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**State Procurement is a Business Unit of the NSW Department of  
Commerce**

**State Procurement invites this tender for and on behalf of the  
NSW Government State Contracts Control Board**

## **PART A**

# **Request for Tender 0501027- Fire Fighting Equipment for NSW Fire Brigades and NSW Rural Fire for Foam Equipment, Bushfire Equipment, Rescue Equipment and Miscellaneous Equipment**

**Period: 1 April 2006 to 31 March 2009**  
with two (2), one (1) year extension options.

**Tender Issue Date: Monday, 6 February 2006**  
**Closing Date: Wednesday, 1 March 2006**

**Closing Time: 9:30 am Sydney Time**

**Tenderers should note that a Tenderer Briefing shall be held 15 February 2006.**  
**Refer Part A, Clause 4.4 for further details.**

*Note: If a tender is not submitted electronically, the tenderer must submit the original tender, plus 3 (three) copies of the tender. Tenders are to be marked "Original", "Copy 1", "Copy 2", "Copy 3".*

Non-Refundable Hard Copy Document Fee \$110.00(includes GST). Note: There is no charge for downloading an electronic copy from <https://tenders.nsw.gov.au/commerce>. Payment for a hard copy is to be made by either a cheque drawn in favour of the NSW Department of Commerce or by credit card (MasterCard, Visa and Bankcard). Cash will not be accepted.

This publication is available on request via email in large print and/or on computer disk for people with a disability. To obtain copies of this publication in either of these formats, please contact the Contact Officer identified in this RFT.

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# 0501027 - Fire Fighting Equipment - Foam Equipment, Bushfire Equipment, Rescue Equipment and Miscellaneous Equipment

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## **PART A THE REQUIREMENT AND CONDITIONS OF TENDER**

### **1. DEFINITIONS OF TERMS USED IN PARTS A AND C**

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

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

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

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

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

- Inviting and accepting tenders;
- Determining the conditions under which tenders are invited or accepted;
- Entering into contracts on behalf of the Crown in right of the State of New South Wales; and
- On-going contract administration and management,

and includes the duly authorised delegates of the Board, including officers of State Procurement.

**“Closing Date and Time”** means the Closing Date and Time for receipt of Tenders, specified on the cover sheet to this RFT.

**“Code”** means the NSW Government Code of Practice for Procurement, NSW Government Procurement Policy, as amended from time to time, together with any other codes of practice relating to procurement, including any amendments to such codes, that may be applicable to the particular RFT. The aforementioned codes can be viewed and downloaded from:

- 1) NSW Government Procurement Policy:  
<http://www.treasury.nsw.gov.au/pubs/tpp2004/tpp04-1.pdf>

and

- 2) Code of Practice for Procurement:  
[http://www.treasury.nsw.gov.au/procurement/pdf/code\\_of\\_prac-curr.pdf](http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf)

**“Conforming Tender”** means a Tender that:

- (a) conforms to the Requirement;
- (b) is in the prescribed form;
- (c) conforms to the terms and conditions contained in Part B; and
- (d) conforms to all of the other requirements of this RFT.

**“Contractor”** means the tenderer as a party to the proposed Contract.

**“Customer”** is an authorised Government department, public sector agency or nominee purchaser, including NSW Fire Brigade and NSW Rural Fire Service, who have committed to purchase from this contract.

**“Deliverables”** means the goods and services to be supplied by the Contractor in accordance with this Contract, as detailed in the Specification, and as itemised in the Price Schedule.

**“Late Tender”** means a Tender received after the Closing Date and Time for tenders and includes a Tender which is only partly received by the Closing Date and Time.

**“Management Fee”** means the fee payable by the Contractor to the Principal in accordance with Part B Clause 18 and Schedule 2 – Management Fee Deed.

**“Non-Conforming Tender”** means a Tender that:

- (a) does not conform to the Requirement;
- (b) is not in the prescribed form;
- (c) does not conform to any one or more of the terms of the Contract in Part B, including a Tender which seeks to qualify or amend these terms; or
- (d) does not conform to any of the other requirements of this RFT.

**“OHS&R”** means occupational health, safety and rehabilitation.

**“Price Schedule”** means the list of Services offered by the tenderer, together with the corresponding pricing information.

**“Principal”** means State Contracts Control Board established under the Public Sector Employment and Management Act 2002 and includes the duly authorised delegates of the Principal, including officers of State Procurement.

**“Requirement”** means the detailed description of the required Goods and/or Services to be met by the tenderers and detailed in the Specification.

**“RFT”** means this Request for Tender.

**“Smartbuy®”** means an electronic market place, consisting of an internet web site and associated databases and applications, maintained on behalf of the NSW Government, located at <http://smartbuy.nsw.gov.au> and associated domains.

**“SME”** means small to medium enterprise.

**“Specification”** means the detailed description of the Goods and Service to be provided under this Contract that is at Part C2a. In the event of any inconsistency between the Specification and any part of this Contract, this Contract will prevail to the extent of the inconsistency.

**“State Procurement”** means a business unit of the NSW Department of Commerce representing the Board and authorised to arrange and administer contracts on behalf of the Board.

**“Tender”** means the offer to supply the Services submitted in response to the RFT.

**“Tender Price”** means, in respect of each Service offered, the price nominated in the Price Schedule for that Service.

## 2. OUTLINE DESCRIPTION OF THE REQUIREMENT

### 2.1 Scope

- 2.1.1 This Request For Tender (“RFT”) covers the requirement for the supply of various Fire Fighting Equipment and maintenance services for the NSW Fire Brigades (NSWFB), the NSW Rural Fire Service (NSWRFS), other Government Departments and Agencies, who aid in the control and suppression of bush, urban and structural fires.

The following items are included in this RFT:

- 1. Foam Equipment
- 2. Bushfire Equipment
- 3. Rescue Equipment
- 4. Miscellaneous Equipment

- 2.1.2 NSW Fire Brigades (NSWFB) is responsible for promoting fire safety and managing fire emergencies for 90% of the states population in the major cities, metropolitan areas and towns across rural and regional NSW. It has a network of some 340 Stations (refer Attachment 1 and Attachment 2) across the state and a fleet of approximately 875 vehicles. The Rural Fire Service is one of the world's largest fire services. The NSWRF is comprised of 2094 front line brigades protecting 1,200 towns and villages throughout NSW. The NSWRF brigades operate within the 50 Draft Region and Zone/Team Boundaries (refer Attachment 3), which through a process of consolidation and amalgamation are now administered by 50 Zone/Team offices and 4 Regional Management Offices. Bushfire fighting, prevention and mitigation are the NSWRF primary roles, however the Service is involved in other critical community safety activities. These include:
- Fighting building and structure fires
  - Fire safety education
  - Motor Vehicle Accident response
  - Search and rescue operations
  - Storm and flood recovery
  - Hazard reduction management
- 2.1.3 Supply of this equipment will be on a single unit purchase direct to any nominated site within the state of NSW as indicated in the schedule following – Refer Part A, Attachments 1,2 & 3.
- 2.1.4 Compliance documentation is to be supplied at the time of tendering, please refer Clause 6.11 – COMPLIANCE with RELEVANT LEGISLATION, SPECIFICATION AND STANDARDS. Should this documentation not be presented at the time of tendering, the tender may be set aside and may not be considered further.
- 2.1.5 All equipment supplied through this RFT is to be covered by a minimum warranty as prescribed by legislation. NSWRF has a specific requirement [Refer Part C1, clause 3(b)(vii)]. Tenderers shall provide full details.
- 2.1.6 NSWFB requires preventative maintenance and repair services to support the required equipment below:
1. Positive Pressure Ventilation Fan – Rescue Equipment
- 2.1.7 At Part C3 tenderers should indicate their capacity and capability to provide Preventative Maintenance and Repair to support the tendered equipment above.
- 2.1.8 Tenderers are to propose in this RFT cost effective and functional preventative maintenance and repair programs to support the equipment offered. The proposals are to be in line with the NSWFB four (4) Defined Maintenance Levels, details of which are at Part C3. For example tenderers may elect to:
- Allow the client to provide operator level cleaning and minor preventative maintenance under the guidance and written instruction of the tenderer. Spare parts enabling the nominated servicing to be undertaken by the client are to be supplied and listed within the RFT
  - Service equipment at the clients site, or
  - Nominate site(s) for items to be returned for maintenance by the client, or
  - Incorporate a pick up and delivery service for preventative maintenance and repairs.

Preventative maintenance/repair is required to be undertaken either on site at NSWFB Stations or on a pick up, repair and return basis.

Complete details of the NSWFB requirement for preventative maintenance and repair of existing and tendered equipment is provided in *Part C3 and C4 respectively* of this tender document.

Tenderers responses to this requirement are to be completed at Part C3 and C4 of this tender document.

## 2.2 Background

- 2.2.1 This is a Common Use Contract for Fire Fighting Equipment NSW Fire Brigades and NSW Rural Fire for Foam Equipment, Bushfire Equipment, Rescue Equipment and Miscellaneous Equipment.
- 2.2.2 The Board is responsible for the conduct of the tender process, assisted by State Procurement.

## 3. SUMMARY INFORMATION FOR TENDERERS

### 3.1 Structure of Request for Tender

- 3.1.1 This RFT is made up of Parts A to C. When submitting a Tender, retain Parts A and B. The completed Part C forms the Tender.
- 3.1.2 Part C must be submitted in accordance with the instructions in this Part A.
- Part C1 Responses supplied in response to Part A  
Schedule 1 - Statement of compliance with the Specification  
Schedule 2 - Acknowledgment and confirmation of Tender
  - Part C2 Price Schedule
  - Part C2a Item Cluster Index and Specification List
  - Part C3 Preventative Maintenance & Repairs for tendered items,  
Including response to C3 and Schedule of Charges
  - Part C4 Preventative Maintenance & Repairs for existing items,  
Including response to C4 and Schedule of Charges

### 3.2 Contact Officer

- 3.2.1 Refer requests for information or advice regarding this RFT to:

For All Enquiries

Name: Roland Sinn

Phone: (02) 9372 8419

Fax: (02) 9372 7799

Email: [Roland.Sinn@commerce.nsw.gov.au](mailto:Roland.Sinn@commerce.nsw.gov.au)

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

### 3.3 Nature of Contract

- 3.3.1 The Requirement is to be met by a Contract between the Principal and the successful tenderer(s) on the terms and conditions of Part B. ***Note: if you nominate at Part C that you comply with the Conditions of Contract (Part B), then the stated Conditions of Contract at Part B will not be subject to any negotiation should your tender be successful.*** The Board reserves the right to appoint more than one Contractor to supply the Requirement or a part of the Requirement.
- 3.3.2 The Contract will be for a term of three (3) years and may be extended by two (2) further terms, each of 1-year duration. Any such extension shall be solely at the discretion of the Principal.



### **3.4 Selection of Contractor**

- 3.4.1 NSW Fire Brigades and New South Wales Rural Fire Service have a preference to appoint one Contractor for each cluster of items and maintenance, for the whole of the State but may consider separate Contractors for each item and maintenance.  
Tenders from companies that can provide a comprehensive statewide service for all items will be preferred.

### **3.5 Eligibility to Tender**

- 3.5.1 Tenders must be submitted by a legal entity or, if a joint Tender, by legal entities, with the capacity to contract. The Principal will only contract with the relevant legal entity or entities.
- 3.5.2 The Board may ask a tenderer to provide evidence of its legal status or capacity to contract. If Tenders from trustees are permitted this may include a copy of the relevant trust deed. Any evidence requested is to be provided within 3 working days of the request.
- 3.5.3 The Board may submit any financial information provided by the Tenderer for independent financial assessment of the Tenderer's business. If the Board judges the tenderer's financial position to be marginal, the Board reserves the right to make acceptance of any Tender conditional upon the tenderer entering into a bank, parent company or personal guarantee or an unconditional performance bond in a form satisfactory to the Board.
- 3.5.4 The Board reserves the right to reject any tender if it judges the tenderer not to have appropriate financial assets.
- 3.5.5 The Board will not enter into a contract with an organisation that does not have an Australian Business Number and is not registered for GST. Normally, tenderers must be registered for GST and state their ABN in their Tender.
- 3.5.6 Tenders from tenderers that do not have an ABN and/or are not registered for GST, such as tenderers commencing business in Australia, may be considered at the Board's discretion if the tenderer demonstrates that it will obtain an ABN and GST registration before entering into a Contract with the Principal. Such tenderers must state how and when they intend to obtain an ABN and register for GST in their Tender.
- 3.5.7 The Board will not contract with any legal entity acting as trustee for another legal entity.

## **4. PREPARATION OF TENDER - GENERAL**

### **4.1 Conformity of Tenders**

- 4.1.1 The Board seeks Conforming Tenders.
- 4.1.2 Tenders that do not include a fully completed Part C, in particular those Tenders, which do not contain sufficient information to permit a proper evaluation to be conducted, may be excluded from the tender process without further consideration, at the Board's discretion.
- 4.1.3 The Board will consider Alternative Tenders, provided the Alternative Tender meets the scope and functional intent expressed in the RFT. Where such Alternative Tender is proposed, a detailed description of the alternative must be submitted, stating clearly the manner in which it does not conform to the requirements of the RFT.
- 4.1.4 The Board may assess an Alternative Tender against the selection criteria.
- 4.1.5 An Alternative Tender must be clearly marked "Alternative Tender".
- 4.1.6 The Board expressly reserves the right to accept, in its discretion, either or both of the following:
- (a) Any Alternative Tender or part of an Alternative Tender, which meets the scope and functional intent expressed in the RFT, and

- (b) Any other Non-Conforming Tender or part of a Non-Conforming Tender that, in the Board's opinion, is substantially a Conforming Tender.

## **4.2 General Instructions for Completion of Tenders**

- 4.2.1 Prices, responses and other information provided in the Tender are to be in writing and in English.
- 4.2.2 Tenderers must initial and date any alterations to, and deletions from, a hard copy Tender.
- 4.2.3 Tenderers must complete ALL of Part C1 of this RFT. Tenderers should also complete the Price Schedule at Part C2 and questions and pricing at Part C3 for maintenance and repairs, and also Part C4 if appropriate. These sections only should be returned.
- 4.2.4 Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.
- 4.2.5 A Tenderer must satisfy itself that the Tender, including the Tender Price is correct and that it is financially and practically viable for it to enter into and perform the proposed Contract.
- 4.2.6 **Deadline for Submission of Tenderers' Questions 4:30 pm Australian Eastern Standard Time on 17 February 2006.**

## **4.3 Addenda to this RFT Before Close of Tenders**

- 4.3.1 A tenderer may ask the Contact Officer for clarification of anything in the RFT before the Closing Date and Time. The Board may issue any instruction resulting from such request in writing to all tenderers in the form of an Addendum.
- 4.3.2 If for any other reason the Board requires the RFT to be amended an Addendum will be issued.
- 4.3.3 In each case, an Addendum becomes part of the RFT.
- 4.3.4 It is the obligation of the tenderer to verify if any addenda were issued prior to closing date, even if a tender has already been submitted. They must obtain a copy of all addenda and confirm in Part C that all addenda have been obtained and taken into consideration.

