unreasonably to disadvantage.

If a Tenderer wishes to withhold the disclosure of specific contract information, the Tenderer must clearly outline how the release of this information will expose trade secrets or expose the business unreasonably to disadvantage.

Trade Secrets

In considering whether specific information should be categorised as a trade secret, Tenderers should assess:

* the extent to which it is known outside of the Tenderer’s business;
* the extent to which it is known by the persons engaged in the Tenderer’s business;
* any measures taken to guard its secrecy;
* its value to the Tenderer’s business and to any competitors;
* the amount of money and effort invested in developing the information; and
* the ease or difficulty with which others may acquire or develop this information.

Unreasonable Disadvantage

In determining whether disclosure of specific information will expose a Tenderer’s business unreasonably to disadvantage, you should consider section 34(2) of the FOI Act. Broadly, you should consider:

* whether the information is generally available to competitors; and
* whether it could be disclosed without causing substantial harm to the competitive position of the business

The Agency will consider these applications in the Tender evaluation and negotiations with Tenderers.