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**Contracting Services is a Business Unit of the NSW Department of Commerce**

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

Request for Tender 0601250  
Labour Hire for Disability Care Workers in  
DADHC Residential Group Homes and Large  
Residences

Period: Two (2) Years from Date of  
Acceptance Plus 2 x 1 Year Extension Options

Tender Issue Date: 16 October 2006

Closing Date: 15 November 2006

Closing Time: 9:30 am Sydney Time

*Note: If a tender is not submitted electronically, the tenderer must submit the original tender, plus 1 copy of the tender. Tenders are to be marked "Original" and "Copy 1" accordingly.*

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.

Other formats, such as Braille and audio (cassette tape), will be considered on a case-by-case basis.

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# *Labour Hire for Disability Care Workers in DADHC Residential Group Homes and Large Residences*

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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 Contracting Services.

**“CALD”** means Culturally and Linguistically Diverse.

**“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 as amended from time to time, together with any other codes of practice relating to procurement, including any amendments to such codes that may be applicable to the particular RFT. The code can be viewed and downloaded from:

[http://www.treasury.nsw.gov.au/procurement/pdf/code\\_of\\_prac-curr.pdf](http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf)

**“Commerce”** means the NSW Department of Commerce.

**“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.

**“DADHC”** means the Department of Ageing Disability and Home Care.

**“HACC”** means Home and Community Care

**“Home Care”** means the Home Care Service of New South Wales.

**“Industrial Instrument”** includes an award, enterprise agreement, collective or individual agreement, a contract determination or a contract agreement regulating terms and conditions of work, whether made under State or Federal law.

**“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.

**“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 return to work.

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

**“Principal”** means the Department of Ageing Disability and Home Care (DADHC).

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

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

**“Service”** means the services sought under this RFT, as detailed in the Specification at Part C2.

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

**“Specification”** means the detailed description of the required Services contained in Part C.

**“Contracting Services”** 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 provision of Labour Hire for Disability Care Workers in DADHC Residential Group Homes and Large Residences.
- 2.1.2 An additional RFT will be released covering the provision of In-Home Direct Care Services for the Home Care Service of NSW (Home Care). Home Care is a statutory authority administered by DADHC. Tenderers are asked to investigate this opportunity and provide rates in the relevant column of the Price Schedule for these services to Home Care should they be accepted as a successful supplier through this tender for DADHC.
- 2.1.3 The Board is responsible for the conduct of the tender process, assisted by Contracting Services.
- 2.1.4 Through this tender process, DADHC seeks to arrange a panel of Contractors sufficient to ensure its operational requirements are met. The result will be a standing offer for the supply of only such Service as may be required from time to time and DADHC shall not be bound expressly or implied to order from the Contractor any quantity of Service during the period of the Contract. An indicative panel size of 3-4 is expected although DADHC reserves the right to appoint more or less Contractors.

### **2.2 Background**

The Department of Ageing, Disability and Home Care (DADHC) is one of the largest human services organisations in NSW. DADHC provides support and services to more than 1 million older people, people with disabilities and their carers in NSW. In 2004–05 the Department had a total budget of \$1.4 billion and employed more than 12,000 staff. DADHC must provide services in line with the Disability Services Act 1993.

The Department is committed to ensuring that older people, people with disabilities and their carers are valued, lead independent lives and have the opportunity to participate fully in community life.

The Department's strategic focus is to ensure that services and programs are sharply focused, well-structured and set the direction for longer-term improvement and have begun to reposition the Department's system so that:

- supports are provided before families reach crisis
- a wider range of care and support models are available to better meet the needs of people with disabilities
- access to services is prioritised on the basis of need
- purchasing and accountability arrangements give greater emphasis to quantity and quality of care
- a planned and collaborative approach is taken to development and improvement of services

DADHC services are delivered through six geographical regions.

They are responsible for:

- delivering services directly to clients
- referring clients and assisting them to access other community services
- working in partnership with the service providers DADHC funds, to deliver services to clients on their behalf

#### **As at May 2006, DADHC:**

- operated 299 group homes for people with disabilities
- operated 9 large residences for people with disabilities
- operated 45 respite centres as well as offering in-home respite

- In 2006-07, DADHC will provide more than \$620 million to fund over 800 non-government and local government providers to deliver services to clients on our behalf

### 2.2.1 Disability Services

This tender is for the following service provisions to DADHC:

- The recruitment and placement of temporary (including management for temporary) and permanent nursing staff in DADHC accommodation and respite services, for people with a disability;
- The recruitment, placement and management of temporary and permanent residential support workers for DADHC Group Homes for people with a disability;

Indicative position descriptions are set out for the information of Tenderers at Appendix 2 to this Part A.

Note: Applicants can nominate to tender in the following way on either a regional or whole of NSW basis:

- Recruitment, Placement and Management of **Temporary nursing staff** in large residences and of **Temporary residential support workers** in group homes;
- Recruitment and Placement of **Permanent nursing staff** in large residences and of **Permanent** residential support workers in group homes;
- Both A and B above.

The key objectives of this tender for DADHC are:

- Improvements in accountability in the provision of services
- Providing a cost effective, high quality service to clients
- An improved structured approach to the services delivered for increase in cost effectiveness and ongoing sustainability to continue to provide a high quality of services to meet the needs of clients.

It should be noted that BusinessLink is DADHC's preferred supplier for Permanent recruitment services. In regard to requirement B, **Permanent** residential support workers in group homes only, the DADHC requirement will only be sourced from this contract where the requirement cannot be met by BusinessLink.



### 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. If 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.

#### 3.2 Contact Officer

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

For Enquiries regarding Disability Services in DADHC

Name: Graham Brickwood

Phone: (02) 8270 2424

Fax: (02) 8270 2437

Email: [graham.brickwood@dadhc.nsw.gov.au](mailto:graham.brickwood@dadhc.nsw.gov.au)

For Contractual Enquiries

Name: Sam Aiello

Phone: (02) 9372 7626

Fax: (02) 9372 7799

Email: [sam.aiello@commerce.nsw.gov.au](mailto:sam.aiello@commerce.nsw.gov.au)

- 3.2.2 A Tender briefing will be held:

**DATE: Tuesday 31 October, 2006 between 12:00 and 2:00 p.m.**

**ADDRESS: McKell Building, 2-24 Rawson Place, Sydney  
Level 4 Conference Room.**

The briefing will outline the Tender requirements, answer questions about the RFT and explain the Tender process. An attendance register will be circulated. While attendance is not compulsory, it is strongly recommended.

- 3.2.3 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 2 years and may be extended by 2 further terms, each of 1 year. Any such extension shall be solely at the discretion of the Principal.

#### 3.4 Eligibility to Tender

- 3.4.1 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.

- 3.4.2 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.
- 3.4.3 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, it reserves the right to make acceptance of any Tender conditional upon the tenderer entering into a bank or parent company guarantee, or an unconditional performance bond in a form satisfactory to the Board.
- 3.4.4 The Board reserves the right to reject any Tender if it judges the tenderer not to have appropriate financial assets.
- 3.4.5 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.
- 3.4.6 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.
- 3.4.7 Tenderers must read, understand and comply with the requirements of the Commerce Business Ethics Statement, which is available at the link below. Tenderers must disclose any potential conflict of interests (including any relevant relationships) in the Tender Response.

The Board will consider any disclosure and will only enter into an agreement with tenderers that do not have improper conflict of interests. If the Board becomes aware of improper conflicts of interests by a successful tenderer at the time an agreement has already been entered into then the Board reserves the **right to terminate the agreement**.

<http://www.commerce.nsw.gov.au/About+Commerce/Business+ethics+statement/Business+ethics+statement.htm#commerce>

#### **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 C of this RFT, as directed.
- 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.

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

- 4.3.1 The Board, during the tender period may issue Addenda altering the RFT. In such cases, it is the obligation of the tenderer to verify if any addenda were issued prior to closing date, even if a tender has already been submitted. They must obtain a copy of all addenda as given in clause 4.3.2 or 4.3.3 as applicable.
- 4.3.2 Where a RFT has been acquired in a hard copy form, tenderers must contact the Contact Officer named under clause 3.2 of Part A or the Tenders Office (Level 8 McKell Building 2-24 Rawson Place Sydney, contact number: 9372-8900, e-mail: [Tenders@commerce.nsw.gov.au](mailto:Tenders@commerce.nsw.gov.au)).
- 4.3.3 Where a RFT has been acquired in an electronic form, tenderers must check the web site address, <https://tenders.nsw.gov.au/commerce> and download the Addendum.
- 4.3.4 It is mandatory for tender response 5.1 in Part C to be completed. Failure to complete tender response 5.1 in Part C will result in your tender not being considered.

## **5. PREPARATION OF TENDER - PRICE SCHEDULE AND PROJECT PLAN**

### **5.1 Price Schedule**

- 5.1.1 Tenderers must complete the Price Schedule at Part C.

### **5.2 Calculating the Tender Price**

- 5.2.1 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;
  - (d) include all costs associated with the preparation and submission of the Tender; and
  - (e) take account of the Contracting Services management fee, which is not to be shown as a separate charge.
- 5.2.2 Tender prices for temporary staff are sought on the basis of an all inclusive Hourly Rate and for permanent recruitment on the basis of a fixed Fee. The tendered Hourly Rate for the hire of temporary staff is to be inclusive of all costs associated with providing the service and the

Tenderer's Fee for Service is to be all inclusive of costs associated with providing recruitment service. The tendered Hourly Rate payable shall commence upon arrival at the Client's residence or commencement of duties and shall conclude upon departure from the Client's residence or finalisation of duties. No amount will be payable in addition to the tendered Hourly Rate for any costs associated with travel to and from the Contractor's premises. The tendered Hourly Rate for temporary staff shall be calculated in accordance with that part of the Price Schedule at Part C which refers to Collection Data Temporary Staff and shall be provided in the form of the Tenderer's mark up on pay and identification of on-costs, on the basis of pay rates set out in that part of the Price Schedule. Tenderers are to take note of the special notes set out in the Price Schedule at Part C about the manner in which the mark up, margin and on-costs are to be calculated.

- 5.2.3 The Tenderer's Fee for recruitment of permanent staff is to cover the costs involved in providing the Service including but not limited to the sourcing and allocation of staff, training and assessment of staff, OH&S aspects, payment of wages, holding of appropriate licences and insurances by/for the staff/service, meeting all employer legal requirements, undertaking dispute resolution and the reporting requirements of DADHC. Costs of other specific training and orientation are also at the Tenderer's expense.

### **5.3 Price Basis**

#### **5.3.1 Tenderer's Fee for Service**

- 5.3.1.1 The Tendered Fee for Service shall remain FIRM for the duration of the Contract including any optional extension periods.

#### **5.3.2 Hourly Rate**

- 5.3.2.1 The Tendered Hourly Rates may be varied but only if required to comply with the applicable industrial instrument and the Tenderer shall inform DADHC Care of any such variation.

### **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 C if their Tenders will remain open for any longer period.

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

### **6.1 Procurement Policy – Introduction**

- 6.1.1 Tenderers should read the main policy document/s 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 C.

a) NSW Government Procurement Policy:

<http://www.treasury.nsw.gov.au/pubs/tpp2004/tpp04-1.pdf>

## 6.2 NSW Government Code of Practice for Procurement

- 6.2.1 Tenderers must comply with the NSW Government Code of Practice for Procurement, which is available at:

[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)

- 6.2.2 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 agreement 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 agreement awarded:

- (a) The *Occupational Health and Safety Act 2000* (NSW) and any regulation made under this Act, including the OHS Regulation 2001;
- (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 6.3.1 in the performance of any agreement awarded.

- 6.3.3 Tenderers must indicate compliance with OHS&R obligations in Part C.