## **4.4 Tenderer Briefing**

- 4.4.1 A briefing session, where aspects of this RFT and the contracting process will be discussed, will be held in conjunction with this tender process.

The briefing session has been arranged for:

Date:	15 February 2006.
Time:	10.00 am; for a duration of approximately 90 minutes
Place:	NSW Rural Fire Service, 15 Carter Street, Homebush Bay
RSVP's	by 3.30pm, 13 February 2006
To	<a href="mailto:Roland.Sinn@commerce.nsw.gov.au">Roland.Sinn@commerce.nsw.gov.au</a>

## **4.5 Samples and/or demonstrations of required equipment**

- 4.5.1 If samples and/or demonstrations are required, tenderers will be given sufficient notice and advice as to where samples are to be delivered or demonstrations are to be held.
- 4.5.2 Samples may be tested to destruction.
- 4.5.3 When the evaluation is completed, tenderers will be notified and given a week to collect their samples.

## 5. PREPARATION OF TENDER - PRICE SCHEDULE

### 5.1 Price Schedule

5.1.1 Tenderers must complete the Price Schedule at Part C2.

### 5.2 Calculating the Tender Price

#### 5.2.1 General

The Tender Price must:

- (a) be in Australian dollars;
- (b) cover all costs of performing the Contract;
- (c) include Goods and Services Tax if it is payable and all other applicable taxes, duties and charges at the rates applicable at the Closing Date and Time for Tenders; and
- (d) include all costs associated with the preparation and submission of the Tender
- (e) take account of the State Procurement management fee, which is not to be shown as a separate charge.
- (f) include all costs associated in the packaging and transport of the deliverables to any nominated site within the state of New South Wales as provided by the Customer.

5.2.2 The tendered Price is to include delivery, which is Free-into-Store (FIS)

5.2.3 For any other discounts to be offered please enter details at Part C1 – Tender Response.

### 5.3 Price Basis

5.3.1 Tenderers may determine their Tender Price on the basis of **one of the four options** below. Tenderers will be required to indicate which price basis option is selected in Part C1.

- (1) Firm for the **entire duration** of the Standing Offer agreement, thirty-six (36) months plus twenty-four (24) month optional extension periods.
- (2) Firm for the first twelve (12) months of the term of the Standing Offer agreement then subject to review at the end of that period and each twelve (12) months, including for any extension period following based on variations in **rates of exchange**.
- (3) Firm for the first twelve (12) months of the term of the Standing Offer agreement then subject to review at the end of that period and each twelve (12) months, including for any extension period following based on variations in **labour and material** factors.
- (4) Firm for the first twelve (12) months of the term of the Standing Offer agreement then subject to review at the end of that period and each twelve (12) months, including for any extension period following based on variations in **Published Price List**.

5.3.2 If option (2) is selected, variation on the basis of exchange rates will be as follows:

#### Exchange Rates

- (i) If the Tender Prices are variable only in respect of rates of exchange, the actual difference between rates paid and the rates upon which the Tender was based will be allowed subject to production of satisfactory documentary evidence.
- (ii) Tenderers are to nominate the foreign currency and associated exchange rate based on the Westpac Bank's relevant selling rate as published in the *Sydney Morning Herald* seven days prior to the Closing Date and Time.
- (iii) The nominated exchange rate will be used as the basis for any future price variation request.

5.3.3 If option (3) is selected, variation will be on the basis of the following formulae.

**Labour and Material Factors**

$$CP = CPo \times \left(0.1 + \frac{Y(L)}{Lo}\right) + \frac{Z(M)}{Mo}$$

Where:

CP = Current Contract Price.

CPo = Contract Price at start date.

Y = The Labour Factor, expressed as a decimal, being the proportion of the Contract Price subject to variation by labour costs.

L = The Weekly Award Rate of pay, or the Effective Award Hourly Rate (EAHR) calculated in accordance with the EAHR formula detailed hereunder, for the category of labour primarily employed on the Standing Offer agreement, most recently published at the date of application for price variation.

Lo = The Weekly Award Rate of pay, or the EAHR calculated in accordance with the EAHR formula detailed hereunder, for the category of labour primarily employed on the Standing Offer agreement, most recently published at twenty-one days before tender closing.

Z = The Materials Factor, expressed as a decimal, being the proportion of the Standing Offer agreement price subject to price variation by materials costs.

M = Materials Cost Index most recently available at the date of application of price variation.

Mo = Materials Cost Index, corresponding to the index used for "M", most recently available twenty-one days before tender closing date.

**Note:** Y (Labour Factor) and Z (Material Factor) must be expressed as a decimal and together, must total 0.9.

**EAHR Formula:**

Tenderers may elect to use, instead of the weekly award rate of pay in the above formula, an "Effective Award Hourly Rate" (EAHR) which is determined by the following formula. If the award rate of pay is nominated for L and Lo, then this formula does not apply.

$$EAHR = \frac{AW}{HW} \times \frac{(52 + LL)}{(52 - LA)} \times (1 + WC + PT + S)$$

Where:

AW = Weekly award rate of pay for the labour primarily engaged in the Standing Offer agreement, including industry allowances and site-specific allowances approved by the appropriate State or Commonwealth Authority.

HW = Award hours per week.

LL = Award annual leave loading (expressed as a decimal) multiplied by the number of days paid recreation leave covered by the award divided by 5.

LA	=	Award leave allowance divided by 5.
WC	=	The recommended rate (expressed as a decimal) of contribution of Workers Compensation in accordance with the relevant legislation.
PT	=	Payroll tax percentage (expressed as a decimal).
S	=	Rate of employer's superannuation as a percentage of the employees' wages in accordance with the relevant award (expressed as a decimal).

**5.3.4** If option (4) is selected, variation will be on the basis of the following formulae.

***Published Price List Formula***

$$RP = \left[ \frac{TP * (PLP)}{(PLPo)} \right]$$

(Note: \* = means multiplication)

Where:

RP	=	Revised contract price.
TP	=	Tendered price (or latest revised price)
PLPo	=	Published list price effective on the date 7 days before tender closing (the base date), or the published list price upon which the latest revised contract price is based.
PLP	=	Published list price effective at date price variation application is lodged.

2(b) Where the supplies are imported, and the published price list is in an overseas currency, the above formula shall be modified as follows:-

$$RP = \left[ \frac{TP * (PLP)}{(PLPo)} * \frac{Eo}{E} \right]$$

(Note: \* = means multiplication)

Where:

Eo	=	The exchange rate as published in the Sydney Morning Herald on the base date, expressed as selling price A\$=
E	=	The exchange rate most recently published in the Sydney Morning Herald at an exact monthly interval from the base date, expressed as selling price A\$=

**5.4 GST Free or Input Taxed Supplies**

5.4.1 Tenderers must identify and state the value of any GST Free or Input Taxed Supplies to be made under the Contract.

**5.5 Minimum Tender Validity Period**

- 5.5.1 Tenders must remain open for acceptance for a period of at least six (6) months from the Closing Date and Time for Tenders. Tenderers must state in Part C1 if their Tenders will remain open for any longer period.

## **5.6 Access to Government Contracts**

- 5.6.1 Tenderers are advised that the Customers have agreed to arrange access to NSW Government State Contracts through Nominee Purchaser Arrangements (see Clause 5.7 below) should Contractors wish to take advantage of Government pricing for the purchase of equipment on behalf of the Customer.

## **5.7 Nominated Purchaser Agreement**

- 5.7.1 The guidelines in Appendix 1 to Part A have been developed to assist with the contracting-out of activities by registered users of the purchasing facilities provided by the State Contracts Control Board of New South Wales. The intention is to provide for the use of the Board's period contracts by the registered nominee purchasers in conjunction with and relevant to contractual arrangements with the 'Government' is as provided for in Clause 17(4)(g) of the Public Sector Management (Goods and Services) Regulation 2002.

# **6. PREPARATION OF TENDER – POLICY REQUIREMENTS**

## **6.1 Procurement Policy – introduction**

- 6.1.1 Tenderers should read the main policy documents listed below. Other relevant policies and particular policy objectives to be implemented through this procurement are drawn to tenderers' attention in this cl.6. Their requirements are reflected in the selection criteria listed in cl.8.2 and in the responses required from tenderers in Part C1.

- (a) Government Procurement Policy  
<http://www.treasury.nsw.gov.au/pubs/tpp2004/tpp04-1.pdf>
- (b) Government Code of Practice for Procurement:  
[http://www.treasury.nsw.gov.au/procurement/pdf/code\\_of\\_prac-curr.pdf](http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf)

## **6.2 Code of Practice for Procurement**

- 6.2.1 Tenderers must comply with the Code of Practice for Procurement. The ability of a tenderer to comply with the Code is an essential condition of all Tenders.
- 6.2.2 Lodgement of a tender will itself be an acknowledgement and representation by the tenderer that it is aware of the requirements of the Code, that the tenderer will comply with the Code and that the tenderer agrees to provide periodic evidence of compliance with the Code and access to all relevant information to demonstrate compliance for the duration of any contract that may be awarded.
- 6.2.3 If a tenderer has failed to comply with the Code, this failure will be taken into account by the Board when considering its tender or any subsequent tender and may result in this or any subsequent tender being passed over without prejudice to any other rights or action or remedies available to the Board.

## **6.3 Occupational Health Safety & Rehabilitation**

- 6.3.1 Tenderers must comply with the following OHS&R requirements in the performance of any contract awarded:
- (a) The *Occupational Health and Safety Act 2000* (NSW) and any regulation made under this Act, including the OHS Regulation 2001, and
  - (b) Codes of Practice, approved and issued pursuant to the above Act and or regulations made under the Act

6.3.2 Tenderers must ensure that the tenderer's Sub-Contractors will comply with the OHS&R requirements listed in clause 6.3.1 in the performance of any contract awarded.

6.3.3 Tenderers must indicate compliance with OHS&R requirements in Part C1.

#### **6.4 Environmental Management**

6.4.1 The NSW Government seeks to promote ecologically sustainable development through procurement. The Tenderer is required in Part C1 to highlight how the provision of the Services would promote this object if its Tender is accepted.

#### **6.5 Economic Development Through Government Procurement**

6.5.1 Economic development is a key policy objective in all government procurement. This objective may incorporate policies regarding:

- (a) the giving of purchasing preferences to Deliverables of Australian and New Zealand origin;
- (b) local industry participation, and;
- (c) Small to Medium Enterprise (SME) involvement, employment and workforce development.

6.5.2 Policies of particular relevance to this procurement are drawn to tenderers' attention in this Part. Further details are to be found in the NSW Government Procurement Policy and from sources identified in this clause.

6.5.3 Tenderers are encouraged to take up the services offered by the Industry Capability Network (NSW) Ltd (ICN) to assist in maximising the local content of Tenders. The ICN is a business advisory service, managed by industry and funded by the NSW Government, primarily to assist business and buying organisations to source their requirements from local producers who can provide goods, equipment and services against imports. The ICN provides a free service of identifying the supply capabilities of Australian manufacturers and import replacement. The ICN also assists in the preparation of Local Industry Participation Plans. Contact details are given below.

ICN (NSW) Ltd  
Suite 313 Henry Lawson Business Centre  
Birkenhead Point  
Drummoyne NSW 2047

Phone: 02 9819 7200

Fax: 02 9181 3321

E-mail: [enquiry@icnsw.org.au](mailto:enquiry@icnsw.org.au)

Website address: [www.icnsw.org.au](http://www.icnsw.org.au)

6.5.4 The Board makes no representation or promise in relation to the suitability or otherwise of any advice or assistance offered by the ISO or its compliance with the Board's requirements.

#### **6.6 NSW Government Purchasing Preference Scheme**

6.6.1 The NSW Government has directed its departments and declared agencies to give preference to goods (and related services) of Australian and New Zealand origin. The NSW Purchasing Preference Scheme supports Australian manufactured products and services in preference to imports. Certain eligible country based suppliers are given additional preference above all other suppliers. Preferences are only used for the purposes of tender evaluation and no actual costs are incurred by Contractors or client agencies.

6.6.2 The Preference Scheme is implemented by evaluating Tender Prices in accordance with the clauses below.

#### **Preference – Australian and New Zealand Content**

- 6.6.3 Preference is applied in the form of a 20% loading on the declared imported/overseas content (excluding New Zealand) of the tendered goods (and related services). For example:

Tender Price:	\$10.00
Imported Content:	80%
Preference margin	20% x 80% x \$10.00 = \$1.60
Price used for evaluation:	\$10.00 + \$1.60 = \$11.60

- 6.6.4 No preference margin is applied when assessing Tenders for the provision of services alone.
- 6.6.5 Tenderers are required to provide details of the imported (non-Australian and New Zealand) content in the Price Schedule and to make available records (as and when required) to substantiate imported or local content claims. Tenderers must also include detailed statements from their sub-contractors on the imported content of the goods and related services they are offering.
- 6.6.6 The imported content of goods and related services is the estimated duty paid value, inclusive of the value of any services, for example overseas freight and insurance, consultancy or engineering effort, or any charges of overseas origin, together with customs clearing charges.

#### **NSW Country Industries Preference Scheme**

- 6.6.7 A further preference loading of up to 5% is applied if the tenderer is not based in a NSW country area in accordance with the Country Industries Preference Scheme (CIPS). The preference loading is not applied against New Zealand or other overseas Tenders or Tenders from other states or territories.
- 6.6.8 For preference to be applied to a Tender under the CIPS:
- (a) the tenderer must be registered with the Department of State and Regional Development as a country manufacturer under the Country Industry Preference Scheme (Tel 02 9338 6717) before the Closing Date and Time for Tenders;
  - (b) The tenderer must quote its Preference Registration Number allocated by the Department of State and Regional Development and the applicable preference margin in the space provided in Part C of this RFT;
  - (c) The goods being sought are those for which the tenderer is registered; and
  - (d) The tenderer is tendering as the prime contractor.
- 6.6.9 The Country Industries Preference Scheme is intended primarily to benefit manufacturers located outside the metropolitan areas of the State, which, in comparison with their city-based competitors, suffer definable economic disadvantages, which can be directly attributed to their country location. The preference applies on the following basis to approved manufacturing industries located outside the County of Cumberland, the Cities of Newcastle, Wollongong, Penrith and Liverpool and the Municipality of Camden:
- (a) In the Cities of Maitland, Greater Cessnock and Blue Mountains, the Municipalities of Kiama and Shell harbour and the Shires of Port Stephens, Lake Macquarie, Gosford, Wyong, Wollondilly, Wingecaribee and that part of the Shire of Hornsby which was previously part of the Shire of Colo: maximum preference of 2.5%.
  - (b) Elsewhere in New South Wales: maximum preference of 5%.
- 6.6.10 Further details of the NSW Purchasing Preference Scheme, and an application for registration under the Country Industry Preference Scheme, can be obtained from:  
<http://www.dpws.nsw.gov.au/NR/rdonlyres/ecufn2722d4anbl464l6knvz4d7stllxzkqj2kclauhfxfpbqd6ndphucroflqsuas24astfwx5njy4ym2gkxbxgiexa/NSW+Government+Preference+Scheme.pdf>

additional information can be obtained from:



Department of State and Regional Development  
 Regional Development Division, SYDNEY  
 Telephone: (02) 9338 6717  
 Facsimile: (02) 9338 6726  
 Website address: <http://www.business.nsw.gov.au/index.asp>

## **6.7 Small to Medium Enterprise (SME) involvement**

- 6.7.1 If Deliverables may be sourced from SME sub-contracting arrangements tenderers are to provide details in Part C1 of the likely percentage of the value of the Deliverables to be provided under the Standing Offer agreement, that will be sourced from SMEs and of the activities that will be carried out by SMEs under the Standing Offer agreement.

## **6.8 Regional Development**

- 6.8.1 It is NSW Government policy to encourage regional development. Tenderers are to provide details in Part C1 of the positive impact that the work flowing to the local region will generate, and any adverse effect should the same work be awarded to a capital city based organisation. Tenderers should also show the level and range of activities under the Standing Offer agreement that will be affecting the region.

## **6.9 Not Used**

## **6.10 Electronic Procurement (Smartbuy®)**

- 6.10.1 The NSW Government seeks to maximise the use of electronic procurement and progressively move significant volumes of NSW Government purchasing on to smartbuy®.
- 6.10.2 smartbuy® is an electronic procurement system, maintained on behalf of the NSW Government. smartbuy® is located at <http://www.smartbuy.nsw.gov.au>.
- 6.10.3 smartbuy® enables eligible clients to electronically procure goods and services, generally on terms established in Government Contracts. It is intended that all goods and services provided under the Board's Standing Offer Agreements will be browsed, searched and where appropriate, purchased online via smartbuy®. Similarly, any procurement agreement between eligible clients and suppliers can be facilitated in smartbuy®.
- 6.10.4 Department of Commerce actively encourages all SCCB suppliers to register with smartbuy® to facilitate NSW government agencies to view and purchase goods and services on line. The Client Services division in smartbuy® provides support services for all suppliers in completing the supplier enrolment process, ensuring maximum exposure to the government market. Outlined below are the steps required to become established in the smartbuy® system.
- 6.10.5 All successful tenderers are required to accept Orders and other business documents and communications by electronic communication in accordance with the Electronic Transactions Act (NSW) 2000. More information on the NSW Government's policy about electronic procurement and smartbuy® can be seen at

a) <http://www.smartbuy.nsw.gov.au> and

b) <http://www.dpws.nsw.gov.au/About+Us/Publications/Government+Procurement+Publications.htm>

### **Participating in smartbuy® and smartbuy® enrolment process:**

- 6.10.6 Successful tenderers will be required to enrol with smartbuy®, which is a three step exercise conducted by smartbuy®. The first step for a successful tenderer is to register the organisation online, through the smartbuy® website, and where the smartbuy® Supplier Agreement and participation Rules are reviewed and agreed to.
- 6.10.7 The second step is for the nominated smartbuy® Supplier Administrator to attend

smart buy® training. This training can be conducted online via the smartbuy® website, or at one of the regularly scheduled training sessions.

- 6.10.8 The final step is to have catalogue content prepared in the specified Catalogue Data Collector (CDC) tool, submitted, reviewed, confirmed and loaded into smartbuy®. This will include the provision of product images (see below 6.10.10)
- 6.10.9 On completion of the enrolment process, the Supplier Administrator will be issued with a log on. This will provide access to their catalogue information as held in smartbuy®, from which buyers will view and purchase against.

#### **Additional supplier establishment Requirements**

- 6.10.10 In addition to enrolling in smartbuy®, as explained above, supplier organisations will be required to:

- a) submit specified information about themselves and the Deliverables to which the Standing Offer Agreement applies, to smartbuy®, and keep this information up to date.
- b) provide pricing/product information in the electronic format requested by State Procurement. At the time of shortlisting Tenderers, these organisations will be provided with a CDC file to be populated with catalogue content information in readiness for immediate trading.

It is envisaged the smartbuy® CDC format will be used to receive required catalogue updates throughout the life of the contract.

#### **Smartbuy® Operational Requirements**

- 6.10.11 The smartbuy® solution is comprised of a number of procurement-related applications and services including the smartbuy® CONNECT. smartbuy® CONNECT is based on an IBM MQ Series platform and is a full service B2B hub offering a wide range of integration, document transformation and trading partner management capabilities.
- 6.10.12 smartbuy® CONNECT is tightly integrated to smartbuy® TRADE, and may be connected to Agencies and Suppliers via a number of integration mechanisms. The transmission types and document formats for the different integration options are explained in more detail below.
- 6.10.13 All electronic documents transmitted out of or into smartbuy® TRADE are routed via the smartbuy® CONNECT. smartbuy® CONNECT may also be used for document transmission directly between Agencies and Contractors, without passing through smartbuy® TRADE.
- 6.10.14 The successful tenderer will be required to transmit documents in accordance with the transmission types and document formats detailed below:

smartbuy® CONNECT supports the following business documents:

- a) PO
- b) PO Change
- c) PO Acknowledgement
- d) Receipt
- e) Receipt Change
- f) Advanced Shipping Notice
- g) Invoice
- h) Technical Message Acknowledgement

#### **smartbuy® CONNECT Trading Channels**

- 6.10.15 The following Transmission Types and Document Types can be received by smartbuy® CONNECT. The combination of Transmission Type and Document Type is termed a Trading Channel:

Transmission Type	Document Type	Trading Channel
HTTPS	xCBL3.0 (XML)	HTTPS/xCBL3.0
HTTPS	CSV	HTTPS/CSV
FTP	CSV	FTP/CSV
Email (SMTP)	PDF	Email/PDF
Fax	PDF	Fax/PDF

### **smartbuy® Security**

6.10.16 smartbuy® is committed to a high level of security, and is working towards full AS/NZS7799 accreditation. smartbuy® security systems have been created to protect buyers, suppliers and information maintained on or transmitted from or to smartbuy®.

6.10.17 Key elements of the security regime include:

- a) Data Centre certified to BS7799, ASIO T4 rating and Suntone 2 Accreditation;
- b) Robust firewalls;
- c) Multi level system design;
- d) Virus protection using Sophos Anti Virus software;
- e) Password protection and restricted access permissions;
- f) Intrusion detection systems;
- g) Audit trails of user activities;
- h) Where encryption is used, HTTPS protocol with 128 bit technology has been selected;
- i) Programme of system upgrades to ensure security compliance.

## **6.11 Compliance with Relevant Legislation, Specification and Standards**

6.11.1 Certificate of compliance with relevant Standards, where specified.

6.11.2 Tenderers are required to provide evidence of compliance with Standards requirements as laid down by State or Federal Authorities, where relevant.

6.11.3 In all cases where Australian Standards exist, tendered products should conform to such Standards. Tenderers are at liberty to offer items that comply with other recognised international Standards. However, where any inconsistencies exist between other Standards offered and the Australian Standards specified, full details of the inconsistencies are to be stated in the tender response.

6.11.4 Tenderers are required at Part C1a to provide certification from an independent or authorised self-testing authority, which confirm that the tendered item(s) meet the specification(s) or operational requirement(s) including Australian or International Standards, where nominated.

## **7. SUBMISSION OF TENDERS**

### **7.1 General Instructions for Submission of Tenders**

7.1.1 A Tender must be received by the Closing Date and Time.

7.1.2 A Tender may be submitted by any of the following methods:

- (a) by delivery into the Tender Box:

- (1) It must be marked:

Tender Box

NSW Department of Commerce  
 Level 3, McKell Building (Ground Floor)  
 2-24 Rawson Place  
 Sydney, NSW 2000

- (2) If delivery personnel require a signature as evidence of delivery the Tender must be delivered between 8:30 am and 4:30 pm, Mondays to Fridays (except public holidays);

- (b) by post, addressed to

Tender Box  
 Tenders Office,  
 Level 3, McKell Building  
 2-24 Rawson Place  
 Sydney NSW 2000;

(A CD copy should accompany all hard copy tender responses)

- (c) by facsimile to (02) 9372 8974; (A CD copy should accompany all hard copy tender responses)
- (d) by electronic lodgement through the NSW Department of Commerce, eTendering website at <https://tenders.nsw.gov.au/commerce>.

7.1.3 A tenderer must not change pre-existing text in the RFT other than to insert the required information.

7.1.4 If a tenderer intends to submit electronically through the NSW Department of Commerce eTendering website, the tenderer must follow the instructions contained in the "Tenderer's Guide to Using eTenders" and "How to lodge a Response" found in the downloadable version of the RFT at <https://tenders.nsw.gov.au/commerce/>.

7.1.5 If a tenderer intends to submit electronically through the NSW Department of Commerce *eTendering website* or by facsimile, the following must be considered:

- (a) The facsimile machine and NSW Department of Commerce *eTendering website* are at peak use on the morning when Tenders close.
- 1) Due to the limitations of these means of communication it may take longer to lodge a Tender near Closing Date and Time than at other times.
  - 2) When lodging by facsimile or through the NSW Department of Commerce *eTendering website*, it is recommended that a Tender be lodged well in advance of the Closing Date and Time.
  - 3) A tenderer must determine whether lodgement of a Tender by facsimile or through the NSW Department of Commerce *eTendering website* is appropriate.
- (b) The facsimile machine and the NSW Department of Commerce *eTendering website* may experience difficulties in accepting a large Tender. A tender lodged via the NSW Department of Commerce *eTendering website* should ideally be below 7 megabytes (MB) in total file size. Responses totalling more than 7MB may experience difficulties in lodgement. A tenderer is referred to the instructions contained in "How to lodge a Response" found in the downloadable version of the RFT at <https://tenders.nsw.gov.au/commerce/>, as to compressing electronically submitted Tenders.
- 1) In order to comply with the above paragraph, an electronic Tender may be supported by documents in hard copy or on CD-ROM.

- 2) Supporting documents, to be submitted in hard copy or on CD-ROM, may be specified as requirement throughout the RFT. Supporting documents may include, but are not limited to, statutory declarations, certificates, and company brochures.
- 3) If submitting an electronic tender with supporting documents:
  - (a) The complete Tender, including the supporting documents, must be submitted by Closing Date and Time, and
  - (b) Supporting documents should be clearly designated as "Supporting Documents to RFT 0501027 - NSW Fire Brigades and NSW Rural Fire for Foam Equipment, Bushfire Equipment, Rescue Equipment and Miscellaneous Equipment.

- 7.1.6 A tenderer is strongly encouraged, although not required, to lodge its Tender electronically through the Department of Commerce *eTendering website*. A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000 (NSW)*, and given no lesser level of confidentiality, probity and attention than Tenders lodged by other means.
- 7.1.7 A tenderer, by electronically lodging a Tender, is taken to have accepted conditions shown on the Department of Commerce *eTendering website*.
- 7.1.8 An electronically lodged tender must be lodged in a file format which can be read, formatted, displayed and printed by Microsoft Word 97, or any format required by the RFT. Any CAD files submitted with an electronically lodged Tender must be in DWF, DWG or DXF format. A tenderer must ensure that any CAD files submitted will correctly display and print in Microstation Version 4.
- 7.1.9. Signatures are not required for a Tender submitted to the Department of Commerce *eTendering website*. A tenderer, however, must ensure that an electronically lodged Tender is authorised by the person or persons who may do so on behalf of the Tenderer and appropriately identify the person and indicate the person's approval of the information communicated.
- 7.1.10 If a tenderer experiences any persistent difficulty with the Department of Commerce *eTendering website* in submitting a Tender or otherwise, it is encouraged to advise the Contact Officer, and to note there are usually alternative Tender lodgement methods described in the RFT.

## **7.2 Late Tenders**

- 7.2.1 Late Tenders will not be considered except when the Board is satisfied that the integrity and competitiveness of the tendering process will not be compromised.

## **7.3 Extension of the Closing Date and Time**

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

## **8. EVALUATION OF TENDERS**

### **8.1 General**

- 8.1.1 Tenders will be assessed against the selection criteria listed below, which are not necessarily exhaustive, in order of significance or to be given equal weight.
- 8.1.2 Information supplied by the tenderer in Part C1 and attachment of certification of compliance to specification(s), at Part C1a, will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the selection criteria listed in this RFT.

**Note: Certification required showing compliance with the specification as per Clause 6.11 of Part A is to be supplied with the tender response.**

**Where the specification calls for the product to be independently tested, a certificate of compliance is to be provided from the testing authority.**

- 8.1.3 If a particular requirement is stated to be “mandatory” a failure by the Tender to fully comply with that requirement will result in automatic exclusion of the Tender without further consideration.
- 8.1.4 As part of the evaluation process, tenderers may be called upon at their own expense to make a presentation of their proposal to the evaluation committee.
- 8.1.5 Tenderers shall note that their premises and facilities may be inspected during the tender evaluation phase. Reasonable notice will be provided to tenderers of any proposed inspection. Inspections will be carried out between the hours of 9:00 am to 5:00 pm Monday to Friday.
- 8.1.6 At the Board's discretion any omitted detail or variation and/or qualification of any requirement may be either evaluated and/or scored in accordance with the tenderers statement (or lack thereof) or clarified by the Board as to the intention of the tenderer.

## **8.2 Selection Criteria**

- (a) Pricing considerations and value for money
- (b) Fitness for Purpose which included the following (Technical Evaluation)
  - i. Degree of compliance with specification including certification to Specifications and Standards
  - ii. Innovative aspects
  - iii. Product design
  - iv. Performance
- (c) Delivery Considerations
- (d) Preventative Maintenance and Repairs required equipment
- (e) Capacity to perform this Standing Offer agreement which includes the following:
  - i. Technical, warehousing, inventory, distribution capability and current capacity
  - ii. Suitability of sub-contractors
  - iii. Human resources capacity/qualifications, skills and experience
  - iv. Financial Capacity and Viability of the Tenderer
  - v. Current Legal Proceedings
  - vi. Maintenance and support service levels.
  - vii. Quality Assurance Systems
  - viii. Warranties.
- (f) Previous Contract Experience
- (g) Degree of Compliance with Conditions of Contract.
- (h) Degree of Compliance with NSW Government Procurement policies.

## **8.3 Variation of Tenders**

- 8.3.1 At any time before the Board accepts any Tender received in response to this RFT, a tenderer may vary its Tender:
  - (a) by providing the Board with further information by way of explanation or clarification (“provide an explanation”);
  - (b) by correcting a mistake or anomaly (“correct a mistake”), or

- (c) by documenting agreed changes to the Tender negotiated under this Part A.

8.3.2 Such a variation may be made either:

- (a) at the request of the Board, or
- (b) with the consent of the Board at the request of the tenderer

but only if,

- (c) in the case of variation requested by the tenderer to provide an explanation or correct a mistake, it appears to the Board reasonable in the circumstances to allow the tenderer to provide the explanation or correct the mistake or anomaly, or
- (d) in the case of variation to document agreed changes, the Board has confirmed that the draft-documented changes reflect what has been agreed.