## 6.4 Competitive Neutrality

- 6.4.1 In this RFT, a reference to "**Government Businesses**" means in general, entities which: a) have some form of public sector ownership; b) are engaged in trading goods and/or services; c) have a large measure of self sufficiency; and d) are subject to Executive control. In this context, the term Government business includes Public Trading Enterprises, State Owned Corporations and General Government Businesses.
- 6.4.2 The objective of NSW Government Policy on the application of competitive neutrality is to ensure that Government Businesses, whether they are Commonwealth, State or Local, do not have any net advantage over their competitors as a result of their public sector ownership. It requires that comparisons between public and private sector bids be made on a similar basis. It means, amongst other things, that in-house bids should reflect adjustments that offset the effects of taxation exemptions, where it is feasible to do so, and be accurately costed.
- 6.4.3 A tenderer who is a Government Business is referred to the NSW Government Policy Statement on the Application of Competitive Neutrality, January 2002, available from the Cabinet Office at Level 37, Governor Macquarie Tower, 1 Farrer Place, Sydney 2000.
- 6.4.4 The principal or other appropriate senior officer of a tenderer who constitutes Government Business is required to affirm, in Part C, that the tenderer complies with this policy.

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

- 6.5.1 It is NSW Government policy to encourage the development of local industry and to support SMEs. Tenderers are required to state in Part C1 how they will provide opportunities for SMEs and, if the Tender involves the formation of a relationship with one or more SMEs, tenderers are asked to provide specified information regarding such relationship(s). The evaluation will favour tenderers that are prepared to contractually commit to supply chain management and using SMEs identified within their Tenders and the value of work that will flow through to SMEs.

## **6.6 Regional development activity**

- 6.6.1 It is NSW Government policy to encourage regional development. Tenderers are to provide details in Part C1 of the number and type of regionally based enterprises participating in their Tender and of the expected regional economic impact of their Tender. The evaluation will favour proposals with a commitment to participation of regional enterprises and to activities that enhance regional development.

## **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  
NSW Department of Commerce  
Level 3, McKell Building (Ground Floor)  
2-24 Rawson Place  
Sydney, NSW 2000;
  - (c) by facsimile to (02) 9372 8974;
  - (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 0601250”
- 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 The selection criteria for this Request for Tender that do not relate to price will account for 60% of the total evaluation score. The selection criteria for this Request for Tender that relate to price will account for 40% of the total evaluation score.
- 8.1.3 Information supplied by the tenderer in Part C will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the selection criteria listed in this RFT.
- 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.*
- (b) *Ability and capacity to perform the contract including:*
- (i) *Demonstrated ability, expertise and experience in the successful provision of the full range of services tendered (as indicated at the "Competency and Location" tab in the price schedule*



- (ii) *Human resources availability, capacity, qualifications, skills and experience to be utilised for the purposes of the contract including location of human resources to adequately service the contract*
- (iii) *Organisational infrastructure and capacity to meet the geographically diverse requirements of the request for tender*
- (c) *Degree of compliance with specification.*
- (d) *Degree of compliance with conditions of the Contract.*
- (e) *Compliance with applicable NSW Government policies.*
- (f) *Quality of referee reports.*

### **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 subcontractor 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
  - (a) a record or alleged record of unethical behaviour,
  - (b) not complied with the requirements of Commerce Business Ethics Statement found in the link below:

<http://www.commerce.nsw.gov.au/About+Commerce/Business+ethics+statement/Business+ethics+statement.htm#commerce>

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.
- 9.1.2 The Board will generally not enter into negotiations on the standard conditions of contract contained in Part B.

### **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 with 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 \$100,000, 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.

## **9.8 Monitoring of Contractor Performance**

During the course of the Standing Offer agreement the Contractor's performance will be monitored and assessed. For details refer to the NSW Government Procurement Guidelines on Service Provider performance management which is available on request from the Contact Officer, the NSW Department of Commerce or can be viewed and downloaded from:

<http://www.ogp.commerce.nsw.gov.au/NR/rdonlyres/eucuz2722gdb54776cyhkw7ntoj4cpw5iga5ztwvtvjjethi2xjujwd4zrgsfte4cye7lgoqtlf4wxywdioutedaph/Service+Provider+Performance+Management.pdf>

9.8.2 A sample service level agreement and key performance indicators can be found in appendix.

## APPENDIX 1      LIST OF DADHC LARGE RESIDENTIAL CENTRES (LRC'S), GROUP HOMES AND RESPITE CENTRES

### DADHC Summary of LRC's, Group Homes and Respite Centres - May 2006

Region	LRCs	Group Homes	Respite	Regional Total	Percentage
Metro South	1	74	10	85	24%
Metro North	3	95	13	111	32%
Western	1	29	9	39	11%
Southern		40	4	44	13%
Northern		22	3	25	7%
Hunter	4	39	6	49	14%
<b>Total</b>	<b>9</b>	<b>299</b>	<b>45</b>	<b>353</b>	<b>100%</b>

DADHC LRC's at May 2006				
Item	Name	DADHC region	Road	Suburb
1	Stockton	Hunter Region / Residences	Fullerton Rd	Stockton
2	Tomaree	Hunter Region / Residences	Shoal Bay Rd	Shoal Bay
3	Kanangra	Hunter Region / Residences	Morisset Hospital	Morisset
4	Peat Island Centre	Hunter Region / Residences	Peat Island	Brooklyn
5	Grosvenor	Metro South	56,57,58 Liverpool Rd	Summer Hill
6	Rydalmere Centre	Metro Sydney Residences	262 Victoria Rd	Rydalmere
7	Marsden Centre	Metro Sydney Residences	36 Mons Rd	Westmead
8	Lachlan	Metro Sydney Residences	Wick's & Cox Rd	North Ryde
9	Riverside	Western	Forest Rd	Orange

**DADHC Group Homes and Respite Centres**

(As at 31 May 2006. The location, number and type of sites will change over time)

Region	Suburb	Post Code	No. of Sites	Remark
Hunter	Aberdare	2325	1	
Hunter	Aberglasslyn	2320	1	
Hunter	Adamstown	2289	1	
Hunter	Ashtonfield	2323	1	Respite
Hunter	Barnsley	2283	1	
Hunter	Berkeley Vale	2261	1	
Hunter	Berry Park	2321	1	
Hunter	Blackalls Park	2283	1	
Hunter	Bobs Farm	2316	1	
Hunter	Bolwarra	2320	1	
Hunter	Cessnock	2325	1	
Hunter	Edgeworth	2285	2	
Hunter	Elmore Vale	2287	1	
Hunter	Fennell Bay	2283	2	
Hunter	Glendale	2285	1	
Hunter	Green Point	2251	3	
Hunter	Jilliby	2259	1	Respite
Hunter	Lisarow	2250	1	
Hunter	Lochinvar	2321	1	
Hunter	Maryland	2287	1	Respite
Hunter	Maryland	2287	1	
Hunter	Mayfield	2304	1	
Hunter	Merewether	2291	2	
Hunter	Metford	2323	1	Respite
Hunter	Mount Hutton	2290	2	
Hunter	Narara	2250	1	Respite
Hunter	Nelson Bay	2315	1	
Hunter	Niagara Park	2250	1	
Hunter	Norah Head	2263	1	
Hunter	Raymond Terrace	2324	1	Respite
Hunter	Thornton	2322	2	
Hunter	Tumbi Umbi	2261	1	
Hunter	Waratah	2287	1	
Hunter	Warnervale	2259	2	
Hunter	Watanobbi	2259	1	
Hunter	Woodrising	2284	1	
Hunter	Wyang	2259	1	
Met North	Allambie	2100	2	
Met North	Asquith	2077	1	
Met North	Baulkham Hills	2153	4	
Met North	Beacon Hill	2101	1	
Met North	Belrose	2085	1	Respite
Met North	Belrose	2085	1	
Met North	Berowra Heights	2082	1	
Met North	Bidwell	2770	1	Respite
Met North	Blacktown	2148	1	
Met North	Carlingford	2118	1	

Region	Suburb	Post Code	No. of Sites	Remark
Met North	Cranebrook	2749	1	
Met North	Davidson	2085	1	
Met North	Denistone	2114	2	
Met North	Eastwood	2112	3	
Met North	Elanora Heights	2101	3	
Met North	Emu Plains	2750	1	
Met North	Epping	2121	1	
Met North	Erskine Park	2759	2	
Met North	Faulconbridge	2776	1	Respite
Met North	Forestville	2087	1	
Met North	Frenchs Forest	2086	2	Respite
Met North	Girraween	2145	1	Respite
Met North	Girraween	2145	2	
Met North	Glenbrook	2773	1	
Met North	Glenmore Park	2745	2	
Met North	Greystanes	2145	2	
Met North	Gulldford	2161	1	
Met North	Harbord	2096	1	
Met North	Hornsby Heights	2077	5	
Met North	Katoomba	2780	1	
Met North	Kellyville	2155	1	
Met North	Kings Langley	2147	1	
Met North	Kingswood	2747	1	
Met North	Llandilo	2747	1	
Met North	Manly	2093	1	
Met North	Marayong	2148	2	
Met North	Merrylands	2160	2	
Met North	Mona Vale	2103	1	
Met North	Mt Colah	2076	1	
Met North	Narrabeen	2101	1	
Met North	Normanhurst	2076	3	
Met North	North Ryde	2113	4	
Met North	Pendle Hill	2145	1	
Met North	Pennant Hills	2120	2	
Met North	Penrith	2750	1	Respite
Met North	Putney	2112	1	
Met North	Quakers Hill	2763	2	
Met North	Rooty Hill	2766	3	
Met North	Roseville	2068	1	Respite
Met North	Roseville	2069	1	
Met North	Ryde	2112	1	Respite
Met North	South Wentworthville	2145	1	
Met North	Springwood	2777	1	Respite
Met North	Springwood	2777	1	
Met North	St Marys	2760	1	Respite
Met North	St Marys	2760	1	
Met North	St. Ives	2075	1	
Met North	Terry Hills	2184	2	
Met North	Thornleigh	2120	1	
Met North	Toongabbie	2146	2	
Met North	Wahroonga	2076	2	

Region	Suburb	Post Code	No. of Sites	Remark
Met North	Wahroonga	2076	1	Respite
Met North	Waitara	2077	1	
Met North	Wentworthville	2145	1	
Met North	Werrington	2747	1	
Met North	West Guildford	2161	1	
Met North	West Pennant Hills	2125	1	
Met North	West Ryde	2114	3	
Met North	Wheeler Heights	2098	1	Respite
Met North	Wheeler Heights	2098	1	
Met North	Winston Hills	2153	1	
Met South	Arncliffe	2205	1	Respite
Met South	Arncliffe	2205	2	
Met South	Ashfield	2131	1	Respite
Met South	Ashfield	2020	4	
Met South	Bass Hill	2197	1	
Met South	Beverley Hills	2209	1	
Met South	Beverley Park	2217	1	
Met South	Bexley	2207	1	Respite
Met South	Bexley	2207	1	
Met South	Bondi	2022	1	Respite
Met South	Bondi Junction	2033	1	
Met South	Bosley Park	2176	1	
Met South	Bowral	2576	1	
Met South	Bradbury	2560	1	Respite
Met South	Cabramatta	2166	1	Respite
Met South	Cabramatta	2158	1	
Met South	Campsie	2194	2	
Met South	Caringbah	2229	1	
Met South	Carlton	2218	1	
Met South	Casula	2170	1	
Met South	Catherine Field	2171	1	
Met South	Chifley	2036	1	
Met South	Chipping Norton	2170	1	
Met South	Concord	2137	1	
Met South	Condell Park	2176	1	Respite
Met South	Condell Park	2200	1	
Met South	Croydon	2137	1	Respite
Met South	Croydon	2132	3	
Met South	Dulwich Hill	2203	1	
Met South	Earlwood	2206	1	
Met South	Edensor Pk	2176	1	
Met South	Five Dock	2046	2	
Met South	Georges Hall	2198	1	Respite
Met South	Greenfield Pk	2176	1	
Met South	GyMEA Bay	2227	1	
Met South	Hurstville	2220	2	
Met South	Ingleburn	2565	1	
Met South	Kensington	2033	1	Respite
Met South	Kensington	2116	1	
Met South	Kingsford	2032	1	
Met South	Kingsgrove	2208	1	