8.3.3 If a Tender is varied to provide an explanation or correct a mistake, the Board will provide all other tenderers whose Tenders have similar characteristics with the opportunity of varying their Tenders in a similar way.

8.3.4 A variation of a Tender will not be permitted if in the Board's view:

- (a) it would substantially alter the original Tender; or
- (b) in the case of variation to provide an explanation or correct a mistake, it would result in the revising or expanding of a Tender in a way which would give a tenderer an unfair advantage over other tenderers.

#### **8.4 Exchange of Information Between Government Agencies**

8.4.1 By tendering for this Contract, the tenderer authorises the Board to collect, or exchange with other public bodies, information and opinions about the tenderer's performance or financial position (that may identify the tenderer by name) for any purpose related to the performance by the tenderer of NSW public sector contracts. In particular, any such information and opinions about the tenderer may be used in considering whether to offer the tenderer opportunities for NSW public sector work.

8.4.2 The tenderer agrees that it will make no claim against the State, the Board, the Principal, or any other NSW public body in respect of information or opinions about the tenderer collected, exchanged and used for the above-stated purposes. The tenderer may have rights under the *Freedom of Information Act 1989* to access, and to require the correction of, information held by certain agencies.

8.4.3 The tenderer agrees that information which may be collected, exchanged and used in accordance with this provision includes "personal information" about the tenderer for the purposes of the Privacy and Personal Information Protection Act 1998. Lodgement of a Tender will be an authorisation by the tenderer to the Board to collect such information from third parties in accordance with this clause.

#### **8.5 Corrupt or Unethical Conduct**

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

- (a) offered any inducement or reward to any public servant or employee, agent or sub-contractor of the Board, the Client Agency, or the NSW Government in connection with this RFT or the submitted Tender;
- (b) engaged in corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988*, or
- (c) a record (including through an agency report) of unethical behaviour,

this may result in the Tender not receiving further consideration.

- 8.5.2 The Board is under no obligation to do so, but may in its discretion invite a relevant tenderer to provide written comments within a specified time before the Board excludes the tenderer on this basis.

## **9. OUTCOMES**

### **9.1 Negotiations Before Determination of Outcome**

- 9.1.1 Before making any determination as to acceptance or rejection of Tenders the Board may, at its discretion, elect to conduct limited negotiation with preferred tenderers or a preferred tenderer, including those who have submitted Alternative Tenders or who have submitted substantially Conforming Tenders, to mutually improve outcomes.

### **9.2 Acceptance or Rejection of Tenders**

- 9.2.1 The Board may accept all or any part or parts of any Tender or Tenders, including, in accordance with this Part A, any Alternative Tender or other Non-Conforming Tender.
- 9.2.2 The Board is not bound to accept the lowest or any Tender.
- 9.2.3 If the Board rejects all the Tenders received it may:
- (a) invite fresh Tenders based on the same or different criteria (specifications and details contained in Alternative Tenders will not be used as the basis for the calling of new Tenders), or
  - (b) conduct post-tender negotiations in accordance with this Part A.

- 9.2.4 The Board will accept a Tender by letter of acceptance or by execution of a formal contract, at the Board's discretion. No Tender may be verbally accepted.

### **9.3 Discontinuance of the Tender Process**

- 9.3.1 The Board reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of Tenders.
- 9.3.2 The Board will not be liable for any losses suffered by a tenderer as a result of discontinuance of the tender process, including costs of tendering.

### **9.4 Post Tender Negotiations in the Event all Tenders Are Rejected**

- 9.4.1 If there are no acceptable Tenders the Board may negotiate with the tenderers, which are closest to conforming to the tender requirements, and provide best value for money.

### **9.5 Complaints**

- 9.5.1 It is the NSW Government's objective to ensure that industry is given every opportunity to win Government contracts. Should any entity feel that it has been unfairly excluded from tendering or unfairly disadvantaged by the Conditions in Part B or the Requirement, it is invited to write to:

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

### **9.6 Disclosure of Information Concerning Successful and Unsuccessful Tenders**

- 9.6.1 In accordance with NSW Government Policy, the Board may publish information relating to the contract awarded under the RFT, including the identity of the successful tenderer, the



price payable by the agency and the significant selection criteria used in Tender assessment plus their weightings.

- 9.6.2 Unless the successful tenderer agrees or release is legally required, the Board will not disclose the successful tenderer's financing arrangements, cost structure or profit margins, significant intellectual property or any other information that in the Board's view would put the successful tenderer at a substantial commercial disadvantage.
- 9.6.3 A tenderer may request that the Board not disclose particular information included in its Tender, giving reasons. The Board will consider any such request before disclosure of information under this clause, but the Board's decision is final and at its absolute discretion.
- 9.6.4 The Board may publish the identities of all tenderers, but will not disclose other information included in an unsuccessful Tender unless the tenderer agrees, or release is determined under the *Freedom of Information Act 1989* or is otherwise legally required.
- 9.6.5 For contracts valued over \$150,000, the Board will normally publish the names of tenderers when Tenders close, and the other public information about the contract on the internet, within 90 days after award of the contract. For other contracts the Board will disclose the public information on request.

## **9.7 Ownership of Tenders**

- 9.7.1 All Tenders become the property of the Board on submission.
- 9.7.2 The Board may make copies of the Tenders for any purpose related to this RFT.



## **APPENDIX 1 TO PART A**

### **NOMINEE PURCHASER GUIDELINES**

#### **STATE PROCUREMENT**

##### **Introduction**

The Nominee Purchaser Arrangement was created under section 18 of the *Public Sector (Goods and Services) Regulation 2000* (NSW). The Regulation allows the State Contracts Control Board ("SCCB") to provide access to contractors of public sector agencies to SCCB standing offer agreements for the provision of goods and services. These contractors are known as Nominee Purchasers. The public sector agencies making the nominations are known as Nominating Agencies.

##### **What is a Nominee Purchaser?**

Nominee Purchaser means a contractor to a public sector agency, nominated by the public sector agency to be authorised to place orders under standing offer agreements and registered by State Procurement, a division of the Department of Commerce.

Access of Nominee Purchasers to SCCB standing offer agreements:

- Is limited to standing offer agreements relevant to the contract between the Nominating Agency and the Nominee Purchaser, and which are specifically listed in the Nominee Purchaser's registration; and
- Is for a fixed period of registration, usually ending on the completion of the term of the contract between the Nominating Agency and the Nominee Purchaser.

A Nominee Purchaser must not purchase goods or services under a SCCB standing offer agreement, unless they are related to its obligations under a contract with a public sector agency and are used during the term of such a contract or included or incorporated in works, goods or services to be provided to the public sector agency.

##### **Pre-Tender Access for Tenderers and Subcontractors**

Details of SCCB standing offer agreements including general conditions and unpriced catalogue information are publicly available on the State Procurement (formerly NSW Supply) website from: [www.supply.dpws.nsw.gov.au](http://www.supply.dpws.nsw.gov.au)

Nominating Agencies seeking tenders, may nominate contractors wishing to tender for contracts and subcontractors which may be going to tender for parts of such contracts, to be given 'Temporary User or Read Only' access to the SCCB standing offer agreements electronic catalogue system (smartbuy® TRADE) to assist in pricing tenders. This access will normally expire when the relevant tender closes.

The purpose of pre tender access is to enable nominee purchasers to price goods and services at State Contract Control Board rates, and to confer that benefit in their tender to the public sector agency.

Contractors and subcontractors seeking pre-tender access should apply to the Nominating Agency, which needs to complete and submit a Nominee Purchaser Nomination Form to State Procurement.

Pre-tender access does not entitle contractors or subcontractors to make purchases under any SCCB standing offer agreement.

### **How does a contractor become a Nominee Purchaser?**

A Nominating Agency can nominate a contractor to be registered as a Nominee Purchaser. The contractor's sub-contractors or suppliers may also be nominated by the Nominating Agency to become Nominee Purchasers for SCCB standing offer agreements relevant to their subcontracts.

Contractors seeking to be a Nominee Purchaser should apply to the public sector agency concerned, which needs to complete and submit a Nominee Purchaser Nomination Form to State Procurement. Contractors that are Nominee Purchasers are not enabled to pass on access to subcontractors. Each subcontractor must be nominated and registered as a Nominee Purchaser. Contractors should include details of subcontractors proposed to become Nominee Purchasers in their own application to the Nominating Agency or in a later application.

Nominating Agencies requiring the registration of a Nominee Purchaser must fill out a Nominee Purchaser Nomination Form and submit it to the Contracts Information Unit, State Procurement. The Nominee Purchaser Application Form must be authorised by an appropriate representative of the Nominating Agency. Where the complete details of a proposed Nominee Purchaser have already been provided in a Nominee Purchaser Nomination Form to enable pre-tender access, the nomination for 'buying' access may be by e-mail, fax or letter, referring to the previous Nominee Purchaser Nomination Form.

If the nomination is approved, the Nominee Purchaser will be notified and given a State Procurement Registration Number for placing orders.

### **What terms and conditions apply to the Nominee Purchaser arrangement?**

#### **Scope of Access**

By placing an order under an SCCB standing offer agreement the Nominee Purchaser is taken to agree to comply with the following terms and conditions.

Access to SCCB standing offer agreements is limited to those relevant to the contract between the Nominating Agency and the Nominee Purchaser, and which are specifically listed in the Nominee Purchaser registration.

Access to SCCB standing offer agreements does not extend to any subsidiaries or associates of the Nominee Purchaser or to any subcontractors or suppliers of the Nominee Purchaser unless they are also registered as Nominee Purchasers.

A Nominee Purchaser must not purchase goods or services under a SCCB standing offer agreement, unless they are related to its obligations under a contract with a public sector agency and are used during the term of such contract, and applied to the direct fulfilment of that contract or include or incorporate the works, goods or services provided to the public sector agency.

The Nominee Purchaser must include the following in orders under a SCCB standing offer agreement.

- State Procurement Registration Number of the Nominee Purchaser;
- The SCCB standing offer agreement Contract Number and item number of the goods or service being ordered;
- The identity of the Nominating Agency;
- The contract name, number and location of the contract in respect of which the purchase is being made;

- A statement saying whether or not the goods or services ordered is related to carrying out its obligations under a contract with a public sector agency.

### **General Conditions**

Nominee Purchasers who place an order under an SCCB Standing Offer Agreement are subject to the terms and conditions of the Standing Offer Agreement's Customer Contract. Any orders placed under SCCB Standing Offer Agreement are also subject to The Code of Practice for NSW Government Procurement and Implementation Guidelines for NSW Government Procurement.

Conditions for the Nominee Purchaser Arrangement may change from time to time. State Procurement will inform current Nominee Purchasers and their Nominating Agencies of these amendments. State Procurement may terminate the registration of a Nominee Purchaser at any time. No government department or public sector agency is liable for any consequences of any change in conditions applying to, or termination of, registration of a Nominee Purchaser. If the nominating agency or Nominee Purchaser encounters any difficulties in the purchase of goods or services under SCCB Standing Offer Agreements, it should contact the relevant Contact Officer under the agreement.

### **Period**

The Nominee Purchaser may only access SCCB standing offer agreements within the period stated in the Nominee Purchaser registration. The nominated period must fall within the term of the contract between the Nominee Purchaser and the Nominating Agency, unless the Nominating Agency requests for an extension and is approved by State Procurement.

### **Verification**

The SCCB, through State Procurement, may require the Nominee Purchaser and/or the nominating agency to verify purchases under the Nominee Purchaser Arrangement by way of an on-request or periodic purchase report.

It is recommended that Nominating Agencies monitor Nominee Purchaser's purchases, by sampling audit or other means, and internally verify that the purchases are properly used for the provision of goods and services to the Nominating Agency.

**Attachment 1**  
List of NSWFB Stations by Region

**ATTACHMENT 1****LIST OF NSWFB STATIONS BY REGION**

**Attachment 2**  
Map of NSWFB Zones and Regions

**ATTACHMENT 2**

**MAP OF NSWFB ZONES AND REGIONS**

**Attachment 3**  
**NSW RFS Draft Region and Zone/Team Boundaries**

**ATTACHMENT 3**

**NSW RFS DRAFT REGION AND  
ZONE/TEAM BOUNDARIES**



**State Procurement is a Business Unit of the NSW Department of Commerce**

## **PART B – CONDITIONS OF CONTRACT**

**Contract No. 0501027- Fire Fighting Equipment for  
NSW Fire Brigades and NSW Rural Fire for Foam  
Equipment, Bushfire Equipment, Rescue Equipment and  
Miscellaneous Equipment**

**PERIOD: 1 April 2006 to 31 March 2009**



## Part B – Conditions of Contract

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## **PART B CONDITIONS OF CONTRACT**

### **1. INTERPRETATION**

#### **1.1 Definitions**

**“Circumstances Beyond the Control of the Contractor”** include:

- (a) acts of God;
- (b) fire, flood, or earthquake;
- (c) national emergency or war; or
- (d) a serious industrial dispute

**“Confidential Information”** means, in relation to a Party, information that:

- (a) is by its nature confidential;
- (b) is designated by that Party as confidential; or
- (c) the other Party knows or ought to know is confidential.

**“Contract”** means this Contract concluded between the Principal and the Contractor, including all special conditions, specifications, schedules and other documents incorporating and forming part of the Contract.

**“Contract Material”** means:

- (a) any material brought into existence as part of, or for the purpose of providing the Service including records, documents and Information stored by any means (“New Contract Material”);
- (b) any material which is existing at the date of this Contract and which is incorporated with the New Contract Material (“Existing Contract Material”).

**“Contract Price”** means the total amount payable by the Principal to the Contractor for the Service as detailed in the Pricing Schedule at Part C1.

**“Contractor”** means the organisation or individual who by the contract undertakes to provide the Service required by the Contract and, where the contractor is an individual or partnership, the expression shall include the personal representatives of that individual or of the partners as the case may be and the expression shall also include any person to whom the benefit may be assigned by the Contractor with the consent of the Principal.

**“Contractor’s Insolvency”** means any of the following:

- (a) insolvency;
- (b) the Contractor indicates that it does not have the resources to perform the Contract or any Contract;
- (c) an application for winding up is made and not stayed within 14 days;
- (d) a winding up order is made;
- (e) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed;

- (f) a mortgagee enters the possession of any property of the Contractor;
- (g) notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (h) any actions of a similar effect are taken.

**“Customer”** is an authorised Government department, public sector agency or nominee purchaser, including NSW Fire Brigade and NSW Rural Fire Service, who have committed to purchase from this contract.

**“Delegate”** is an authorised officer delegated by the Board, by authority of clause 141 of Public Sector Employment and Management Act 2002.

**“Deliverables”** means the goods and/ or services to be supplied by the Contractor in accordance with this Contract, as detailed in the Specification, and as itemised in the Price Schedule.

**“Information”** includes information in the form of data, text or images.

**“Intellectual Property”** means all rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, and all other rights of Intellectual Property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967, whether created before or after the date of this Contract.

**“Management Fee”** means the fee payable by the Contractor to the Principal in accordance with Part B Clause 18 and Schedule 2 – Management Fee Deed.