Region	Suburb	Post Code	No. of Sites	Remark
Met South	Kirrawee	2232	1	
Met South	Kogarah Bay	2217	1	
Met South	Lakemba	2195	2	
Met South	Lilyfield	2040	1	
Met South	Liverpool	2170	1	
Met South	Malabar	2036	1	
Met South	Maroubra	2035	1	
Met South	Mascot	2020	3	
Met South	Matraville	2036	1	
Met South	Milperra	2214	1	
Met South	Mt Annan	2567	1	
Met South	Narellan Vale	2567	1	
Met South	Panania	2213	1	
Met South	Peakhurst	2210	2	
Met South	Punchbowl	2196	2	
Met South	Riverwood	2210	1	
Met South	Rosebery	2018	3	
Met South	Roselands	2196	2	
Met South	Rydalmere	2018	1	
Met South	St. Park	2176	1	
Met South	Summer Hill	2130	2	
Met South	Sylvania	2224	1	
Met South	Woolooware	2230	1	
Met South	Yagoona	2199	2	
Northern	Armidale	2350	3	Respite
Northern	Armidale	2350	1	
Northern	Clunes	2480	1	
Northern	Coffs Harbour	2450	1	
Northern	Forster	2428	1	
Northern	Goonellabah	2480	1	
Northern	Grafton	2460	1	
Northern	Gunnedah	2380	2	
Northern	Kempsey West	2440	1	
Northern	Mullumbimby	2482	2	
Northern	Narrabri	2390	1	
Northern	Port Macquarie	2444	2	Respite
Northern	Port Macquarie	2444	1	
Northern	Quirindi	2343	1	Respite
Northern	Sawtell	2452	1	
Northern	Tamworth	2340	4	
Northern	Wauchope	2446	1	
Southern	Albion Park	2527	3	
Southern	Albion Park	2527	1	Respite
Southern	Balgownie	2518	1	
Southern	Balgownie	2518	1	
Southern	Barrack Hts	2528	1	Respite
Southern	Bellambi	2518	1	
Southern	Berkeley	2506	1	
Southern	Curramore	2533	1	Respite
Southern	Dapto	2530	1	
Southern	Figtree	2525	1	

Region	Suburb	Post Code	No. of Sites	Remark
<b>Southern</b>	Goulburn	2580	9	
<b>Southern</b>	Keiraville	2500	2	
<b>Southern</b>	Koonawarra	2530	1	
<b>Southern</b>	Mt Keira	2500	1	
<b>Southern</b>	Mt Ousley	2519	1	Respite
<b>Southern</b>	Nowra	2541	1	
<b>Southern</b>	Nowra	2541	6	
<b>Southern</b>	Queanbeyan	2620	3	
<b>Southern</b>	Russell Vale	2517	2	
<b>Southern</b>	Towradgi	2518	1	
<b>Southern</b>	Ulladulla	2541	1	
<b>Southern</b>	Warilla	2528	2	
<b>Southern</b>	Warrawong	2502	1	
<b>Southern</b>	Wollongong	2500	1	
<b>Western</b>	Bathurst	2795	3	
<b>Western</b>	Blayney	2799	1	Respite
<b>Western</b>	Broken Hill	2880	1	
<b>Western</b>	Cootamundra	2590	2	
<b>Western</b>	Deniliquin	2710	1	Respite
<b>Western</b>	Dubbo	2830	2	
<b>Western</b>	Dubbo	2830	2	Respite
<b>Western</b>	Griffith	2680	1	
<b>Western</b>	Griffith	2680	1	Respite
<b>Western</b>	Lavington, Albury	2641	7	
<b>Western</b>	Lavington, Albury	2641	1	Respite
<b>Western</b>	Orange	2800	1	
<b>Western</b>	Orange	2800	6	
<b>Western</b>	Thurgoona	2640	2	
<b>Western</b>	Wagga Wagga	2650	2	
<b>Western</b>	West Albury	2641	1	

## APPENDIX 2      INDICATIVE STATEMENT OF DUTIES & POSITION DESCRIPTIONS

### NSW DEPARTMENT OF AGEING, DISABILITY & HOME CARE

## STATEMENT OF DUTIES

Residential Support Worker

**Title under Award or Agreement:** Residential Support Worker

**Branch or Town:** Various

**Responsible to:** Network Manager

**Code No:**

**Responsible for:**

The direct care, and development of persons with a developmental disability (in conjunction with other team members) by:

1. Promoting the dignity, independence and rights of each resident.
2. Participating in the preparation of programs designed to maximise the quality of life of residents and their participation in the community
3. Develop, implement, monitor and review Individual Plans to ensure that they remain appropriate and that they are being implemented.
4. Providing appropriate support to residents to enable them to achieve their individual goals.
5. Assisting and supporting residents to develop community living skills by facilitating their active participation in budgeting, shopping and aspects of community life including the management of the residence, its physical operation and client related finances.
6. Encouraging residents to develop personal, community and social relationships and leisure, sport, recreation holiday and travel skills as appropriate.
7. Assisting residents to develop independence in personal care, health care and hygiene, eg; eating, dressing, toileting and bathing.
8. Undertaking health care procedures as determined appropriate
9. Maintaining contact with residents' family, friends and advocates and liaising with employers and other organisations as appropriate to promote community integration.
10. Maintaining all necessary Departmental records and providing reports as required.
11. Ensuring confidentiality of information and security of all personal property of clients.
12. Carrying out all necessary domestic and household duties, eg; cooking, laundry, cleaning, gardening and maintenance.
13. Ensuring that acceptance of diversity, including the prevention of overt and covert discriminatory practices is applied to all areas of work.
14. Participating in the regular practice of occupational health and safety procedures including emergency drills.
15. Carrying out any relevant duties as directed.

**RESIDENTIAL SUPPORT WORKER SELECTION CRITERIA**

1. Demonstrated ability to assist people who require support in daily living and personal care skills.
2. Demonstrated commitment to increased independence and community integration for people with a disability
3. A commitment to professional and ethical behaviour.
4. Demonstrated ability to work effectively as part of a team or independently as required.
5. Ability to understand and apply written and verbal instructions/policies and procedures
6. Good written and oral communication skills.
7. Ability to effectively interact with clients, their families and advocates.
8. Willingness to participate in formal training.
9. Current drivers licence and willingness to drive departmental vehicles.

**POSITION TITLE:** Assistant in Nursing**ROLE PURPOSE:**

Delivery of quality client nursing and support services consistent with the Disability Service Act 1993, Policies for Working with People with Disabilities and DADHC policy and procedure.

KEY ACCOUNTABILITIES	KEY PERFORMANCE INDICATORS
<p><b>Delivery of Quality Client Services</b></p> <p>Complete required administration effectively and provide effective feedback to the Residential Unit Nurse on service provision</p> <p>Deliver quality client services consistent with the IP and service plan and instructions from Supervisors complex client matters. These may include</p> <p>Ensure a high standard of service provision utilising quality assurance principles.</p> <p>Provide support to all staff in the Centre, to foster a spirit of teamwork, co-operation, support and excellent performance</p> <p>Implement HR, EEO and OHS policies and practices including issue management</p> <p><b>Communication and team contribution</b></p> <p>Effectively communicate within the Centre, within DADHC, and with local community partnerships and with stakeholders (including families and carers) both within and external to the DADHC.</p> <p>Ensure the systematic approach to implementation of new / revised policy and process through participation in staff briefings, training, records management and stakeholder communication.</p>	<p>Administrative effectiveness Timeliness and accuracy of feedback</p> <p>Effective delivery of client service plans and IP's.</p> <p>Effective QA principles implemented</p> <p>Staff satisfaction and teamwork</p> <p>Effective implementation of policy and practice; Effective issue management</p> <p>Stakeholder communication</p> <p>Systematic implementation of process and policy changes and process improvements</p>

<b>KNOWLEDGE, SKILLS, &amp; EXPERIENCE</b>									
<ul style="list-style-type: none"> <li>• A knowledge and contemporary understanding of human services and key issues for departmental clients and stakeholders.</li> <li>• Ability to provide support and direction to support staff in the Centre others, who often work in a conflict environment of competing priorities and needs with limited resources.</li> <li>• Ability to implement changes to client care procedures supporting legislative change, financial results, benchmarking, quality assurance measurements, workflow analysis, client management systems and Centre performance results.</li> <li>• Interpersonal skills and ability to communicate effectively and build relationships with staff and families.</li> <li>• Qualifications appropriate to the position, or equivalent demonstrated experience and competence, with demonstrated commitment to ongoing development</li> </ul>									
<b>DECISION MAKING</b>									
<p>The position holder reports directly to the Nurse Unit Manager – Accommodation</p> <p>The Assistant in Nursing may be required to support the support team at the Centre comprising Gardening, Catering, Transport, Laundry and Maintenance staff and other casual support staff on certain shifts, depending on the size of the Centre.</p> <table> <tr> <td>Location</td><td>Number of clients in accommodation</td></tr> <tr> <td>Tomaree, Kanangra</td><td>up to 50</td></tr> <tr> <td>Lachlan, Marsden, Peat Island</td><td>up to 150</td></tr> <tr> <td>Stockton</td><td>up to 450</td></tr> </table>		Location	Number of clients in accommodation	Tomaree, Kanangra	up to 50	Lachlan, Marsden, Peat Island	up to 150	Stockton	up to 450
Location	Number of clients in accommodation								
Tomaree, Kanangra	up to 50								
Lachlan, Marsden, Peat Island	up to 150								
Stockton	up to 450								
<b>DIMENSIONS:</b>									
<b>Staff</b> The Nursing Assistant reports to the Nurse Unit Manager - Accommodation	<b>Operating Budget</b> This role is not directly accountable for management of a budget; however all activities of the Nursing Assistant are to be conducted with an understanding of Centre Cost management.								

**KEY CHALLENGES**

The Accommodation Centre is responsible for delivering 24x7 services for clients with developmental disabilities. The services include:

- residential services;
- behaviour intervention and support;
- vocational, recreational, leisure and independent living training and education; and
- medical, nursing, psychological, psychiatric, physio-therapeutic, neurological assessment, treatment and support

*The Nursing Assistant delivers of client services at the Centre. Due to the 24x7 nature of the shifts, the Nursing Assistant is required to direct support staff including casual staff on some shifts.*

The Nursing Assistant work focuses on providing client support service for the attainment of agreed service outcomes, within the Centre's cost management practices.

The Nursing Assistant is accountable for the provision of services to some of the most vulnerable members of the community. The ability to implement and adopt changes is a key requirement of the role.

**POSITION TITLE:** Enrolled Nurse

<b>ROLE PURPOSE:</b>  Delivery of quality client nursing and support services consistent with the Disability Service Act 1993, Policies for Working with People with Disabilities and DADHC policy and procedure.	
KEY ACCOUNTABILITIES	KEY PERFORMANCE INDICATORS
<b>Delivery of Quality Client Services</b>  Complete required administration effectively and provide effective feedback to the Nurse Unit Manager – Accommodation on service provision  Deliver quality client services consistent with the IP and service plan and instructions from Supervisors complex client matters. These may include  Ensure a high standard of service provision utilising quality assurance principles.  Provide support to all staff in the Centre, to foster a spirit of teamwork, co-operation, support and excellent performance  Implement HR, EEO and OHS policies and practices including issue management  Health care procedures and medication administration as accredited  <b>Communication and team contribution</b>  Effectively communicate within the Centre, within DADHC, and with local community partnerships and with stakeholders (including families and carers) both within and external to the DADHC.  Ensure the systematic approach to implementation of new / revised policy and process through participation in staff briefings, training, records management and stakeholder communication.	Administrative effectiveness Timeliness and accuracy of feedback  Effective delivery of client service plans and IP's.  Effective QA principles implemented  Staff satisfaction and teamwork  Effective implementation of policy and practice  Effective issue management  Stakeholder communication  Systematic implementation of process and policy changes and process improvements



<b>KNOWLEDGE, SKILLS, &amp; EXPERIENCE</b>									
<ul style="list-style-type: none"> <li>• A knowledge and contemporary understanding of human services and key issues for departmental clients and stakeholders.</li> <li>• Ability to provide support and direction to support staff in the Centre others, who often work in a conflict environment of competing priorities and needs with limited resources.</li> <li>• Ability to implement changes to client care procedures supporting legislative change, financial results, benchmarking, quality assurance measurements, workflow analysis, client management systems and Centre performance results.</li> <li>• Interpersonal skills and ability to communicate effectively and build relationships with staff and families.</li> <li>• Must be on A list of Role of Nurses' Registration Board</li> <li>• Must hold or obtain Certificate IV competencies in Disability</li> <li>• Qualifications appropriate to the position, or equivalent demonstrated experience and competence, with demonstrated commitment to ongoing development</li> </ul>									
<b>DECISION MAKING</b>									
<p>The position holder reports directly to the Nurse Unit Manager – Accommodation</p> <p>The Enrolled Nurse may be required to direct and support the Support team at the Centre comprising Gardening, Catering, Transport, Laundry and Maintenance staff and other casual support staff on certain shifts, depending on the size of the Centre.</p> <table> <tr> <td>Location</td><td>Number of clients in accommodation</td></tr> <tr> <td>Tomaree, Kanangra</td><td>up to 50</td></tr> <tr> <td>Lachlan, Marsden, Peat Island</td><td>up to 150</td></tr> <tr> <td>Stockton</td><td>up to 450</td></tr> </table>		Location	Number of clients in accommodation	Tomaree, Kanangra	up to 50	Lachlan, Marsden, Peat Island	up to 150	Stockton	up to 450
Location	Number of clients in accommodation								
Tomaree, Kanangra	up to 50								
Lachlan, Marsden, Peat Island	up to 150								
Stockton	up to 450								
<b>DIMENSIONS:</b>									
<p><b>Staff</b></p> <p>The Enrolled Nurse reports to the Residential Unit Nurse Manager</p> <p>This role can direct the activities, as required, of</p> <p>Assistant in Nursing staff Gardener, Catering and transport staff Laundry and general maintenance staff</p>	<p><b>Operating Budget</b></p> <p>This role is not directly accountable for management of a budget; however all activities of the Enrolled Nurse are to be conducted with an understanding of Centre Cost management.</p>								

**KEY CHALLENGES**

The Accommodation Centre is responsible for delivering 24x7 services for clients with developmental disabilities. The services include:

- residential services;
- behaviour intervention and support;
- vocational, recreational, leisure and independent living training and education; and
- medical, nursing, psychological, psychiatric, physio-therapeutic, neurological assessment, treatment and support

*The Enrolled Nurse delivers of client services at the Centre. Due to the 24x7 nature of the shifts, the Enrolled Nurse is required to direct support staff including casual staff on some shifts.*

The Enrolled Nurse's work focuses on providing client support service for the attainment of agreed service outcomes, within the Centre's cost management practices.

The Residential Carer is accountable for the provision of services to some of the most vulnerable members of the community. The ability to implement and adopt changes is a key requirement of the role.

**POSITION TITLE:** Registered Nurse - Accommodation

<b>ROLE PURPOSE:</b>  Co-ordination of client and clinical services, and provide direction to Accommodation staff to ensure service provision is consistent with the Disability Service Act 1993, Policies for Working with People with Disabilities and DADHC policy and procedure.	
KEY ACCOUNTABILITIES	KEY PERFORMANCE INDICATORS
<b>Co-ordination of client and clinical services</b>  Ensure that day to day administrative processes are operating effectively and providing effective feedback to the Nurse Unit Manager – Accommodation on service provision  Co-ordinate and review individual service plans and IP's; monitor and coach staff with the implementation of IP's, service standards and associated complex client matters. These may include <ul style="list-style-type: none"> <li>○ Individual Service plans</li> <li>○ Health and well-being of clients – epilepsy, medication, health care plans, nutrition</li> <li>○ Behaviour intervention and support processes</li> <li>○ Family and advocate relationship management</li> <li>○ Recreational/holiday plans for clients</li> <li>○ Staff-client relationship management</li> </ul> Ensure a high standard of service provision utilising quality assurance principles.	Administrative effectiveness Timeliness and accuracy of advice, feedback and reporting  Effective implementation of client service plans and IP's.
<b>Staff Supervision and Support</b>  Provide staff with feedback, advice, coaching, training and support, and agree actions to improve performance, to enable them to maximise performance and meet budget targets  Provide support and counsel to all staff in the Centre, to foster a spirit of teamwork, co-operation, support and excellent performance  Monitor and implement HR, EEO and OHS policies and practices including issue management	Effective QA principles implemented  Staff performance and flexibility of resources  Staff satisfaction and teamwork  Effective implementation of policy and practice; Effective issue management

<p><b>Communication and team contribution</b></p> <p>Effectively communicate within the Centre, within DADHC, and with local community partnerships and with stakeholders (including families and carers) both within and external to the DADHC.</p> <p>Ensure the systematic approach to implementation of new / revised policy and process through staff briefings, training, monitoring, process and protocol development, records management and stakeholder communication.</p>	<p>Stakeholder consultation, communication and management</p> <p>Systematic implementation, communication and training of staff for process improvements</p>
<p><b>KNOWLEDGE, SKILLS, &amp; EXPERIENCE</b></p>	
<ul style="list-style-type: none"> <li>• A solid working knowledge and contemporary understanding of human services and key issues for departmental clients and stakeholders.</li> <li>• Ability to supervise and coach others, who often work in a conflict environment of competing priorities and needs with limited resources.</li> <li>• Ability to interpret and implement changes to client care procedures supporting legislative change, financial results, benchmarking, quality assurance measurements, workflow analysis, client management systems and Centre performance results.</li> <li>• Change management, stakeholder communication and staff training skills and experience.</li> <li>• Interpersonal skills and ability to communicate effectively and build relationships with staff and families.</li> <li>• Tertiary qualifications including holding a current Registration with the Nurses Registration Board, with demonstrated commitment to ongoing professional development</li> </ul>	

<b>DECISION MAKING</b>									
<p>The position holder reports directly to the Residential Unit Nurse Manager</p> <p>The Registered Nurse - Accommodation supervises staff and acts as a supervisor for the Centre, supporting the Residential Unit Nurse Manager, in promoting and improving Centre performance and staff development.</p> <p>The Registered Nurse – Accommodation is the position that supervises an Accommodation unit Enrolled Nurses, Assistants in Nursing and support team. The size of the role is dependent on the number and complexity of client needs at the centre:</p> <table> <tr> <td>Location</td><td>Number of clients in accommodation</td></tr> <tr> <td>Tomaree, Kanangra</td><td>up to 50</td></tr> <tr> <td>Lachlan, Marsden, Peat Island</td><td>up to 150</td></tr> <tr> <td>Stockton</td><td>up to 450</td></tr> </table>		Location	Number of clients in accommodation	Tomaree, Kanangra	up to 50	Lachlan, Marsden, Peat Island	up to 150	Stockton	up to 450
Location	Number of clients in accommodation								
Tomaree, Kanangra	up to 50								
Lachlan, Marsden, Peat Island	up to 150								
Stockton	up to 450								
<b>DIMENSIONS:</b>									
<p style="text-align: center;"><b>Staff</b></p> <p>The Registered Nurse reports to the Nurse Unit Manager - Accommodation</p> <p>This role can supervise the activities, as required, of</p> <p>Enrolled Nurse and Assistants in Nursing staff</p> <p>Unit support staff</p> <p>Gardener, Catering and transport staff</p> <p>Laundry and general maintenance staff</p>	<p><b>Operating Budget</b></p> <p>This role is not directly accountable for management of a budget; however all activities of the Registered Nurse are to be conducted with an understanding of Centre Budgets.</p>								

**KEY CHALLENGES**

The Accommodation Centre is responsible for delivering 24x7 services for clients with developmental disabilities. The services include:

- residential services;
- behaviour intervention and support;
- vocational, recreational, leisure and independent living training and education; and
- medical, nursing, psychological, psychiatric, physio-therapeutic, neurological assessment, treatment and support

The Registered Nurse – Accommodation provides the co-ordination of client and clinical services and staff supervision at the Centre. Due to the 24x7 nature of the shifts, the Registered Nurse – Accommodation is required to co-ordinate and supervises nursing and other Accommodation centre staff including casual staff.

While the registered Nurse's work focuses on providing nursing and other support for the attainment of agreed service outcomes, the challenge is in providing sustainable, equitable and accessible services to address local demands within available resources, policy and guidelines. The Registered Nurse conducts these activities with an understanding of the Centre's budget and cost management.

The Registered Nurse - Accommodation is accountable for the provision of nursing services to some of the most vulnerable members of the community. The services are provided in a complex and emotionally charged environment subject, understandably, to considerable pressure from advocacy groups, industrial associations, health providers, clients and their families. The Registered Nurse will be required to communicate effectively with stakeholders including families and carers.

Change management, and staff leadership and coaching within this changing environment, will be a continual challenge.

## **APPENDIX 3      SAMPLE SERVICE LEVEL AGREEMENT**

The purpose of this Service Level Agreement is to enable the monitoring of Contractor performance by the Principal (DADHC) during the term of the contract.

### **1      PROVISION OF SERVICES**

1.1      The Contractor will carry out the services as to:

- Comply with the specifications of the services in accordance with the terms and conditions of the contract.
- Achieve the service performance benchmarks (the "Service Levels") set out in clause 6 and Key Performance Indicators of this Service Level Agreement.

1.2      The Contractor shall use all reasonable care, skill and diligence in the provision of services.

### **2      CONTRACTOR PERFORMANCE**

2.1      It is the intention of DADHC and the Contractor that the Agreement be a mutually beneficial arrangement.

2.2      The Contractor acknowledges that service performance in accordance with the set service levels is of prime benefit to DADHC.

2.3      The Contractor will participate in quarterly meetings (or at other scheduled times as required) with DADHC to review the Contractor's performance in meeting the Service levels.

### **3      ACCOUNT MANAGEMENT**

3.1      The Contractor will allocate personnel with sufficient authority and experience to liaise with DADHC on a regular basis for the purposes of:

- Ascertaining business needs and service requirements;
- Resolving Service Level difficulties
- Ensuring the effective and timely administration of the Agreement.

### **4      CONTRIBUTION TO MANAGEMENT REPORTING**

4.1      The Contractor will co-operate with DADHC in the design of management reports to monitor Service Levels in the provision of Services. These reports shall be provided on a monthly basis and submitted to DADHC for that period, or as otherwise requested from time to time.

### **5      GENERAL**

5.1      This Service Level Agreement will be effective from date of agreement by both parties.

5.2      The purpose of this Agreement is to clearly define the areas of performance that will be monitored by DADHC, together with the expected service levels.

5.3      No modifications or amendments to the Service Level Agreement or any waiver of any terms or conditions herein shall be effective, unless agreed in writing and signed by both parties.

5.4      The Service Level Agreement is subject to arbitration/mediation procedures for the resolution of disputes in accordance with the provisions of Schedule 1, Part B.

- 5.5 Neither party shall be liable for failure to fulfil its obligations when such failure is due to reasons beyond its reasonable control.

## **6 SERVICE LEVEL BENCHMARKS**

- 6.1 The service levels to be measured as part of this Service Level Agreement will monitor the following key accountabilities, which are considered essential for high standard services. They include but are not limited to:

- Ordering systems
- Provision of accurate and timely reports
- Complaints management
- Induction procedures
- Compliance with statutory requirements

- 6.2 The required service levels are detailed in the key performance indicators to this Agreement.

- 6.3 DADHC may also conduct surveys of its clients incorporating these key accountabilities, the results of which may be reported to the contractor and form part of the overall assessment.

- 6.3 DADHC may provide market share information to assist contractors in monitoring their own performance to that of their co-panellists during the term of the contract.

## **7 SCHEDULED PERFORMANCE MEETINGS**

- 7.1 A meeting may be convened between delegates of both parties on a quarterly basis at a time agreed by both parties.