**“Nominee Purchaser”** is a contractor to a public sector agency authorised to place orders under standing offer agreements and registered by State Procurement.

**“Parties”** means the Principal and the Contractor.

**“Price”** means the price payable for each Deliverable as set out in the Price Schedule.

**“Price Schedule”** means the Price Schedule attached to the Tender in Part C2.

**“Principal”** means the State Contracts Control Board, established under the Public Sector Employment and Management Act 2002 and includes the duly authorised delegates of the Principal, including officers of State Procurement.

**“Principal’s Material”** means any material, document, or information supplied by the Principal to the Contractor by whatever means, including information supplied by the Principal, which is information from other departments or agencies of Crown.

**“Public Service”** has the same meaning as that given to it in the *Public Sector Management Act 1988* (NSW).

**“Schedule”** means a schedule to this Contract.

**“Specification”** means the detailed description of the Goods and Service to be provided under this Contract that is at Part C2a. In the event of any inconsistency between the Specification and any part of this Contract, this Contract will prevail to the extent of the inconsistency.

**“State of New South Wales”** means the Crown in right of the State of New South Wales.

**“Statutory Requirements”** means the laws relating to the performance of this Contract or the lawful requirements of any authority with respect to the performance of this Contract.

**“Substantial Breach”** means a substantial breach of a term of this Contract by the Contractor and includes, but not limited to, any breach of the following clauses (which will be taken in each case to be a substantial breach of this Contract):

- (a) clause 21 (Insurance),
- (b) clause 23 (General Indemnity)
- (c) clause 26 (Licences and Approvals),
- (d) clause 32 (Confidentiality),
- (e) clause 34 (Intellectual Property Rights); and
- (f) clause 42 (No assignment or novation)

**“Term”** means the period of this Contract, set out in clause 3.

## **1.2 Rules for interpreting this Contract**

1.2.1 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

1.2.2 A reference to:

- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a document or Contract, or a provision of a document or Contract, is a reference to that document, Contract or provision as amended, supplemented, replaced or novated;
- (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
- (d) anything (including a right, obligation or concept) includes each part of it.

1.2.3 If this Contract expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.

1.2.4 A singular word includes the plural, and vice versa.

1.2.5 A word which suggests one gender includes the other genders.

1.2.6 If a word is defined, another part of speech of that word has a corresponding meaning.

1.2.7 The Parties may undertake business by the electronic exchange of information and the provisions of this Contract will be interpreted to give effect to undertaking business in this manner.

## **2. NATURE OF CONTRACT BETWEEN THE PRINCIPAL AND CONTRACTOR**

2.1 This Contract covers the supply of Fire Fighting Equipment and Preventative Maintenance and Repair Services– Foam Equipment, Bushfire Equipment, Rescue Equipment and Miscellaneous Equipment and Services to the Customer, in accordance with the Specification.

2.2 This Contract constitutes the entire Contract between the Parties. Any prior arrangements, Contracts, representations or undertakings are superseded. No notification or alteration of any clause of this Contract will be valid except in writing signed by both Parties, (SCCB and the Contractor)

**3. TERM**

- 3.1 This Contract commences on *1<sup>st</sup> April 2006* and expires on *31<sup>st</sup> March 2009* unless sooner determined in accordance with this Contract.
- 3.2 The Principal may, in its sole discretion, extend this Contract for two (2) further periods, each of one (1) year duration.

**4. SERVICES TO BE SUPPLIED**

- 4.1 The Contractor acknowledges that the Contract constitutes a standing offer for the supply of only such Service as may be required from time to time during the currency of the Contract and the Principal shall not be bound expressly or implied to order from the Contractor any quantity of Service during the period of the Contract.

**5. RIGHT TO OBTAIN SERVICES ELSEWHERE**

- 5.1 If, in the Principal's opinion, any Service/s required cannot be promptly or conveniently obtained under the Contract, it shall be lawful for the Principal to make, or authorise the making of, special arrangements for the provision of such Service/s and the Contract shall not be considered as infringed or vitiated thereby.
- 5.2 If Service of the kind contracted, to be supplied, under the Contract is provided in any government establishment or institution, they may be obtained from that establishment or institution instead of under the Contract and the Contract shall not be considered as infringed or vitiated thereby.

**6. RESPONSIBILITY OF THE CONTRACTOR**

- 6.1 The Contractor shall establish immediately, at no additional cost to the Principal, all necessary facilities for the effective conduct and management of all aspects of the Contract.

**7. PERFORMANCE OF WORK**

- 7.1 The work under this Contract shall be executed in accordance with the terms and conditions detailed herein and the Contractor shall carry out and perform the work in a thoroughly sound and competent manner, to the reasonable satisfaction of the Principal and in accordance with its general directions.
- 7.2 For the purposes of this clause, the word "direction" includes any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which the Principal may make, give or issue pursuant to the provisions of the Contract.

**8. PRINCIPAL'S DELEGATE**

- 8.1 The Principal's Delegate is responsible for administering this Contract.
- 8.2 The Contractor must comply with any reasonable direction given by the Principal's Delegate in connection with the performance of work under this Contract.
- 8.3 Unless this Contract provides otherwise, and subject to the Principal's direction, the Principal's Delegate may exercise rights and discharge obligations conferred or imposed on the Principal under this Contract.
- 8.4 The Principal's Delegate must not, without the Principal's approval:

- (a) waive or vary any provision of this Contract,
- (b) release the Contractor from any obligation under this Contract, or
- (c) terminate this Contract.

## **9. PRE-CONTRACT MEETING**

- 9.1 Within seven working (7) days of the issue of the letter of intent to the recommended contractor, a Pre-Contract meeting may be held at a venue nominated by the Principal.
- 9.2 The purpose of the meeting is to:
- (a) Ensure that all the parties have a common understanding of the Contract Conditions.
  - (b) Ensure all parties have a common understanding of the Contract Specifications
  - (c) Overview and confirm the special requirements of the Contract.
  - (d) Outline the lines of communication between the Contractor, the Principal, the Principal's Delegate and the Customer.
  - (e) Confirm the requirements of the Customer in regard to the supply of equipment and establishment of a preventative maintenance and repair facility and operational procedures and plans.
  - (f) Develop a Project Management Plan for the whole contract.
- 9.3 The pre-contract meeting must formalise all communication(s) required by the contract and also formalise the reporting processes for all communication(s) between the customer and the contractor.

## **10. PRICE BASIS**

- 10.1 The Contract prices shall be as per clause 5.3.1 of Part A. Contract prices shall be as provided in Part C2 of the tender.

## **11. PRICE ADJUSTMENT PROCESS FOR INCREASES IN PRICES**

- 11.1 The Contractor may not vary the Price of a Service/s except in accordance with the Price mechanism selected in Part C1 of the Tender.
- 11.2 The Contractor must apply in writing to the Principal to increase Prices in the Price Schedule. Such application is to be made six weeks prior to each anniversary of the contract. Sufficient documentation to justify applications for Price variation must accompany the application.
- 11.3 Subject to the Contractor having provided the Principal with sufficient documentation, the Principal will, in writing, approve or reject a price variation within six (6) weeks of lodgement of the application.
- 11.4 Increased prices approved by the Principal shall apply to all Goods and Services (if any) made after the date upon which the Principal publishes the increased Price. No Price increase shall be applied retrospectively.
- 11.5 Where the Price variation is accepted, the Price Schedule will be taken to include the varied Price.
- 11.6 The provision of Service/s under the Contract shall not be withheld or disrupted by formalities or disputes associated with the variation of a Price.

## **12. GOODS AND SERVICES TAX**

12.1 In this clause and Contract:

12.1.1 “**Consideration**”, “**Tax Invoice**”, “**Taxable Supply**” and “**Supply**” have the same meaning as provided for in the GST Law.

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

12.1.3 “**GST Law**” means any law imposing a GST and includes *A New Tax System (Goods & Services Tax) Act 1999* (Cth) or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation based on those Acts.

12.1.4 Every invoice issued by a person making a Goods or Service provision must be in the form of, or be accompanied by, a valid Tax Invoice. No amount is payable until a valid Tax Invoice for the Contract Price, or any instalment of the Contract Price, is received.

12.1.5 If there is any abolition or reduction of any tax, duty, excise or statutory charge associated with the GST, or any change in the GST, the Consideration payable for the Supply must be varied so that the Contractor's net dollar margin for the Supply remains the same.

12.1.6 Any contract entered into by a Party to this Contract with a third party which involves a Supply being made, the cost of which will affect the cost of any Supply made under or in connection with this Contract, must include a clause in equivalent terms to clause 12.1.5.

## **13. GOVERNMENT TAXES, DUTIES AND CHARGES**

13.1 All taxes, duties and charges imposed or levied in Australia or overseas in connection with the performance of the Contract shall be borne by the Contractor.

## **14. PAYMENT**

### **14.1 Payment of Contract Price**

14.1.1 In consideration for the Contractor providing the Goods or Services, the Customer will, subject to the conditions of this Contract, pay the Contractor the Contract Price in the amounts and at the times set out in the Contract or Order less:

- (a) any amount already paid by the Customer for the particular Goods or Services, and
- (b) any amount the Customer may deduct or set-off under this Contract.

14.1.2 The Contractor agrees that failure by the Customer to pay the Contract Price at the due time will not be grounds to vitiate or avoid this Contract.

14.1.3 The Contractor will not be entitled to any interest, credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment of money becoming due for the provision of the Goods or Services.

## **15. INVOICES AND TIME FOR PAYMENT**

15.1 The Contractor must lodge with the Customer an invoice for the Contract Price by the times specified by the Customer.

15.2 The Customer is not obliged to pay the invoices of the Contractor unless the Customer receives a correctly rendered invoice from the Contractor.

15.3 An invoice is correctly rendered if:



- (a) the amounts specified in the invoice are correctly calculated in accordance with this Contract;
- (b) Invoice contains details of each service the time /sessions undertaken at the specified rate and total cost for each Service.
- (c) the invoice is accompanied by documentation that provides evidence that the Services have been accepted in accordance with the Principal's Contract; and
- (d) the invoice is addressed as specified in the Principal's Order to receive invoices.

15.4 If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment shall be recoverable by or from the Contractor and without limiting recourse to other available means, may be set off against any amount subsequently due by the Customer to the Contractor.

15.5 In accordance with clause 2AB of the Public Finance & Audit Regulation 1984, Accounting Officers shall ensure that all accounts are paid on time. When a contract for the supply of goods and services does not provide for the time of payment in the contract, payment is to be made by the end of the month following the month in which an invoice or statement is received.

## **16. DELIVERY REQUIREMENTS**

16.1 Items supplied must be suitably packaged to prevent any loss or damage in transit, from the contractor to the Customer.

16.2 Items supplied must be suitably labelled to ensure they are received at the nominated address supplied by the Customer.

16.3 Orders for items must be supplied to the Customer within ten (10) working days from receipt of order.

16.4 Where goods cannot be immediately despatched to the Customer, the contractor is to provide the customer with a written notification of the backorder and an estimated delivery date.

## **17. EMERGENCY ORDERS**

17.1 Emergency orders shall be made available for collection from the suppliers nominated collection point within four (4) hours during normal business hours and twelve (12) hours outside normal business hours.

17.2 Where supply of Deliverables made under the emergency supply provisions draws upon the regular stock holding to such a point where the contractor is unable to meet the specified delivery times for regular items, the contractor shall provide the Principal/Customer with a delivery schedule for all current orders.

17.3 The contractor shall provide details of any stoppage in production, which is expected to occur.

## **18. MANAGEMENT FEE**

18.1 The Contractor must execute the Management Fee Deed attached as a Schedule to this Contract and must pay to the Board the Management Fee in accordance with that Deed.

18.2 The Management Fee will be the amount prescribed in the Management Fee Deed and shall be paid as stipulated in that Deed.

- 18.3 The Contractor agrees that the Management Fee has been allowed for in the Contract Price together with all costs associated with the calculation and proving payment of the Management Fee.
- 18.4 The Contractor shall during the Term of this Contract and for a 12 month period after this Contract has expired or is terminated, keep secure all relevant documents and Information for the purposes of this clause and will give any auditor appointed by the Board access to those documents and Information at all reasonable times.
- 18.5 The Principal may terminate this Contract if the Contractor fails to comply with this clause, including where the Contractor has not for three consecutive Payment Periods paid the Management Fee.

## **19. CONFLICT OF INTEREST**

- 19.1 The Contractor warrants that, to the best of its knowledge, no conflict of interest of the Contractor, its employees, agents or sub-contractors exists or is likely to arise in the performance of its obligations under the Contract.
- 19.2 The Contractor must:
- (a) notify in writing, and consult with, the Principal immediately upon becoming aware of the existence, or possibility, of a conflict of interest; and
  - (b) comply with any direction given by the Principal in relation to those circumstances designed to manage that conflict of interest.
- 19.3 For the purposes of this clause, a “conflict of interest” includes engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Contractor of, or to restrict the Contractor in performing, its obligations under the Contract.
- 19.4 The Principal may terminate the Contract in accordance with clause 41.1 if in its view a conflict of interest exists which prevents the proper performance of the Contract.

## **20. MISTAKES IN INFORMATION**

- 20.1 The Contractor must pay for the extra costs (if any) occasioned by errors or omissions in Contract Material or other Information supplied by it, even though that Contract Material or Information may have been approved by the Principal.

## **21. ADDITIONAL ITEMS**

- 21.1 If during the term of this Contract, the Contractor is capable of providing:
- (a) modified versions, or upgrades of the components or Deliverables
  - (b) new components or Deliverables released in Australia by the Contractor or by a manufacturer
- the Contractor shall provide the Delegate with information on (a) and (b) above and shall offer to include those components or Deliverables at the same time as it is first informing its other customers of the commercial availability of those items.
- 21.2 The new components or Deliverables referred to in sub-clause (b) shall be deemed to form part of Part C2 at prices indicated at Part B from the date the Principal despatches notification in writing to the Contractor that such components or Deliverables shall form part of Part C2. This will allow Customers the option to evaluate and seek approval to include onto contract.

## **22. MINIMUM INSURANCE REQUIREMENTS**

- 22.1 The Contractor must hold and maintain and must ensure that all subcontractors are beneficiaries under or otherwise hold and maintain, the following insurances for the Term, or for such other period as may be specifically required by this Contract for the particular policy:
- 22.2 A broad form liability policy of insurance which includes:
- (i) public liability insurance to the value of at least the amount of at least A\$10 million in respect of each claim; and
  - (ii) products liability insurance to the value of at least A\$10 million for the total aggregate liability for all claims arising out of the Contractor's products for the period of cover.
- 22.3 Workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees; and
- 22.4 All policies of insurance must be effected with an insurer approved by the Principal (which approval will not be unreasonably withheld).
- 22.5 All policies, apart from workers compensation must:
- (a) note the interest of the Principal.
  - (b) not exclude liability assumed by the Contractor under this Contract.
- 22.6 During the Term, the Contractor must when requested in writing by the Principal:
- (a) supply proof that all insurance policies required by this Contract are current; and
  - (b) if required, arrange for its insurer to complete and sign a "Confirmation of Insurances Obtained Form", and on-send this to the Principal within 30 days of the request. Equivalent evidence as to the currency of insurance policies required by this Contract will be acceptable to the Principal.
- 22.7 If the Contractor fails to comply with clauses 22.1, 22.2, 22.3 and 22.4, the Principal
- (a) may affect and maintain that insurance and pay the necessary premiums; and
  - (b) may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance.
- 22.8 Where the Contractor is insured under a foreign company's or holding company's insurance policy, that insurance policy must clearly indicate that it applies to and extends coverage to the Contractor.
- 22.9 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Contract.