- 7.2 Additional quarterly meetings may be scheduled by DADHC in addition to those at clause 7.1 to discuss specific performance issues.

## **8 PERFORMANCE MANAGEMENT REPORTS**

- 8.1 The Key Performance Indicators (KPI) report shall be submitted within seven (7) days of the end of each quarter.

## **9 FAILURE TO MEET SERVICE LEVELS**

- 9.1 In the event of the Contractor's performance not meeting the Service Levels (the "Performance Deficiency"), DADHC will advise the Contractor in writing of the performance deficiency. The Contractor must effect corrective action within 30 days to rectify the Performance Deficiency.

- 9.2 It will be at the DADHC's discretion to determine whether a failure to meet a service level warrants immediate action as per clause 32 of Part B – Termination of Contract.

- 9.3 If the Contractor is notified and fails to take corrective action in accordance with 9.1 above, the Contractor will be deemed to be in breach of the Agreement. DADHC will then notify the Contractor in writing that the Contractor is in breach of the Agreement.

- 9.4 If the Contractor is in breach of the Agreement, where such failure is not outside of the Contractor's reasonable control, will be liable to consequences which may include, but not limited to, the publicising of any sub-standard performance to users or, depending on the severity, termination of the Agreement at DADHC's discretion.



**Proposed Key Performance Indicators – Temporary Staff****Methodology:**

The KPI matrix is an effective way of scoring the performance of the supplier within desired parameters.

**With the below example** if the supplier has a success rate of 85% the score is .5. The KPI is given a weighting of 10, therefore the score would be 5 out of a possible 10.

4	Example - Order fill rate	Result	>95%	85% to 95%	75% to 84%	<75%	.5	10	5
		Score	1	.5	.25	0			

If the supplier had 100% success rate for all KPIs their score would tally to 100

#	KPI	Result/Score	Measure				Score Received	Weighting	Weighted Score
1	Services consistent with ordering	Result	>85%	70% to 84%	50% to 70%	up to 50%		15	
		Score	1	0.5	0.25	0			
2	Induction procedures conducted	Result	>85%	70% to 84%	50% to 70%	up to 50%		20	
		Score	1	0.5	0.25	0			
4	Order fill rate	Result	>95%	85% to 95%	75% to 84%	<75%		20	
		Score	1	.5	.25	0			
5	Non conformances eg incorrect invoicing	Result	0	1	2	>2		5	
		Score	1	0.75	0.5	-			

**RESPONDENT:**

Name of Representative:

(block letters)

Signature:

(block letters)

**Proposed Key Performance Indicators – Permanent Staff****Methodology:**

The KPI matrix is an effective way of scoring the performance of the supplier within desired parameters.

**With the below example** if the supplier has a success rate of 85% the score is .5. The KPI is given a weighting of 10, therefore the score would be 5 out of a possible 10.

<b>5</b>	Example - Order fill rate	Result	>95%	85% to 95%	75% to 84%	<75%	.5	10	5
		Score	1	.5	.25	0			

If the supplier had 100% success rate for all KPIs their score would tally to 100

#	KPI	Result/Score	Measure				Score Received	Weighting	Weighted Score
<b>1</b>	Services consistent with ordering	Result	>85%	70% to 84%	50% to 70%	up to 50%		15	
		Score	1	0.5	0.25	0			
<b>2</b>	Permanent Recruiting Manager's Feedback forms (See next page)	Result	100%	75%	<75%	-		20	
		Score	1	0.5	0	-			
<b>3</b>	Induction procedures conducted	Result	>85%	70% to 84%	50% to 70%	up to 50%		20	
		Score	1	0.5	0.25	0			
<b>5</b>	Order fill rate	Result	>95%	85% to 95%	75% to 84%	<75%		20	
		Score	1	.5	.25	0			
<b>6</b>	Non conformances eg incorrect invoicing	Result	0	1	2	>2		5	
		Score	1	0.75	0.5	-			

**RESPONDENT:**

Name of Representative:

(block letters)

Signature:

(block letters)

**PROPOSED FEEDBACK FORM (Indicative for DADHC Permanent Only)**

This form is to be sent to the relevant DADHC recruiting manager by the supplier via email.

It is the DADHC recruiting manager's responsibility to complete this form. It is the responsibility of the supplier to collect this from the recruiting manager within 1 week of the candidate's appointment.

The data collected on this form will be aggregated with other placements and will be used as part of the assessment of the supplier's performance.

Recruitment Company.....

Recruitment Company Representative.....

DADHC Business Unit.....

DADHC Recruiting Manager's Name.....

Temp / Perm Requirement.....

Position .....

Date Recruitment Company Given Assignment.....

Date Candidate Appointed.....

Date this form filled out.....

This system works on ranking performance with colour. Please colour the corresponding squares for each of the criteria or type G or Y or R:

Green – Satisfactory to Exceed Expectations

Yellow – Requires Improvement to Satisfactory

Red – Requires Improvement to Unsatisfactory

Criteria	Ranking	Comments
Candidate within first 3 resumes		
Supplier demonstrated knowledge of DADHC policy		
Lead time to fill order		
Supplier demonstrated suitable knowledge of job requirement		
Supplier made clear the advantages and disadvantages of their recommended sourcing strategy.		

Respondent:

Name of Representative:

Signature:

(block letters)

(block letters)

## **APPENDIX 4        NSW DISABILITY SERVICE STANDARDS**

### *Standards applicable to DADHC*

#### **Standard 1 - Service Access**

Each consumer seeking a service has access to a service on the basis of relative need and available resources

#### **Standard 2 - Individual Needs**

Each person with a disability receives a service which is designed to meet, in the least restrictive way, his or her individual needs and personal goals.

#### **Standard 3 - Decision Making and Choice**

Each person with a disability has the opportunity to participate as fully as possible in making decisions about the events and activities of his or her daily life in relation to the services he or she receives.

#### **Standard 4 - Privacy, Dignity and Confidentiality**

Each consumer's right to privacy, dignity and confidentiality in all aspects of his or her life is recognised and respected.

#### **Standard 5 - Participation and Integration**

Each person with a disability is supported and encouraged to participate and be involved in the life of the community.

#### **Standard 6 - Valued Status**

Each person with a disability has the opportunity to develop and maintain skills and to participate in activities that enable him or her to achieve valued roles in the community.

#### **Standard 7 - Complaints and Disputes**

Each consumer is free to raise and have resolved, and complaints or disputes he or she may have regarding the agency or the services.

#### **Standard 8 - Service Management**

Each agency adopts sound management practices which maximise outcomes for consumers.

#### **Standard 9 - Family Relationships**

Each person with a disability receives a service which recognises the importance of preserving family relationships and is sensitive to their cultural and linguistic environments.

#### **Standard 10 - Protection of Human Rights and Freedom from Abuse**

The agency ensures the legal and human rights of people with a disability are upheld in relation to prevention of sexual, physical and emotional abuse within the service.



**Contracting Services is a Business Unit of the NSW Department of Commerce**

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

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

**Contract No. 0601250  
Labour Hire for Disability Care Workers in DADHC  
Residential Group Homes and Large Residences**

**PERIOD: Two Years from Date of Acceptance  
Plus 2 x 1 Year Extension Options**

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## 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 C.

**“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.

**“DADHC”** means the Department of Ageing Disability and Home Care.

**“Eligible Customer” means**

- (a) an entity listed in Schedule 1 to the Public Sector Employment and Management Act 2002 as amended from time to time;
- (b) a public sector agency as defined by clause 18(4) of the Public Sector Management (goods and Services) Regulation 2000 being:
  - 1) a government trading enterprise (including a State owned corporation)
  - 2) a public or private hospital (including an area health service)
  - 3) a local government agency
  - 4) a charity or other community non-profit organisation
  - 5) a public or private school, college or university
  - 6) a public sector agency of this State, the Commonwealth or of any other State or Territory
  - 7) a contractor to a public sector agency (but only in respect of things done as such a contractor)
  - 8) a Nominee Purchaser as defined in clause 1.1 and
  - 9) such other persons or entities, which the Principal may from time to time in its discretion, determine through a customer registration process.

**“Home Care”** means the Home Care Service of New South Wales.

**“Industrial Instrument”** includes an award, enterprise agreement, collective or individual agreement, a contract determination or a contract agreement regulating terms and conditions of work, whether made under State or Federal law.

**“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.

**“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 for things done as such a contractor 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 C.

**“Principal”** means the means the Department of Ageing Disability and Home Care (DADHC) for and on behalf of the Crown in right of the State of New South Wales who will be a party to the Contract.

**“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.

**“Service”** means the services to be supplied by the Contractor in accordance with this Contract and as itemised in the Price Schedule.

**“Specification”** means the detailed description of the Service to be provided under this Contract that is at Part C2. 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 14 (Insurance),
- (b) clause 15 (General Indemnity)
- (c) clause 19 (Licences and Approvals),
- (d) clause 26 (Confidentiality),
- (e) clause 28 (Intellectual Property Rights); and
- (f) clause 34 (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.

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- 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 THE CONTRACT BETWEEN THE PRINCIPAL AND THE CONTRACTOR**

- 2.1 This Contract covers the provision of Labour Hire for Disability Care Workers in DADHC Residential Group Homes and Large Residences for the Department of Ageing, Disability and Home Care (The Principal), 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.
- 2.3 The Parties agree that any Eligible Customer, although not a Party to this Agreement, may take the benefit of, and seek to enforce, this Agreement in its own name at the consent of DADHC.

## **3. TERM**

- 3.1 This Contract commences on the date of acceptance and expires two (2) years from date of acceptance 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.
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- 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. PRICE BASIS**

### **8.1 Hourly Rate**

- 8.1.1 Tendered Hourly Rates apply to the hire of temporary staff and shall be subject to variation in accordance with the applicable industrial instrument provided that the Contractor notifies DADHC prior to the date on which the increase is to take effect. The Contractor shall advise DADHC of the increases required by the applicable industrial instrument and the percentage increase involved.
- 8.1.2 The Contractor shall ensure that increases required by the applicable industrial instrument are automatically applied and paid to the staff from the effective date of the instrument increase.

### **8.2 Tenderer’s Fee for Service**

- 8.2.1 The Tendered Fee for Service for recruitment of permanent staff shall remain FIRM for the duration of the Contract including any optional extension periods.

## **9. GOODS AND SERVICES TAX**

- 9.1 In this clause and Contract:
- 9.1.1 “**Consideration**”, “**Tax Invoice**”, “**Taxable Supply**” and “**Supply**” have the same meaning as provided for in the GST Law.
- 9.1.2 “**GST**” is a goods and services tax and has the same meaning as in the GST Law.
- 9.1.3 “**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.
- 9.1.4 Every invoice issued by a person making a Supply 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.
- 9.1.5 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.
- 9.1.6 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 9.1.5.

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

- 10.1 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.

## **11. PAYMENT**

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- 11.1 DADHC shall pay to the Contractor the fees set out in the Price Schedule. NSW BusinessLink facilitates the payment of invoices for DADHC. NSW BusinessLink payment terms are 31 days.
- 11.2 No payment by DADHC for any services provided pursuant to this agreement will be made unless a written statement satisfying the requirements of s.127 of the Industrial Relations Act 1996 has been provided. No liability will arise for any payment not made where no written statement has been provided by the Contractor.
- 11.3 Payment will be made on presentation of the appropriate invoice and within the trading terms agreed. Where the contractor is registered for GST, payment will only be made on the presentation of a "TAX INVOICE". Where the contractor is not registered for GST and does not quote an ABN number then withholding tax will be applied at the rate determined by the ATO.

## **12. CONFLICT OF INTEREST**

- 12.1 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.
- 12.2 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.
- 12.3 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.
- 12.4 The Principal may terminate the Contract in accordance with clause 32.1 if in its view a conflict of interest exists which prevents the proper performance of the Contract.

## **13. MISTAKES IN INFORMATION**

- 13.1 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.

## **14. MINIMUM INSURANCE REQUIREMENTS**

- 14.1 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:
- 14.1.1 a public liability insurance to the value of at least the amount of \$20 million in respect of each claim; and
  - 14.1.2 workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees; and
  - 14.1.3 Professional indemnity insurance to the value of \$5 million.
- 14.1.3.1 The professional indemnity insurance:
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- i) must be maintained by the Contractor for 2 years after the conclusion of this Contract for an amount sufficient to indemnify the Contractor in respect of all liabilities arising out of this Contract; and
  - ii) must cover the Contractor's liability to the Principal in respect of the services and any products supplied ancillary to the services;
  - iii) must include one automatic reinstatement provision; and
  - iv) must include a description of the risk covered by the policy; and
- 14.2 All policies of insurance must be effected with an insurer approved by the Principal (which approval will not be unreasonably withheld).
- 14.3 All policies, apart from workers compensation and professional indemnity insurance must:
  - (a) note the interest of the Principal, the State and the State;
  - (b) not exclude liability assumed by the Contractor under this Contract.
- 14.4 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.
- 14.5 If the Contractor fails to comply with clauses 14.1, 14.2, 14.3 and 14.4, 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.
- 14.6 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.
- 14.7 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Contract.

## **15. GENERAL INDEMNITY**

- 15.1 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.
  - 15.2 The Contractor's liability in respect of, and indemnity given in, clause 15.1 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.
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**16. COMPLIANCE WITH LAWS**

16.1 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, industrial relations 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.

**17. PAYMENT OF WAGES AND ALLOWANCES**

17.1 The Contractor shall ensure that all persons employed by it in or in connection with the Service are paid wages and allowances of every kind required to be paid by or under the relevant industrial instrument referred to in that part of the Price Schedule at Part C entitled Collection Data Temporary Staff.

17.2 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.

**18. THE CONTRACTOR'S ON-COSTS**

18.1 Other than the Tenderer's Fee for Service, the Principal will not be liable for any of the Contractor's employee "on-costs", including wages, salaries, training, 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.

**19. LICENCES AND APPROVALS**

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

**20. KEEPING OF RECORDS AND ACCESS TO RECORDS**

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

20.2 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.

**21. ACCESS TO CONTRACTOR'S PREMISES**

21.1 During the Contract period, the Contractor shall at all times during hours (i.e. 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.

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**22. MONITORING OF PERFORMANCE**

- 22.1 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.
- 22.2 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.

**23. EXCHANGE OF INFORMATION BETWEEN GOVERNMENT AGENCIES**

- 23.1 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.
- 23.2 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.
- 23.3 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).
- 23.4 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.

**24. THE CONTRACTOR'S PERSONNEL/SPECIFIED PERSONNEL**

- 24.1 The Contractor warrants that all personnel engaged in the provision of the Service are appropriately qualified, competent and experienced.
- 24.2 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.

**25. STAFFING**

- 25.1 For each and every person employed or engaged by the Contractor under the Contract, the Contractor shall provide to DADHC where required, for retention, the information detailed below, and obtain in advance, the DADHC's written approval of that person:
- a. details including name, address and contact phone no
  - b. details of educational qualifications, training undertaken, and employment history
  - c. for staff bound by the Nurses and Midwife Board, New South Wales, details of professional registration number and a copy of Currency Certificate and expiry date. (to be provided annually)
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- d. for other staff a copy of training certificates received and a copy of a current first aid certificate
- e. a copy of the staff members current Working With Children Check (where applicable)
- f. a copy of the staff members Criminal Record Check clearance.

and in so doing, the Contractor will first obtain the person's consent to the collection, use and retention in accordance with this Agreement of all such information as is *personal information* within the meaning of the Personal Information and Privacy Protection Act.

- 25.2 Staff provided must be trained in infection control, manual handling, and OH&S to the level prescribed below. All staff must have a current first aid certificate.

**Infection control** includes but is not limited to personal hygiene, personal protective clothing and equipment, cleaning and disinfecting equipment, cleaning the environment, dealing with blood and other body fluids, food handling, linen management, managing waste, safe handling of sharps.

**Manual handling** covers practical principles of manual handling, including hazard identification

**OH&S** includes an overview of NSW OH&S legislation including employers and employees OH&S responsibilities at the workplace and general principles on how to identify, assess and control hazards.

- 25.3 Additionally, for Registered Nurses, the Contractor shall ensure that staff are regularly trained and assessed in Medication Calculation and administration.
- 25.4 The requirement to obtain the approval in clause 25.1 shall not relieve the Contractor of responsibility to provide adequate and efficient personnel at all times. All Contractor personnel shall at all times demonstrate competence in their duties to the satisfaction of the Delegate.
- 25.5 Approvals given in respect of any person may be revoked at any time.
- 25.6 Should the Client be unhappy with the appointed Contractor's staff member, the Contractor shall replace the staff member immediately.
- 25.7 The Contractor shall provide prior notification to Principal and obtain approval by the Principal of any changes in the staff who are performing the service under the contract;
- 25.8 The Contractor shall ensure all staff, including sub-contractors, are briefed on DADHC's requirements and appropriate DADHC policies.
- 25.9 The Contractor agrees that all of its employees and sub-contractors, who are to be involved in the provision of the Services under this Contract, are to submit to a criminal records check arranged by the Contractor, prior to commencing the services and if appropriate, during the currency of the Term. A working with children check is required for Residential Support Workers who provide a service to children and young people under 18 years of age in respite centres.
- 25.10 The Contractor agrees to bring to the attention of the DADHC, prior to the commencement of the Services, any matter of a criminal nature relating to the Contractor, its employees and sub-contractors, including but not limited to details of any criminal convictions.
- 25.11 In the event that the criminal records check is unsatisfactory in respect of any one or more employees and sub-contractors of the Contractor, DADHC reserves all of its rights including the right of refusal to such employees and sub-contractors being involved in the provision of any part of the Services. In the event that several of the Contractor's employees and/or sub-
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contractors, particularly key personnel, return an unsatisfactory criminal records check, the Principal reserves the right to immediately cancel this Contract in accordance with clause 32.

## **26. CONFIDENTIALITY**

26.1 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.

26.2 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.

26.3 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.

26.4 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.

26.5 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.

26.6 Each party shall on demand by the other party return any document supplied by the other party to it.

26.7 This clause shall survive the termination of this Contract.

## **27. DELIVERY OF CONTRACT MATERIAL AND INFORMATION**

27.1 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.

27.2 The Contractor may in good faith keep a copy of the Contract material and information for its records.

## **28. INTELLECTUAL PROPERTY RIGHTS**

28.1 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.

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- 28.2 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.
- 28.3 The Principal may take legal proceedings including injunctive proceedings against the Contractor if there is any actual, threatened or suspected breach of clause 28.1 despite the provisions of clause 35.
- 28.4 The Contractor acknowledges that, in the event of a breach of clause 28.1 the Principal may terminate this Contract in accordance with clause 32 without prejudice to any accrued rights or remedies of the Principal.
- 28.5 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 suspend payment of any money due to the Contractor under the Contract until such claim has been satisfied, settled, or withdrawn.

## **29. ENTRY TO OFFICIAL ESTABLISHMENTS**

- 29.1 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.

## **30. DAMAGE TO PROPERTY**

- 30.1 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 or the Principal's client, 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.

## **31. VARIATIONS**

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

## **32. TERMINATION FOR CAUSE**

- 32.1 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;
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- (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.

### 32.2 Effect of Termination for cause

#### 32.2.1 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.

## 33. TERMINATION FOR THE PRINCIPAL'S CONVENIENCE

- 33.1 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.

### 33.2 Effect of Termination for convenience

- 33.2.1 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.

- 33.2.2 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.

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

**34. NO ASSIGNMENT OR NOVATION**

- 34.1 The Contractor must not assign or novate this Contract without first obtaining the prior written consent of the Principal.
- 34.2 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.

**35. ISSUE RESOLUTION****35.1 General**

- 35.1.1 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.35.2);
  - (b) Expert Determination (cl.35.3)

**35.2 Amicable Resolution**

- 35.2.1 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.
- 35.2.2 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.
- 35.2.3 If the Party giving the Issue Notice is the Principal, it must give the Issue Notice to the Contractor.
- 35.2.4 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.
- 35.2.5 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.
- 35.2.6 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice.
- 35.2.7 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided ("the Referral Notice").
- 35.2.8 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Principal.
- 35.2.9 If the Party giving the Referral Notice is the Principal, it must give the Referral Notice to the Contractor.
- 35.2.10 If a Referral Notice has not been given within 27 days of becoming entitled under clause 35.2.6 then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

**35.3 Expert Determination**

- 35.3.1 If a Referral Notice is given under clause 35.2, the expert is to be agreed between the Principal and the Contractor. If they cannot agree within 27 days of the Referral Notice, the
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expert is to be nominated by the Chief Executive Officer, Australian Commercial Disputes Centre, Sydney.

35.3.2 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.

35.3.3 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.

35.3.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.

35.3.5 The procedure for expert determination is set out in Schedule 1.

35.3.6 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off, or counter-claim.

35.3.7 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.

35.3.8 Unless a Party has a right to commence litigation under clause 35.3.7

- (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.

## **36. PERFORMANCE OF CONTRACT DURING ISSUE RESOLUTION**

36.1 The Parties agree to continue performing their obligations under this Contract while the issue is being dealt with in accordance with this clause 35.

## **37. WAIVER**

37.1 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.

## **38. SEVERABILITY**

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- 38.1 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.

### **39. NOTICES**

- 39.1 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.
- 39.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.
- 39.3 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.

### **40. COUNTERPARTS**

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

### **41. APPLICABLE LAW**

- 41.1 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.

### **42. RIGHTS CUMULATIVE**

- 42.1 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.

### **43. NO AGENCY/NO EMPLOYMENT/NO PARTNERSHIP**

- 43.1 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.

### **44. SET-OFF/MONEY RECOVERABLE BY PRINCIPAL**

- 44.1 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.
- 44.2 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.
- 44.3 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.
-

**45. SUSPENSION OF PAYMENTS**

- 45.1 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.

**46. CONTRACTOR'S WARRANTIES**

- 46.1 In relation to Service that are services, the Contractor warrants that:
- (a) it will provide the Service 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 Service 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 Service in a manner, and to a standard, that is satisfactory to the Principal without first obtaining the Principal's consent.

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

- 47.1 The Contractor warrants that:
- (a) the Service do not infringe the Intellectual Property rights of a third party; and
  - (b) the Service shall conform to any legally applicable requirements and standards.

**48. SUB-CONTRACTING OF CONTRACT**

- 48.1 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.
- 48.2 For the purposes of this and other relevant conditions "Sub-Contractor" is defined as any person whose services are utilised by the Contractor for the purposes of this Contract and who is not an employee of the Contractor.
- 48.3 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 services of Sub-Contractor(s) in order to provide a Service 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.
- 48.4 A consent under this clause does not relieve the Contractor from its liabilities or obligations under the Contract.
- 48.5 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.
-



- 48.6 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.
- 48.7 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.
- 48.8 This clause will not merge on the completion or earlier termination of the Contract.
- 48.9 The Contractor will ensure that a sub-contractor is aware of and complies with all the terms and conditions of the Contract.
- 48.10 This clause 48 does not apply in the event that the Principal requests a particular sub-contractor to provide the Service.

#### **49. NON-MERGER**

- 49.1 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.