## **23. GENERAL INDEMNITY**

- 23.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Principal and its officers, employees and agents against any claim, loss or expense or damages (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together "the loss") as a result of:

- (a) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Contractor (or its employees, agents or subcontractors or their employees) in the performance of this Contract; or
- (b) any breach of this Contract or the confidentiality deeds required by this Contract.

23.2 The Contractor's liability in respect of, and indemnity given in, clause shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Principal, its officers, employees or agents caused or contributed to the loss.

## **24. COMPLIANCE WITH LAWS**

24.1 The Contractor must at all times act in a lawful manner in the provisions of the Service and the conduct of its business including, without limitation, complying with all taxation legislation, privacy legislation, workers compensation and occupational health and safety requirements. In providing the Service the Contractor shall also comply with:

- (i) the Crimes (Administration of Sentences) Act 1999;
- (ii) any other Legislative requirement; and
- (iii) the provisions of this Contract.

## **25. PAYMENT OF WAGES AND ALLOWANCES**

25.1 The Contractor shall ensure that all persons employed by it in or in connection with the Contract are paid wages and allowances of every kind required to be paid by or under any relevant award, determination or order of the State or Territory in which the Service are being provided or by or under any industrial agreement that is in force in the State or Territory of the Commonwealth in which the Service are being provided and that all such persons are employed under the conditions contained in any such award, judgement, order or industrial agreement.

25.2 It shall be a precondition, notwithstanding any other provision of this Contract, to the obligation to pay any monies due to the Contractor that wherever requested by the Principal, the Contractor shall give the Principal a statutory declaration to the effect that no wages are due and owing by the Contractor in respect of work undertaken pursuant to this Contract.

## **26. THE CONTRACTOR'S ON-COSTS**

26.1 The Principal will not be liable for any of the Contractor's employee "on-costs", including wages, salaries, holiday pay or allowances, sick pay, Workers' Compensation, or any tax or levy voluntarily undertaken by or imposed (either by statute or otherwise) on the Contractor.

## **27. LICENCES AND APPROVALS**

27.1 The Contractor must obtain and maintain at its own cost all licences, approvals and consents necessary to perform this Contract.

## **28. KEEPING OF RECORDS AND ACCESS TO RECORDS**

28.1 The Contractor must keep proper accounts, records and time sheets in accordance with the accounting principles generally applied in commercial practice.

28.2 During the Term, the Contractor must, within seven (7) days of a request from the Principal, give the Principal access to, and copies of, any material relevant to the performance of the

Contractor's obligations under this Contract, and any financial information, that the Principal reasonably requires.

- 28.2 During the term the Contractor must provide quarterly reports including equipment sales, preventative maintenance and repairs undertaken during that period.

## **29. ACCESS TO CONTRACTOR'S PREMISES**

- 29.1 During the Contract period, the Contractor shall at all times during hours (ie. Monday to Friday, 9.00am to 5.00 pm) permit or arrange for all officers authorised by the Principal to enter upon the premises of the Contractor for the purposes of inspecting work performed pursuant to the Contract and to be given access to all documents or information necessary for the same purposes.

## **30. MONITORING OF PERFORMANCE**

- 30.1 The Contractor must meet with the Principal from time to time, as reasonably directed by the Principal and as a minimum on a quarterly basis, to evaluate and monitor performance of this Contract by the Contractor.
- 30.2 At all times during the term and any extensions of the term of the Contract, the Contractor shall perform the services to the standards set out in the specification and also strictly in accordance with requirements of the specification.

## **31. EXCHANGE OF INFORMATION BETWEEN GOVERNMENT AGENCIES**

- 31.1 The Contractor authorises the Principal and its employees and agents to make available to NSW Government departments or agencies information concerning the Contractor, including any information provided by the Contractor to the Principal and any Information relating to the Contractor's performance under the Contract, or the Contractor's financial position.
- 31.2 The Contractor acknowledges that Information about the Contractor from any source including any substantiated reports of unsatisfactory performance, may be taken into account by NSW Government agencies in considering whether or not to offer the Contractor future opportunities for NSW Government work.
- 31.3 The Principal regards that the provision of Information about the Contractor to any New South Wales Government department or agency as privileged within section 22 of the Defamation Act 1974 (NSW).
- 31.4 The Contractor releases and indemnifies the Principal and the State of New South Wales from any claim in respect of any matter arising out of the provision of Information. Without limiting the above, the Contractor releases the Principal and the State of New South Wales from any claim it may have for any loss to the Contractor arising out of the provision of Information relating to the use of such Information by the recipient of the Information.

## **32. THE CONTRACTOR'S PERSONNEL/SPECIFIED PERSONNEL**

- 32.1 The Contractor warrants that all personnel engaged in the provision of the Service are appropriately qualified, competent and experienced.
- 32.2 The Contractor must employ only such persons:
- (a) as are careful, skilled and experienced in the provision of the Service or similar Service; and
  - (b) (where applicable) who hold all necessary licences, permits and authorities.

**33 CONFIDENTIALITY**

- 33.1 In this Contract “**Confidential Information**” means information that:
- (a) is by its nature confidential;
  - (b) is designated by either party as confidential; or
  - (c) a party knows or ought to know is confidential;
- but does not include information which:
- (d) is or becomes public knowledge other than by breach of this Contract;
  - (e) is in the possession of a party without restriction in relation to disclosure before the date of receipt from the other party; or
  - (f) has been independently developed or acquired by a party.
- 33.2 Neither party shall, without the prior written approval of the other party (which approval shall not be unreasonably withheld) make public or disclose to any person any Confidential Information of the other party, any information about this Contract or any other agreement associated with this Contract and, in giving written approval, the other party may impose such terms and conditions as it thinks fit.
- 33.3 Each party shall take all reasonable steps to ensure that its employees or agents engaged for the purposes of this Contract, do not make public or disclose Confidential Information of the other party.
- 33.4 Either party may at any time require the other party to arrange for its employees or agents engaged in the performance of the Service to execute a deed of confidentiality.
- 33.5 Either party agrees to indemnify and hold harmless the other party against all costs, liability, losses and claims incurred by the other party as a result of any breach of confidentiality.
- 33.6 Each party shall on demand by the other party return any document supplied by the other party to it.
- 33.7 This clause shall survive the termination of this Contract.

**34. DELIVERY OF CONTRACT MATERIAL AND INFORMATION**

- 34.1 On or as soon as practicable after the end of this Contract, the Contractor must deliver, as required, to the Principal or to the any incoming contractor all materials and information relating to the Contract.
- 34.2 The Contractor may in good faith keep a copy of the Contract material and information for its records.

**35. INTELLECTUAL PROPERTY RIGHTS**

- 35.1 The Contractor must not at any time breach or infringe any Intellectual Property rights of the Principal or of any other person whether in the course of providing the Service or otherwise.
- 35.2 The Contractor agrees to indemnify and keep indemnified the Principal (which term includes in this clause, any Principal, and their officers, employees and agents) from and against any actions, claims, proceedings, demands, costs, expenses, losses and damages, arising from or in connection with any infringement or alleged infringement of any Intellectual Property rights.

- 35.3 The Principal may take legal proceedings including injunctive proceedings against the Contractor if there is any actual, threatened or suspected breach of clause 34.1 despite the provisions of clause 35.
- 35.4 The Contractor acknowledges that, in the event of a breach of clause 28.1 the Principal may terminate this Contract in accordance with clause 40 without prejudice to any accrued rights or remedies of the Principal.
- 35.5 In the event of any claim being made or brought against the Principal in respect of any breach or alleged breach by the Contractor of any Intellectual Property rights, the Principal will notify the Contractor. The Contractor will, with the reasonable assistance, if required, of the Principal, but at the Contractor's sole expense, conduct all negotiations for the settlement of such claims or any litigation that may arise in connection with the claim. If the Contractor fails to conduct such negotiations or settlement the Principal may direct Principals to suspend payment of any money due to the Contractor under the Contract until such claim has been satisfied, settled, or withdrawn.

### **36. ENTRY TO OFFICIAL ESTABLISHMENTS**

- 36.1 All persons entering official establishments are required to be approved and conform with the regulations regarding security and discipline within the area as may be laid down by the Principal or authority concerned.

### **37. DAMAGE TO PROPERTY**

- 37.1 If, in the performance of the Contractor's obligations herein, the Contractor or any servant or agent of the Contractor by any act or omission damages or causes to be damaged any property of the Principal, then the Contractor shall pay the costs of repairing and making good such damage and the amount of any consequential losses, costs or expenses which may be suffered or incurred by reason of such property having been so damaged.

### **38. REPLACEMENT SPARE PARTS**

- 38.1 The Customers should be supplied with a detailed list of recommended replacement parts for all components of equipment where the contractor has permitted and enables the customer to perform Level 1 and Level 2 services at the customer's premises.
- 38.2 The list of parts shall include the description, contractor's part number and the contractors price (in Australian Dollars).
- 38.3 The contractor is to ensure that all parts necessary to perform Levels 1 and Level 2 services are to be made readily available to the client on request."
- 38.4 Where spare parts cannot be provided by the contractor within ten (10) working days, the contractor is to supply a new fully functional unit of similar product to that which requires maintenance, as a interim replacement item at no cost to the client. All costs associated with the delivery and return of the interim replacement item is to be borne by the contractor.

### **39. VARIATIONS**

- 39.1 This Contract may not be varied except in writing signed by both the Principal and the Contractor.

**40. TERMINATION FOR CAUSE**

40.1 Without prejudice to its rights at common law, the Principal may immediately terminate this Contract, in whole or in part, by written notice to the Contractor ("Notice of Termination for Cause"):

- (a) where the Contractor makes any statement, fact, information, representation or provides material in the Tender which is false, untrue, or incorrect in a way which materially affects the Contract;
- (b) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
- (c) where the Contractor commits a Substantial Breach of the Contract that is not capable of remedy;
- (d) where the Contractor commits a Substantial Breach of the Contract in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Principal requiring it to do so ("Notice of Breach"), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as the Principal may reasonably allow;
- (e) where the Contractor assigns its rights and/or obligations, or novates this Contract or subcontracts the Contract except in accordance with this Contract; or
- (f) in the case of the Contractor's Insolvency.
- (g) where the Contractor has not for three consecutive Payment Periods issued any invoice to a Customer or received any Order; or
- (h) If in the Principal's view a conflict of interest exists for the Contractor which prevents the proper performance of the Contract.

40.2 Effect of Termination for cause

40.3 If the Principal terminates this Contract for cause the Principal may:

- (a) contract with any other person to complete the provision of the Service;
- (b) deduct loss or damages arising from or in connection with the termination, including any loss or damages incurred by a Principal under any Contract (which may be ascertained and certified by the Principal), from any money due, or which may become due to the Contractor (whether under this Contract or any Contract) and/or from the Security (if any); and
- (c) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to the Principal.

**41. TERMINATION FOR THE PRINCIPAL'S CONVENIENCE**

41.1 The Principal may terminate this Contract in whole or in part for its convenience by giving written notice ("Notice of Termination for Convenience") with effect from the date stated in the notice and without the need to give reasons.

41.2 Effect of Termination for convenience

41.3 The Principal shall reimburse the Contractor its unavoidable costs directly incurred as a result of termination provided that any claim by the Contractor:



- (a) must be supported by written evidence of the costs claimed;
- (b) will be in total satisfaction of the liability of the Principal to the Contractor in respect of this Contract and its termination.

41.4 The Principal shall not in any circumstances be liable for any consequential loss or loss of profits suffered by the Contractor as a result of the termination of this Contract by the Principal.

41.5 The Contractor must, wherever possible, include in all sub-contracts and supply Contracts an equivalent provision to this clause.

## **42. NO ASSIGNMENT OR NOVATION**

42.1 The Contractor must not assign or novate this Contract without first obtaining the prior written consent of the Principal.

42.2 The Contractor acknowledges that the Principal may make financial checks on the entity proposing to take over this Contract before determining whether or not to give consent to the assignment or novation.

## **43. ISSUE RESOLUTION**

### **43.1 General**

43.1.1 In order to resolve any conflicts or issues between the Parties promptly and to the satisfaction of the Parties, the issue resolution process stated below will be followed in this order until an issue is resolved:

- (a) Amicable Resolution (cl.43.2);
- (b) Expert Determination (cl.43.3)

### **43.2 Amicable Resolution**

43.2.1 Either Party may give notice to the other Party of an issue, including a dispute or difference, ("the Issue Notice") about the meaning or effect of the Contract or about any matter arising under or out of the Contract. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.

43.2.2 If the Party giving the Issue Notice is the Contractor, and this issue has arisen under the Contract, it must give the Issue Notice to the Principal.

43.2.3 If the Party giving the Issue Notice is the Principal, it must give the Issue Notice to the Contractor.

43.2.4 The Parties must follow the issue resolution process in this clause before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.

43.2.5 If a Party gives an Issue Notice under this clause, each Party will nominate in writing a senior executive who will promptly confer to resolve the issue.

43.2.6 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice.

43.2.7 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided ("the Referral Notice").

- 43.2.8 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Principal.
- 43.2.9 If the Party giving the Referral Notice is the Principal, it must give the Referral Notice to the Contractor.
- 43.2.10 If a Referral Notice has not been given within 27 days of becoming entitled under clause 43.2.6 then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

### **43.3 Expert Determination**

- 43.3.1 If a Referral Notice is given under clause 43.2, the expert is to be agreed between the Principal and the Contractor. If they cannot agree within 27 days of the Referral Notice, the expert is to be nominated by the Chief Executive Officer, Australian Commercial Disputes Centre, Sydney.
- 43.3.2 The expert nominated must be a lawyer unless otherwise agreed. The expert must not be:
- (a) an employee of the Parties;
  - (b) a person who has been connected with the Contract or the Contract as the case may be; or
  - (c) a person who the Parties have not been able to agree on.
- 43.3.3 When the person to be the expert has been agreed or nominated, the Principal, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
- (a) the issue referred to the expert for determination
  - (b) the expert's fees
  - (c) the procedure for the determination set out in Schedule 1.
  - (d) any other matter which is relevant to the engagement.
- 43.3.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 43.3.5 The procedure for expert determination is set out in Schedule 1.
- 43.3.6 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off, or counter-claim.
- 43.3.7 If the expert determines that one Party must pay the other an amount exceeding \$100,000.00 (calculating the amount without including interest on it, and after allowing for set-offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 43.3.8 Unless a Party has a right to commence litigation under clause 43.3.7
- (a) the Parties must treat each determination of the expert as final and binding and give effect to it; and
  - (b) if the expert determines that one Party owes the other money, that Party must pay the money within 27 days.