#### **50. MANAGEMENT FEE**

- 50.1 (a) The Contractor must pay to the Principal a Management Fee in accordance with this clause.
- (b) The Contractor shall act in good faith in respect of all its obligations under this clause 50 and shall use its best endeavours to ensure that the obligations imposed on it in relation to management fee are met.
- 50.2 The Management Fee is the GST-exclusive value of the Deliverables supplied to a Customer, multiplied by 1.25 % plus the GST payable on this amount, where the supply of Deliverables to the Customer was or should have been made under this Agreement.
- 50.3 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.
- 50.4 The Contractor agrees to take all reasonable steps to ensure that all Customers do purchase all Deliverables under this Agreement. The Contractor agrees that the Principal may treat all purchases of Deliverables by Customers as Orders under this Agreement, whether or not a NSW Department of Commerce Customer Number is quoted, unless the Contractor can provide evidence, to the satisfaction of the Principal, that the purchase was made under some other contract between that Customer and the Contractor.
- 50.5 The Contractor agrees that the Management Fee payable has been allowed for in the Prices specified in the Price Schedule together with all costs associated with the calculation and proving payment of the Management Fee.
- 50.6 At the end of each Payment Period, the Principal shall forward to the Contractor a request for a Report ("The Sales Report") which relates to the relevant Payment Period and which requires the Contractor to report the:
-

- (a) total amount, exclusive of GST, all Customers are liable to pay in respect of all items invoiced by the Contractor or its approved dealers or distributors to Customers in respect of the Agreement; and
- (b) the sales information on a monthly basis, or as the Principal requests in writing from time to time.
- (c) such other relevant information as the Contract Authority may require.

50.7 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 Principal.

In the event that the Contractor does not complete the Report within 30 days, the Contractor shall be liable to pay to the Principal the cost to the Principal of ensuring the compliance by the Contractor with its obligations under this clause, calculated from the date the sales return was first due to be submitted. The statement by the Principal as to the amount of the administrative costs payable under this clause shall be final and binding and the amount shall be payable on demand as a debt due to the Principal.

AND/OR

In the event that the Contractor does not complete the Report within 30 days and thus causing a failure by the Contractor to comply with its obligations under clause 50.8, the Contractor shall be liable to pay the Principal a Late Payment Fee.

50.8 (a) The Principal shall then compile a tax invoice based on the Sales Report and forward that invoice to the Contractor.

(b) The Contractor shall then forward payment to the Principal within sixty days of the conclusion of the Payment Period.

(c) In the event that the Contractor does not provide payment within sixty days the Contractor shall be liable to pay to the Principal the cost to the principal of ensuring the compliance by the Contractor with its obligations under this clause an amount calculated from the date the payment was first due to be made. The statement by the Principal as to the amount of the costs payable under this clause shall be final and binding and the amount shall be payable on demand as a debt due to the Principal.

AND/OR

(c) In the event that the Contractor does not provide payment within sixty days the Contractor shall be liable to pay to the Principal a Late Payment Fee.

50.9 The tax invoice will set out the Management Fee payable to the Principal and the GST payable on the Management Fee.

50.10 The Principal may alter the above procedure for the collection of the Management Fee as advised in writing and from time to time during the Term.

50.11 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 Principal and the Parties may agree on the amount of any adjustment.

50.12 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.

50.13 The Contractor must set up and maintain a system which:

- (a) to the reasonable satisfaction of the Principal is suitable for identifying all purchasers of the Deliverables that are eligible Customers whether pursuant to Official Orders or otherwise and
- (b) enables monitoring by the Principal of the Orders placed with and invoices issued by the Contractor or its approved dealers or distributors and for the provision of the sales information; and
- (c) accommodates the use of the Customer's corporate credit card if the Parties have agreed to use that card for the purchases of Deliverables.
- (d) Failure to establish such a system to the reasonable satisfaction of the Principal shall constitute a breach of this Agreement and the Contract Authority may, in its discretion terminate the Agreement.

50.14 (a)

The Principal may at its own cost, take such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the Contractor has paid the correct amount of Management Fee due to the Principal by the Contractor and the Contractor agrees to cooperate with the Principal (including any auditor appointed by the Principal).

(b)

If the Principal appoints an auditor, the Principal will inform the Contractor in writing of the appointment. The Contractor agrees to cooperate with the auditor appointed by the Principal including providing access within 10 working days of the written notification from the Principal that an audit will take place, to information about all sales of Deliverables made to eligible Customers (whether pursuant to an Order or otherwise), copies of all contracts, orders and invoices between the Contractor and any eligible Customers. The Contractor agrees to provide the Auditor appointed by the Principal access on the basis of the appointed auditor entering into an Auditor Confidentiality Agreement.

50.15 If the measures taken in clause 50.14 verify that the Contractor has not paid the Management Fee that is actually due to the Principal, the Contractor must:

- (a) remit the difference between the Management Fee paid to the Principal and the Management Fee actually due to the Principal within 30 days of a direction from the Principal; and
- (b) at the discretion of the Principal, reimburse the Principal's costs and expenses of the measures taken (including any auditor's fees) under clause 50.14 to the Principal in accordance with the sliding scale set out below:

Difference between management fee paid and payable

- (a) 99% or more of management fee was paid
- (b) 90-98% of management fee paid
- (c) 75-89% of management fee paid
- (d) 50-74% of management fee paid
- (e) less than 50% of payable management fee paid

Portion of Audit costs to be borne

- (a) \$0
-

- (b) 25% of audit and other costs
- (c) 50% of audit and other costs
- (d) 75% of audit and other costs
- (e) 100% of audit and other costs.

- 50.16 The Contractor shall during the Term of this Agreement and for a 12 month period after the Agreement 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 Principal access to those documents and Information at all reasonable times.
- 50.17 A breach of this clause (including without limitation, a failure by the Contractor to cooperate satisfactorily with the audit referred to in clause 50.14) shall be a substantial breach of this Agreement which will entitle the Principal to terminate this Agreement pursuant to clause 50.1 without prejudice however to the right of the Principal to recover from the Contractor any sums payable to the Principal under this agreement or otherwise, or the right of the Principal to deduct those sums from any money that may be or become payable by the Principal to the Contractor on any other account.
-

## **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 35.3.2 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.
-

## EXECUTED AS A DEED

**SIGNED, SEALED AND DELIVERED** )  
 by <insert name and position of person )  
signing> For and on behalf of the **NEW** )  
**SOUTH WALES STATE CONTRACTS**  
**CONTROL BOARD** for and on behalf of  
 the Crown in right of the State of New  
 South Wales but not so as to incur any  
 personal liability in the presence of:

\_\_\_\_\_  
*Witness*

\_\_\_\_\_  
*Signatory*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Print Name*

**SIGNED SEALED AND DELIVERED** by )  
<insert name of company>, ACN <insert )  
ACN number> in accordance with )  
 section 127 of the Corporations Act and  
 in the presence of :

\_\_\_\_\_  
*Witness*

\_\_\_\_\_  
*Signatory*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Print Name*



**Contracting Services is a Business Unit of the NSW Department of Commerce**

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

## **PART C**

### **TENDER RESPONSE**

**Contract 0601250 - Labour Hire for Disability  
Care Workers in DADHC Residential Group  
Homes and Large Residences**

**Period: Two (2) Years from Date of  
Acceptance Plus 2 x 1 Year Extension Options**

**Closing Date: 15 November 2006**

Your Company's Legal Entity: \_\_\_\_\_

Your Company's Trading Name: \_\_\_\_\_

Your Company's ABN number: \_\_\_\_\_

Contact Name: \_\_\_\_\_  
*<insert name to whom enquiries should be directed>*

Contact Phone: \_\_\_\_\_

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



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# PART C THE TENDER

## **PART C1 INFORMATION SUPPLIED IN RESPONSE TO PART A**

### **1. INTRODUCTION**

- 1.1 The information provided in this Part will be used in the assessment of Tenders. Questions have been framed to ensure responses that are relevant to the selection criteria. Please provide attachments where necessary, clearly labelled and cross-referenced.
- 1.2 References to “you” in this Part means the tenderer and all responses given will be taken to be responses of the tenderer.

### **2. PRICING AND RELATED FACTORS**

#### **2.1 Tender Response Categories**

- 2.1.1 Please indicate the category that your tender covers at the tab labelled “Competency and Location” in the Price Schedule.
- 2.1.2 Tenderers are asked to indicate their competency in each location for services to Home Care also, where applicable, should they be accepted as a successful supplier through this tender for DADHC.

#### **2.2 Price Schedule**

- 2.2.1 You must complete the Price Schedule on the attached Microsoft Excel spreadsheet. Please complete the applicable tabs in the Price Schedule following the instructions provided. Tenderers should note that the Hourly Rates are to be calculated in accordance with the special notes about margin and administrative fees set out in the attached Microsoft Excel spreadsheet.
- 2.2.2 Tenderers are asked to provide rates for services to Home Care also, where applicable, should they be accepted as a successful supplier through this tender for DADHC.

#### **2.3 Price Variation**

##### **2.3.1 Hourly Rate**

- 2.3.1.1 The Tendered Hourly Rates set out in the tab to the Price Schedule at Part C entitled Collection Data Temporary Staff apply to the hire of temporary staff and may be varied but only if required to comply with the industrial instrument which under which the pay rate is set out and the Tenderer shall inform DADHC Care of any such variation.

##### **2.3.2 Tenderer's Fee for Service**

- 2.3.2.1 The Tendered Fee for Service relates to permanent recruitment and shall remain FIRM for the duration of the Contract including any optional extension periods.

#### **2.4 Settlement Discount**

- 2.4.1 The tendered prices are subject to a settlement discount of:-

- (a) \_\_\_\_\_ % for payment within 14 days from the date of receipt of claim or acceptance, whichever date is the later.
- (b) \_\_\_\_\_ % for payment made during the month following that in which the supplies have been received or the account rendered, whichever date is the later.
- (c) \_\_\_\_\_ % for payment within \_\_\_\_\_ days from the date of receipt of claim or acceptance of supplies, whichever date is later.

(N.B.: If this condition is not completed, the prices tendered will be deemed to be NETT.

## **2.5 Tender Validity Period**

- 2.5.1 The Tender will remain valid for acceptance within \_\_\_\_\_ months from the deadline for lodgement of tenders, in accordance with Part A.

**N.B.** The minimum validity period is 6 months as stated in cl. 5.5 of Part A.

**NOTE: ATTACH ADDITIONAL SHEETS AS NECESSARY**

Provide details of any current and previous Contract(s) with the Client Agency, other NSW Government Departments, the Board and/or Private Organisations that you have been involved in during the past four years, providing similar services:

(Note: Current and Previous clients may be contacted for references in addition to referees nominated at clause 3(f).

Contract No.	Contract Name	Client Organisation	Contract Period	Services Provided	Contract Manager	Phone Number

Demonstrate expertise and experience in the successful provision of services tendered for.

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If you have undertaken any previous Contracts provide details of any assessment undertaken of your performance. If performance reports were prepared in respect of your performance, please provide copies.

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Does your organisation have an awareness of the Disability Services Act?

**Yes/No**

Does your organisation have an awareness of the NSW Disability Service Standards attached at Appendix 4 to Part A?

**Yes/No**

Please provide evidence below.

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**NOTE: ATTACH ADDITIONAL SHEETS AS NECESSARY**

*Provide details of your organisation's infrastructure and how you will meet the requirements to provide staff across NSW. Tenderers are required to nominate the regions in NSW in which they can meet the requirements on the Competency and Location tab in the Price Schedule. Details of regions are in Appendix 1 to Part A.*

[illegible]

**(iv) Tenderer's financial capacity and stability**

1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_

If a company, please submit a copy of each of your annual financial reports for the last three financial years with your Tender.



**Criteria (c) Degree of Compliance with Specification**

*No response is required by tenderers, information provided at Part C2 will be used to assess this criteria.*

**Criteria (d) Degree of Compliance with Conditions of Contract**

Do the tendered Services fully comply with the Conditions of Contract at Part B.

\_\_\_\_\_ YES/NO (delete whichever is inapplicable)

***Note: if you answer “yes” to this question, the stated Conditions of Contract at Part B will not be subject to any negotiation should your tender be successful.***

If No, please list clause numbers not fully complied with below and provide full details of deviations below.

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**NOTE: ATTACH ADDITIONAL SHEETS AS NECESSARY**

**Criteria (e) Compliance with applicable NSW Government policies.****(i) Code of Practice for Procurement**

Have you have read the [NSW 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) and taken it into consideration in preparing and submitting your Tender?

**Yes/No**

Will you maintain compliance with the Code for the purposes of this Contract, advise the Board of any breaches of the Code for the duration of the Contract and provide evidence of compliance when requested by the Board during the course of this Contract?

**Yes/No**

Provide any other relevant information below

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**(ii) Occupational Health Safety & Return to work**

Do you currently comply with your OHS&R statutory obligations and will you continue to do so including obligations relating to performance monitoring and Sub-Contractor performance for the duration of any Contract awarded?

**Yes/No**

If “No”, provide details below

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**(iii) Competitive Neutrality (To be completed by Government Agencies or Trading Enterprises only)**

As a public sector tenderer, do you comply with the policy that Government agencies should not have a net advantage over their competitors as a result of their public ownership?

**Yes/No**

If “No”, provide details

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**(iv) Small to Medium Enterprise (SME) involvement**

State below how you will provide opportunities for SMEs in performing any Period Contract awarded. If the project involves formation of a relationship with one or more SMEs, provide the following information:

- (a) Name of, and contacts for, each SME
- (b) Description of each SME's role
- (c) Estimated dollar value of each SME's contribution, and
- (d) Level of value-added activity and any other benefits associated with each SME.

<type or write your answer here>

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**(v) Regional development activity**

Provide information below on:

- (a) The number and type of regionally based enterprises participating in your Tender
- (b) The expected regional economic impact of your Tender in terms of:
  - training, other skills enhancement and the uptake or maintenance of existing technologies and capabilities
  - expected increases in employment and investment , and
  - the expected impact on existing and future R&D programs and innovation.

<type or write your answer here>

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**NOTE: ATTACH ADDITIONAL SHEETS AS NECESSARY**

**Criteria (f) Referee Reports**

*Provide details required below for persons willing to act as referees to the tenderer's standard of service and performance in relation to their ability as a provider for all the nominated services.*

*Note: If you are currently providing service to DADHC it is acceptable to nominate DADHC staff as a referee.*

**Referee No 1.**

Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
Company: \_\_\_\_\_  
No. of Years tenderer has provided service to Referee: \_\_\_\_\_ years  
Telephone No: \_\_\_\_\_  
Fax No: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**Referee No 2.**

Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
Company: \_\_\_\_\_  
No. of Years tenderer has provided service to Referee: \_\_\_\_\_ years  
Telephone No: \_\_\_\_\_  
Fax No: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**Referee No 3.**

Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
Company: \_\_\_\_\_  
No. of Years tenderer has provided service to Referee: \_\_\_\_\_ years  
Telephone No: \_\_\_\_\_  
Fax No: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**4. ADDITIONAL INFORMATION TO BE PROVIDED BY TENDERER****4.1 Sub-Contractors**

4.1.1 Is any part of the Service to be provided through sub-contract?

**Yes/No**

If **“Yes”**, give details of item, name, address and ABN of proposed sub-contractor(s).

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**4.2 Suitability of Proposed Sub-Contractors**

4.2.1 Provide details of proposed sub-contractors' legal status (company, partnership, individual etc) and their experience and qualifications in the provision of similar Services.

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**4.3 Conflict of Interest**

4.3.1 Tenderers are to provide details of any matter connected to the contract that may give rise to an actual or potential conflict of interest of the Contractor, its officers, employees, contractors, servants or agents, and how they propose to overcome any existing or perceived conflicts of interest.

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#### 4.4 Details of Ownership

- 4.4.1 If you are a company, please provide details of your ownership, that is, Australian, Overseas, largest shareholder, paid-up capital and other relevant details.

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- 4.4.2 If you are a partnership, please provide a list of partners and details of the partnership financial arrangements.

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#### 4.5 Contracting as Agent/Trustee

- 4.5.1 If awarded an Contract, do you intend to enter the Contract in your own right or as agent or trustee for some other entity or entities? If the latter, provide full details.

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#### 4.6 Current Legal Proceedings

- 4.6.1 Are you or any of your directors or close associates currently, or have you, or have your directors or close associates been at any time within the last five years, the subject of any or any pending:

- (a) legal proceedings, including winding up or bankruptcy proceedings,
- (b) insolvency administrations or investigations; and/or
- (c) investigations by ICAC or any other public body?

**Yes/No**

If “**Yes**”, please supply full details below:

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**5. OTHER INFORMATION REQUIRED****5.1 Addenda to this RFT after issue**

If there have been any Addenda by the Board to this RFT after the issue of this RFT, indicate below whether you have read and allowed for the Addenda in your Tender.

**YES/NO/THERE HAVE BEEN NO ADDENDA BY THE BOARD**

If **NO**, provide reasons below

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**5.2 Further information**

Provide below any further information you believe is relevant to your Tender, and cross-reference to any clauses of this RFT if applicable.

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**5.3 Tender validity period**

The Tender will remain valid for acceptance within \_\_\_\_ months from the deadline for lodgement of tenders, in accordance with Part B.

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**N.B.** The minimum validity period is as stated in Part B.

**5.4 Supply of Australian Business Number****Question 5.4.1**

If you do not currently have an ABN, state how and when you intend to obtain an ABN and register for GST.

N.B. Tenderers that do not have an ABN cannot enter into an agreement with the Board.

**5.4.1**

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**5.5 Conflict of Interests**

## Question 5.5.1

In lodging a tender to this RFT, are you aware of any real or perceived conflict of interests (including any relevant relationships) existing, which require your disclosure.

## Answer 5.5.1

**Yes/No**

## Question 5.5.1

If the answer is "Yes", disclose conflict of interests

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**6 SCHEDULE OF INSURANCE****6.1 Worker's Compensation Insurance**

Insurance Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone number: \_\_\_\_\_  
Policy number: \_\_\_\_\_  
Expiry Date: \_\_\_\_\_

**6.2 Public Liability Insurance**

Insurance Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone number: \_\_\_\_\_  
Policy number: \_\_\_\_\_  
Expiry Date: \_\_\_\_\_  
Limit of Liability: \_\_\_\_\_

**6.3 Professional Indemnity**

Insurance Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone number: \_\_\_\_\_  
Policy number: \_\_\_\_\_  
Expiry Date: \_\_\_\_\_  
Limit of Liability: \_\_\_\_\_

## **PART C2 SPECIFICATION AND STATEMENT OF COMPLIANCE**

This section seeks a summary of the tenderer's ability to conform with the minimum standards of the tender specification. Required standards are described as MANDATORY.

Failure by the Tenderer to fully comply with any MANDATORY requirement will result in the automatic exclusion of the Tender without further consideration.

The service/s are to be in accordance with the specification below. Tenderers must state hereunder whether the service/s offered comply to the specification.

Tenderers are to clearly indicate below whether they conform or do not conform to the specifications below:

REQUIREMENT	CONFORM / DOES NOT CONFORM	COMMENT
<b>1. INNOVATION &amp; TECHNOLOGY</b>		
1.1 Online order system		
1.2 Fax order system ( <b>MANDATORY</b> )		
1.3 Only inducted staff are to work in specific units.		
1.4 External audit of supplier records ( <b>MANDATORY</b> )		
1.5 Online timesheeting		
1.6 Online training of staff		
<b>2. SERVICE</b>		
2.1 1300 customer service number		
2.2 Order has been fulfilled confirmation / verification (phone preferably).		
2.3 Out of hours contact		
2.4 Defined reporting on a regular basis (see KPIs in Appendix 3 to Part A) ( <b>MANDATORY</b> )		
2.5 Responsibility for management of subcontractors ( <b>MANDATORY</b> )		
2.6 Provide staff whose qualifications match job requirements as required – indicative statements of duties and position descriptions are provided for information of the tenderer at appendix 2 to Part A ( <b>MANDATORY</b> )		

REQUIREMENT	CONFORM / DOES NOT CONFORM	COMMENT
2.7 Supplier reporting aligned to DADHC cost centres		
2.8 Regular meetings between contractor and DADHC management		
2.9 Facilitation of working with children checks, medical checks etc prior to staff commencement <b>(MANDATORY)</b>		
2.10 Regular meetings between contractor and their staff		
2.11 Single point of contact		
2.12 Hierarchical account management		
2.13 Consolidated fortnightly invoicing by cost centre via excel spreadsheet		
2.13 Define an annual account management plan		
2.14 Annual report against previous year's account management plan		
2.15 A 6 monthly client survey against agreed Service Level Agreement to be carried out by contractor		
2.16 Data to be provided monthly		
2.17 Short lead time to order fulfilment (within 2 hours confirmation)		
<b>3. QUALITY</b>		
3.1 Agreement to comply with Key Performance Indicators and with the Service Level Agreement (see Appendix 3 to Part A) <b>(MANDATORY)</b>		
3.2 Complaints management system equivalent to ISO9000 and Disability Service standards <b>(MANDATORY)</b>		
3.3 Defined process for ordering <b>(MANDATORY)</b>		
3.4 Compliance with a Service Level Agreement and KPI (see Appendix 3 to Part A)		
<b>4. OCCUPATIONAL HEALTH AND SAFETY</b>		

REQUIREMENT	CONFORM / DOES NOT CONFORM	COMMENT
4.1 Staff undertake orientation before commencing duty <b>(MANDATORY)</b>		
4.2 Staff undertake orientation before commencing duty at contractor cost		
4.3 Contractor to have clearly defined safety systems (including risk reporting) <b>(MANDATORY)</b>		
4.4 Contractor is a Registered Training Organisation		
4.5 Contractor will provide training to workers under this contract		
4.6 Induction of staff into OH&S procedure <b>(MANDATORY)</b>		
4.7 Induction of staff into standard work practices eg. correct cleaning procedure <b>(MANDATORY)</b>		
4.8 Reporting on number of lost time injuries <b>(MANDATORY)</b>		
4.9 Reporting on number of injuries <b>(MANDATORY)</b>		
4.10 Reporting on frequency of injuries and lost time injuries		
4.11 Reporting on causes and severity of injuries and lost time injuries		

## **PART C3 TENDERER IDENTIFICATION DETAILS AND CONFIRMATION OF TENDER**

### **1. TENDERER IDENTIFICATION DETAILS**

#### **1.1 Name of Tenderer:**

**Individual:** [Print name]

Trading Name (if applicable):

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or

**Company:** [Full name]

Trading Name (if applicable):

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Name and official position of authorised officer completing tender:

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or

**Partnership:** [Trading Name of partnership]

Name of partner completing tender:

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#### **1.2 ABN:**

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#### **1.3 Address of Tenderer:**

*[in the case of a company, state registered office and, if different, principal place of business]*

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#### **1.4 Business Postal Address:**

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STD Area Code:

Telephone No.:

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Facsimile No:

( )

Email:

Website:

Contact Name for general enquiries:

Telephone No.:

Tenderer's reference number

## 2. ACKNOWLEDGEMENT AND CONFIRMATION OF TENDER

Note to tenderers: If submitting a hard copy Tender, execute cl. 2.2. If submitting an electronic Tender, only complete cl. 2.3.

- 2.1 Lodgement of a Tender will itself be an acknowledgment and representation by you that you are aware of the requirements of the Code; that you will comply with the Code; and that you agree to report to the Board any breaches of the Code for the duration of the Contract.
- 2.2 I affirm that this is my Tender to supply the Service sought in the RFT at the prices tendered, and in accordance with the conditions of the RFT except as expressly amended in my Tender, and that the information given in my Tender is correct:

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature of tenderer (if an individual, as identified in cl. 1 Part C3)

OR

\_\_\_\_\_  
Signature of authorised officer of tenderer (as identified in cl. 1 Part C3)

OR

\_\_\_\_\_  
Signature of partner completing tender on behalf of partnership (as identified in cl. 1 Part C3)

- 2.3 If submitting an electronic Tender, do you acknowledge and accept that electronic submission in accordance with the requirements of the RFT and any conditions of the NSW Department of Commerce tenders website is sufficient to verify and affirm that this is your Tender to supply the Service at the prices tendered on the conditions contained in Part A, except as expressly amended in your Tender and that the information contained in your Tender is correct?

Note that such acknowledgment and acceptance, by stating "Yes", is a necessary prerequisite to consideration of your Tender.

**Yes/No**

\_\_\_\_\_  
Print Name and Title