**44. PERFORMANCE OF CONTRACT DURING ISSUE RESOLUTION**

- 44.1 The Parties agree to continue performing their obligations under this Contract while the issue is being dealt with in accordance with this clause 43.

**45. WAIVER**

- 45.1 A waiver in respect of a breach of a term of this Contract by the other Party shall not be taken to be a waiver in respect of any other breach. The failure of either Party to enforce a term of this Contract will not be interpreted as a waiver of that term.

**46. SEVERABILITY**

- 46.1 If any part of this Contract is void or voidable, then that part is severed from this Contract but without affecting the continued operation of the remainder of the Contract.

**47. NOTICES**

- 47.1 Notices must be sent to the other Party at the nominated address, or the address last notified to the other Party in writing, or in the case of the Contractor, at the Contractor's registered office.
- 47.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.
- 47.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

**48. COUNTERPARTS**

- 48.1 If there are a number of counterparts of this Contract, the counterparts taken together constitute one and the same instrument.

**49. APPLICABLE LAW**

- 49.1 This Contract is governed by the laws of the State of New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the Commonwealth of Australia.

**50. RIGHTS CUMULATIVE**

- 50.1 The rights and remedies provided under this Contract are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.

**51. NO AGENCY/NO EMPLOYMENT/NO PARTNERSHIP**

- 51.1 The Contractor agrees that the Contractor will not be taken to be, nor will it represent that it is, the employee, partner, officer and/or agent of the Principal.

**52. SET-OFF/MONEY RECOVERABLE BY PRINCIPAL**

- 52.1 The Principal may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Principal in connection with the supply of the Service.

52.2 Without limiting clause 44.1, any damages, costs and expenses recoverable by the Principal from the Contractor in consequence of the Contractor's breach of the Contract may be deducted from money then due to the Contractor under the Contract. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Principal and may be:

- (a) set off against any other money due to the Contractor by the Principal under this or any other Contract between the Principal and the Contractor; or
- (b) recovered from the Contractor by the Principal in an appropriate court.

52.3 Nothing in this clause will affect the right of any Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

### **53. SUSPENSION OF PAYMENTS**

53.1 Should the Contractor refuse or neglect to carry out the instructions or requirements of the Principal in regard to any matter connected with this Contract, the Principal, may suspend all payments to the Contractor without penalty until such instructions or requirements have been complied with by the Contractor.

### **54. LATENT DEFECTS**

54.1 The Contractor shall rectify latent defects in the Deliverables.

54.2 The Contractor shall rectify any latent defects in the Deliverables within 28 days or such other period as may be agreed by the Customer at no cost to the Customer.

54.3 If the Contractor fails to rectify latent defects in the Deliverables within the specified time, the Customer may perform or have performed the work of rectification and all costs and outgoings incurred by the Customer shall be reimbursed to it by the Contractor.

### **55. NOT USED**

### **56. CONTRACTOR'S WARRANTIES**

56.1 In relation to Deliverables, the Contractor warrants that:

- (a) it will provide the Deliverables in accordance with the requirements of the Contract and with due care and skill;
- (b) it will comply with all statements or representations as to the provision of the Deliverables contained in the Tender;
- (c) the information contained in the Tender as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor and its employees and sub-contractors is correct;
- (d) it has established and will comply with and maintain during the Contract, the quality assurance arrangements set out in the Tender; and
- (e) it will not enter into any arrangement that impedes or is likely to impede its performance of the Deliverables in a manner, and to a standard, that is satisfactory to the Principal without first obtaining the Principal's consent.

**57. CONTRACTOR'S WARRANTIES (GENERAL)**

57.1 The Contractor warrants that:

- (a) the Deliverables do not infringe the Intellectual Property rights of a third party; and
- (b) the Deliverables shall conform to any legally applicable standards.

**58. SUB-CONTRACTING OF CONTRACT**

- 58.1 While a preference is held for all personnel utilised under the Contract to be employees of the Contractor, the Government of New South Wales recognises that, in certain circumstances, the Contractor may need to utilise the Deliverables of Sub-Contractor(s) in order to provide a Deliverables requested by the Principal. In such a case, it will be an express condition of Contract that, for all purposes, the Sub-Contractor(s) will be regarded as employee(s) of the Contractor.
- 58.2 For the purposes of this and other relevant conditions "Sub-Contractor" is defined as any person whose Deliverables are utilised by the Contractor for the purposes of this Contract and who is not an employee of the Contractor.
- 58.3 The Parties agree that the Contractor will not sub-contract the Contract without first obtaining the written consent of the Principal and the Principal, which may be subject to any conditions which the Principal may impose.
- 58.4 A consent under this clause does not relieve the Contractor from its liabilities or obligations under the Contract.
- 58.5 Regardless of any consent given, the Contractor will be responsible for ensuring the suitability of any sub-contractor and that the sub-contractor meets the requirements of a Contract.
- 58.6 The Parties agree that the Principal may withdraw its consent to a sub-contractor if in its reasonable opinion the sub-contractor is not meeting the requirements of the Contract. The Principal will notify the Contractor in writing that its consent is withdrawn and the Contractor will immediately terminate its arrangement with the sub-contractor.
- 58.7 The Contractor will be liable for any acts or omissions of any sub-contractor or any employee or agent of the sub-contractor as fully as if they were the acts or omissions of the Contractor and will indemnify and release the Principal from any liability or loss resulting from the acts or omissions of any sub-contractor.
- 58.8 This clause will not merge on the completion or earlier termination of the Contract.
- 58.9 The Contractor will ensure that a sub-contractor is aware of and complies with all the terms and conditions of the Contract. This is to be maintained throughout the period of the Contract.
- 58.10 This clause 58 does not apply in the event that the Principal requests a particular sub-contractor to provide the Deliverables.

**59. NON-MERGER**

- 59.1 The obligations of the parties under the contract, do not conclude at the cessation of the contract, whether such cessation be through termination, short-closure, suspension or expiry of the contract.

**60. CONTRACT VARIATION PROCEDURES**

- 60.1 No agreement or understanding to vary this Contract is to be legally binding upon either party unless in writing and signed by both parties.
- 60.2 Any change to the contract, whether financial and/or technical, may be raised by either party of the contract using a Customer approved 'contract change request sheet'.
- 60.3 Contract variations relating to technical matters should be endorsed by the Customer and the Contractor Technical Officer, while those relating to commercial/financial matters should be endorsed by the Customer Contract Administrator and the Contractor Contract Administrator.
- 60.4 The requested contract variation, as raised by a party using the 'contract change request sheet', must be immediately forwarded to the other party to the contract for either approval or rejection.
- 60.5 Each contract variation must be signed and returned to the initiating party irrespective of whether the variation has been approved or rejected.

**Note: The Customer has no responsibility for any costs or expenses incurred for technical changes undertaken without approval of the contract variation.**

## **61. CONFIGURATION MANAGEMENT IN THE NSWFB**

### **61.1 Introduction**

- 61.1.1 The NSWFB has undertaken the adoption of the engineering discipline known as Configuration Management (CM). The NSWFB anticipates that CM will provide for greater design control of its fleet of fire Vehicles, which will lead to greater interchangeability of components between vehicles and greater life expectancy of its fleet.
- 61.1.2 CM provides a store for the critical information of a development system or product, and protects the integrity of that information throughout the product's life-cycle. As such, CM provides the foundation for other management and engineering disciplines that require reliable product information as a prerequisite.
- 61.1.3 A configuration managed under CM may be any aggregation of equipment, or any of its discrete components, identified as satisfying a function of the NSWFB. Those equipment or components managed under CM are termed Configuration Items (CIs)
- 61.1.4 CM aims to ensure that the system design, development and manufacture meet the original specification by the establishment of baselines to punctuate the development cycle. A baseline is a reference point in the development effort and is applied to the specification, design documentation and the first as-built product to ensure that the Configuration Management is formally defined as the methodical application of the following:
  - \* Identification - The identification and documentation of the functional, physical and support characteristics of those items, which represent the system configuration as CIs to be controlled by the CM system.
  - \* Change Control - The processes which ensure that the configuration maintains its integrity as changes are made to individual, or collections of CIs, by review of the impact of each proposed change to the CI's form, fit and function, and the management/technical approval of the change prior to its implementation.
  - \* Status Accounting - The maintenance of records of all information required to "account for" and report the status of the system configuration, or individual CIs, at any given time and provide audit trails of each management/technical approval.

\*       Reviews and Audits - The conduct of documented reviews and audits to periodically compare the actual configuration with the approved configuration as maintained by CM in order to highlight any departures from the approved configuration.

61.1.5 CM is simply the formal application of traditional engineering processes. Without the formalisation of these processes, there is little likelihood that there will be the necessary communication to ensure only approved modifications make their way into configuration baselines. CM is a well recognised discipline in the Military (reference Mil-Std-973) as well as in specific fields of engineering such as Software Engineering (refer AS 4043-1992).

## **SCHEDULE 1      EXPERT DETERMINATION PROCEDURE**

### **1.      QUESTIONS TO BE DETERMINED BY THE EXPERT**

- 1.1      The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
- 1.1.1    Is there an event, act or omission which gives the claimant a right to compensation under the Contract:
- (a)      for damages for breach of the Contract, or
- (b)      otherwise in law.
- 1.1.2    If so:
- what is the event, act or omission?
- (a)      on what date did the event, act or omission occur?
- (b)      what is the legal right which gives rise to the liability to compensation?
- (c)      is that right extinguished, barred or reduced by any provision of the Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
- 1.1.3    In the light of the answers to clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:
- (a)      What compensation, if any, is due from one party to the other and when did it fall due?
- (b)      What interest, if any, is due when the expert determines that compensation?
- 1.2      The expert must determine for each issue any other questions required by the parties, having regard to the nature of the issue.

### **2.      SUBMISSIONS**

- 2.1      The procedure for submissions to the expert is as follows:
- 2.2      The Party to the Contract which has referred the issue to Expert Determination must make a submission in respect of the issue, within 15 business days after the date of the letter of engagement referred to in clause 43.3.3 of the Contract.
- 2.3      The other party must respond within 15 business days after receiving a copy of that submission. That response may include cross-claims.
- 2.4      The party referred to in clause 2.1 may reply to the response, but must do so within 10 business days after receiving the response, and must not raise new matters.**
- 2.5      The other party may comment on the reply, but must do so within 10 business days after receiving the reply, and must not raise new matters.
- 2.6      The expert must ignore any submission, response, reply, or comment not made within the time given in clause 2.2 to 2.5 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.



- 2.7 The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the response to the other Party, and give the other Party a reasonable opportunity to comment on the response.
- 2.8 All submissions, responses, replies, requests and comments must be in writing. If a Party to the Contract gives information to the expert, it must at the same time give a copy to the other Party.

### **3. CONFERENCE**

- 3.1 The expert may request a conference with both parties to the Contract. The request must be in writing, setting out the matters to be discussed.
- 3.2 The Parties agree that such a conference is considered not to be a hearing which would give anything under this Expert Determination Procedure the character of an arbitration.

### **4. ROLE OF EXPERT**

- 4.1 The Expert:
- 4.1.1 acts as an expert and not as an arbitrator
  - 4.1.2 must make its determination on the basis of the submissions of the parties, including documents and witness statements, and the Expert's own expertise; and
  - 4.1.3 must issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 12 weeks after the date of the letter of engagement referred to in clause 2.2 of the Contract.
  - 4.1.4 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate.

## **Schedule 2                      Management Fee Deed**

### **1. PARTIES**

This Management Fee Deed is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

- 1.1 Between the NSW STATE CONTRACTS CONTROL BOARD ("the Board") for and on behalf of the Crown in Right of the State of New South Wales

#### **AND**

- 1.2 \_\_\_\_\_  
full name of company/sole trader or partners, (including "trading as", if applicable) ("the Contractor").

### **2. BACKGROUND**

- 2.1 The Contractor is to supply Deliverables to the State of New South Wales and others pursuant to and upon the terms and conditions set out in respect of Contract No. **0501027**.
- 2.2 It is a condition of granting the Contract to the Contractor that the Contractor will provide certain information and pay a Quarterly Management Fee to the Board as provided for in this Deed.

### **3. CONTRACT**

- 3.1 The Contractor must pay to the Board a Management Fee in accordance with this clause.
- 3.2 The Management Fee is the GST-exclusive value of the Deliverables invoiced to a Customer, multiplied by the Management Fee Rate, plus the GST payable on this amount.
- 3.3 The Management Fee Rate is stated in Appendix 1 of this Deed.
- 3.4 The amount of the Management Fee will not under any circumstances be shown as a separate charge in any quote or invoice to a Customer.
- 3.5 The Contractor agrees that the Board may treat all purchases of Deliverables by Customers as Orders under this Contract, whether or not a Customer Number is quoted, unless the Contractor can provide evidence, to the satisfaction of the Board, that the purchase was made under some other contract between that Customer and the Contractor.
- 3.6 The Contractor agrees that the Management Fee payable has been allowed for in the Contract together with all costs associated with the calculation and proving payment of the Management Fee.
- 3.7 At the end of each Payment Period, the Board shall forward to the Contractor a request for a Report ("The Sales Report") which requires the Contractor to report the:
- (a) the total amount, exclusive of GST, all authorised customers are liable to pay in respect of all items invoiced by the Contractor to the Customers in respect of the Contract; and
  - (b) the sales information as set out in Appendix 1 to this Deed ("the sales information"), or as the Board requests in writing from time to time.
- 3.8 Upon receipt of a request for a Sales Report, the Contractor shall within 30 days complete the Sales Report for the relevant Payment Period and return the same to the Board.

- 3.9 The Board shall then compile a tax invoice based on the Sales Report and forward that invoice to the Contractor. The Contractor shall then forward payment to the Board within 30 days of the invoice date for each Payment Period.
- 3.10 The tax invoice will set out the Management Fee payable to the Board and the GST payable on the Management Fee.
- 3.11 The Board may alter the above procedure for the collection of the Management Fee as advised in writing and from time to time during the Term.
- 3.12 Where the Contractor considers that an accounting adjustment to the amount of the Management Fee paid or payable during a Payment Period is required, it should consult with the Board and the Parties may agree on the amount of any adjustment.
- 3.13 Where the Contractor has not issued any invoice to a Customer during a relevant Payment Period the Contractor must provide, within 30 days of the conclusion of that Payment Period, a report stating that 'no Deliverables were provided by the Contractor to any Customer during the Payment Period'.
- 3.14 The Contractor must set up and maintain a system which:
- (a) in the Board's reasonable opinion, is suitable for monitoring by the Board of the Orders placed with and invoices issued by the Contractor and for the provision of the sales information; and
  - (b) accommodates the use of the Customer's corporate credit card if the Parties have agreed to use that card for the purchases of Deliverables.
- 3.15 If requested in writing by the Board, the Contractor must within 30 days after the end of the Contractor's financial year, provide to the Board a certificate prepared by an independent auditor confirming the accuracy of all sales information provided by the Contractor as to Deliverables sold or provided and the Management Fee paid or payable.
- 3.16 The Board may at its own cost, take such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the amount of the Management Fee due to the Board by the Contractor.
- 3.17 If the measures taken in clauses 3.15 and 3.16 verify that the Contractor has not paid the Management Fee that is actually due to the Board, the Contractor must:
- (a) remit the difference between the Management Fee paid to the Board and the Management Fee actually due to the Board within 30 days of a direction from the Board; and
  - (b) at the discretion of the Board, reimburse the Board's costs and expenses of the measures taken (including any auditor's fees) under clauses 3.16 to the Board.
- 3.18 The Contractor shall during the Term of this Contract and for a 12 month period after the Contract has expired or is terminated, keep secure all relevant documents and Information for the purposes of this clause and give any auditor appointed by the Board access to those documents and Information at all reasonable times.
- 3.19 A breach of this clause will give rise to grounds for termination in accordance with the Contract including where the Contractor has not for three consecutive Payment Periods:
- (a) issued any invoice to a Customer or received any Order;
  - (b) provided the Board with the sales information it requires; or
  - (c) paid the Management Fee.

**APPENDIX A**

A. Name, address and telephone number of Contractor

.....  
 .....  
 .....

B. Description of the Contract.

No: **0501027**

Name: **Fire Fighting Equipment – Foam Equipment, Bushfire Equipment, Rescue Equipment and Miscellaneous Equipment and Services**

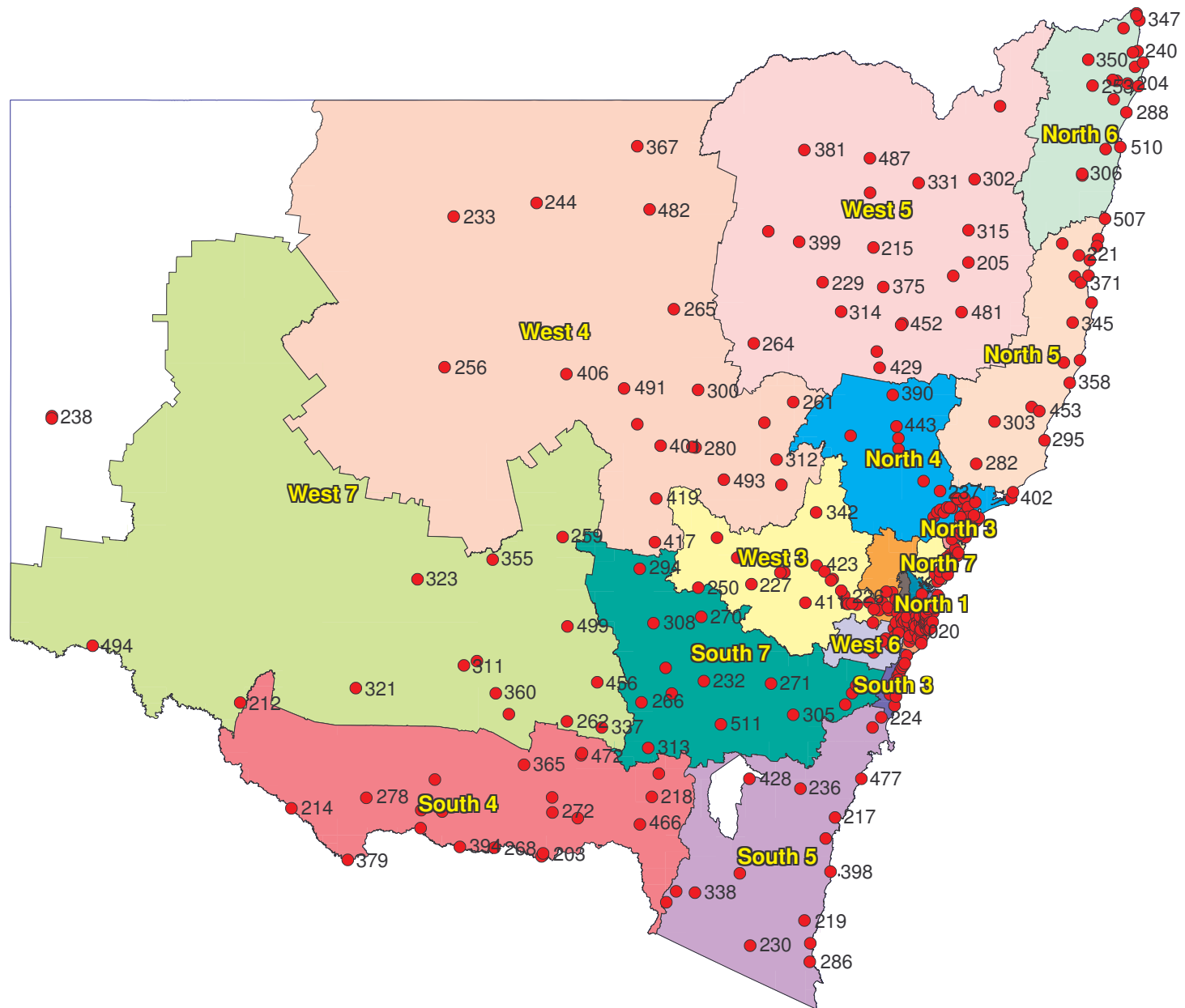
C. Management Fee Rate: **2.5%**

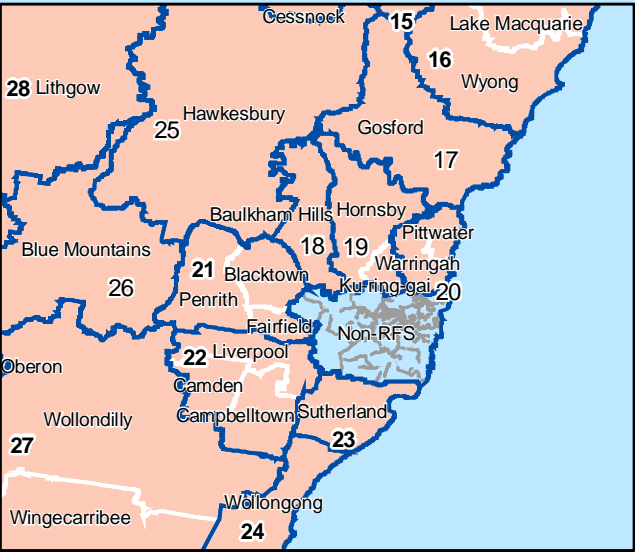
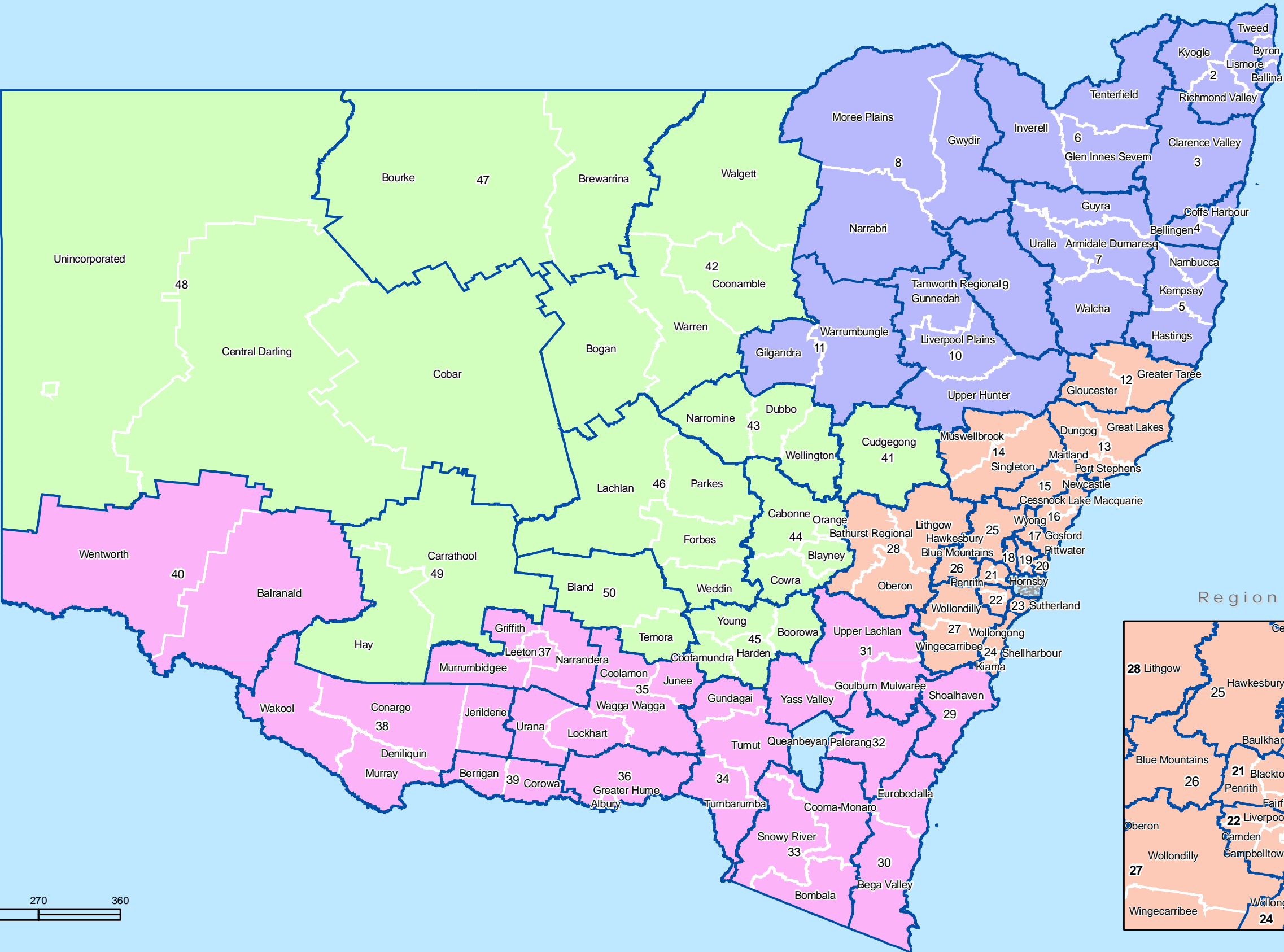
D.1 Management Fee Payable:

To: State Procurement

D.2 At: Finance and Resource Management  
 Level 10  
 2-24 Rawson Place  
 SYDNEY NSW 2000

E. Sales Information required: List by dollar value your 5 largest customers for each quarter under this contract.





Produced by the  
GIS Services Unit  
30th June 2005

REGION NORTH

- |   |   |   |
|---|---|---|
| 1. Far North Coast Team<br>Ballina<br>Byron<br>Tweed            | 5. Lower North Coast Team<br>Nambucca<br>Kempsey<br>Hastings                | 8. Gwydir Team<br>Moree Plains<br>Narrabri<br>Gwydir                                      |
| 2. Northern Rivers Team<br>Kyogle<br>Lismore<br>Richmond Valley | 6. Northern Tablelands Team<br>Inverell<br>Glen Innes Severn<br>Tenterfield | 9. Tamworth Regional<br>Tamworth Regional<br>Gunnedah<br>Liverpool Plains<br>Upper Hunter |
| 3. Clarence Valley Zone<br>Clarence Valley                      | 7. New England Team<br>Armidale Dumaresq<br>Guyra<br>Walcha                 | 11. Castlereagh Zone<br>Warrumbungle<br>Gilgandra   |
| 4. Mid North Coast Team<br>Bellingen<br>Coffs Harbour           |   |   |

REGION EAST

- |   |   |  |   |
|---|---|--|---|
| 12. Manning Team<br>Gloucester<br>Greater Taree                 | 16. The Lakes Team<br>Lake Macquarie<br>Wyong         | 20. (Stand Alone Districts)<br>Warragah<br>Pittwater     | 24. Illawarra Team<br>Kiama<br>Shellharbour<br>Wollongong |
| 13. Lower Hunter Zone<br>Dungog<br>Great Lakes<br>Port Stephens | 17. (Stand Alone District)<br>Gosford                 | 21. Cumberland Zone<br>Blacktown<br>Fairfield<br>Penrith | 25. (Stand Alone District)<br>Hawkesbury                  |
| 14. Hunter Valley Team<br>Muswellbrook<br>Singleton             | 18. (Stand Alone District)<br>Baulkham Hills          | 22. Macarthur Zone<br>Camden<br>Liverpool                | 26. (Stand Alone District)<br>Blue Mountains              |
| 15. Hunter Zone<br>Cessnock<br>Maitland                         | 19. (Stand Alone Districts)<br>Hornsby<br>Ku-ring-gai | 23. (Stand Alone District)<br>Sutherland                 | 27. Highlands Team<br>Wingecarribee<br>Wollondilly        |

REGION SOUTH

- |   |  |  |
|---|--|--|
| 29. (Stand Alone District)<br>Shoalhaven  | 34. Riverina Highlands Zone<br>Gundagai<br>Tumbarumba<br>Tumut             | 38. Mid Murray Zone<br>Conargo<br>Deniliquin<br>Jerilderie<br>Murray<br>Wakool |
| 30. Far South Coast Team<br>Bega Valley<br>Eurobodalla                            | 35. Riverina Zone<br>Urana<br>Lockhart<br>Wagga Wagga<br>Coolamon<br>Junee | 39. Corowa Berrigan Zone<br>Corowa<br>Berrigan                                 |
| 31. Southern Tablelands Zone<br>Yass Valley<br>Goulburn Mulwaree<br>Upper Lachlan | 36. Hume Zone<br>Albury<br>Greater Hume<br>Palerang                        | 40. Lower Western Zone<br>Wentworth<br>Balranald                               |
| 32. Lake George Team<br>Greater Queanbeyan<br>Palerang                            | 37. MIA Zone<br>Murrumbidgee<br>Griffith<br>Leeton<br>Narrandera           |  |
| 33. Monaro Team<br>Bombala<br>Cooma-Monaro<br>Snowy River                         |  |  |

REGION WEST

- |  |  |   |
|--|--|---|
| 41. (Stand Alone District)<br>Cudgong                          | 44. Canobolas Zone<br>Blayney<br>Orange<br>Cabonne<br>Cowra              | 47. Barwon Darling Zone<br>Brewarrina<br>Bourke                     |
| 42. North West Team<br>Walgett<br>Coonamble<br>Warren<br>Bogan | 45. South West Slopes Zone<br>Borrovia<br>Harden<br>Cootamundra<br>Young | 48. Far West Team<br>Unincorporated NSW<br>Central Darling<br>Cobar |
| 43. Orana Team<br>Narramine<br>Wellington<br>Dubbo             | 46. Mid Lachlan Valley Team<br>Lachlan<br>Parkes<br>Forbes<br>Weddin     | 49. Mid West Team<br>Hay<br>Carrathool                              |
|  |  | 50. Bland Temora Zone<br>Bland<br>Temora                            |

Legend

- Non-RFS
- Region East
- Region North
- Region South
- Region West
- RFS\_Zone
- LGA