

Summary File ONLY

**PLEASE BE AWARE THAT
THIS PDF FILE
CANNOT BE PRINTED**

**IT IS BROWSABLE ON-SCREEN ONLY AND IS PROVIDED
FOR YOUR INFORMATION TO DECIDE WHETHER TO
BECOME A PROSPECTIVE TENDERER ONLY**

Note: This file may contain a brief scope statement, or an extract from the RFT documents, or a full exhibited copy – depending on the specific circumstances.

To participate in this tender process you **MUST** first download or order a full copy of the Request for Tender (RFT) documents, including the responsible components, and any addenda issued to date.

To do this return to the RFT web page on this web site and copy the RFT documents to your own computer or network – the blue “**DOWNLOAD A SOFT COPY**” link at the bottom provides access to the page from which you can do this.



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

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

Request for Tender 0601336

PROVISION OF AUCTIONEER SERVICES FOR THE DISPOSAL OF JEWELLERY AND FURNITURE & EFFECTS AND PRELIMINARY CARTAGE OF GOODS TO AUCTION ON BEHALF OF THE PUBLIC TRUSTEE NSW

**PERIOD: THREE YEARS FROM DATE OF ACCEPTANCE,
PLUS 2 X ONE-YEAR EXTENSION OPTIONS**

Tender Issue Date: 7th August 2006

Closing Date: 6th September 2006

Closing Time: 9:30am Sydney Time

Note: If a tender is not submitted electronically, the tenderer must submit the original tender, plus one (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.

PROVISION OF AUCTIONEER SERVICES FOR THE DISPOSAL OF JEWELLERY AND FURNITURE & EFFECTS AND PRELIMINARY CARTAGE OF GOODS TO AUCTION ON BEHALF OF THE PUBLIC TRUSTEE NSW

TABLE OF CONTENTS

PART A	<u>THE REQUIREMENT AND CONDITIONS OF TENDER</u>	4
1.	DEFINITIONS OF TERMS USED IN PARTS A and C	4
2.	OUTLINE DESCRIPTION OF THE REQUIREMENT	6
2.1	Background.....	6
2.2	Scope: Auctioneer Services	6
2.3	Scope: Cartage Services	7
3.	SUMMARY INFORMATION FOR TENDERERS	7
3.1	Structure of Request for Tender	7
3.2	Contact Officer.....	7
3.3	Nature of Contract	7
3.4	Eligibility to Tender	8
4.	PREPARATION OF TENDER - GENERAL	8
4.1	Conformity of Tenders	8
4.2	General Instructions for Completion of Tenders.....	9
4.3	Addenda to this RFT Before Close of Tenders	9
5.	PREPARATION OF TENDER - PRICE SCHEDULE AND PROJECT PLAN	9
5.1	Fee Schedule.....	9
5.2	Calculating the Tender Price	9
5.3	Price Basis.....	9
5.3.1	Price (Commission) Basis: Auctioneer Services	9
5.3.2	Price Basis: Cartage Services	9
5.4	GST Free or Input Taxed Supplies.....	11
5.5	Not Used	11
5.6	Minimum Tender Validity Period.....	11
6.	PREPARATION OF TENDER – POLICY REQUIREMENTS	11
6.1	Procurement Policy – introduction.....	11
6.2	Code of Practice for Procurement	11
6.3	Occupational Health Safety & Rehabilitation.....	12
6.4	Environmental Management.....	12
6.5	Not Used	12
6.6	Economic Development Through Government Procurement	12
6.7	Not Used	13

6.8	Not Used	13
6.9	Not Used	13
6.10	Not Used	13
6.11	Not Used	13
6.12	Not Used	13
6.13	Not Used	13
6.14	Not Used	13
6.15	Not Used	13
6.16	Not Used	13
6.17	Not Used	13
6.18	Competitive Neutrality	13
6.19	Not Used	14
6.20	Not Used	14
6.21	Not Used	14
7.	SUBMISSION OF TENDERS	14
7.1	General Instructions for Submission of Tenders	14
7.2	Late Tenders.....	15
7.3	Extension of the Closing Date and Time	16
8.	EVALUATION OF TENDERS	16
8.1	General	16
8.2	Selection Criteria	16
8.3	Variation of Tenders	17
8.4	Exchange of Information Between Government Agencies.....	18
8.5	Corrupt or Unethical Conduct.....	18
9.	OUTCOMES	18
9.1	Negotiations Before Determination of Outcome.....	18
9.2	Acceptance or Rejection of Tenders	19
9.3	Discontinuance of the Tender Process	19
9.4	Post Tender Negotiations in the Event all Tenders Are Rejected	19
9.5	Complaints.....	19
9.6	Disclosure of Information Concerning Successful and Unsuccessful Tenders	19
9.7	Ownership of Tenders	20

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.

“Arbitrator” means person contracted to perform alternative dispute resolution service on behalf of the Department of Community Services.

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

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

“Cartage Service” shall mean the carriage, on behalf of the Principal, of jewellery, furniture and effects from the place in which they are to be found to the agreed place of auction and shall include all other services necessary to the completion of the individual task, including but not necessarily limited to packing of the items before loading onto a vehicle, loading, carriage and unloading and unpacking of the items on arrival at the place of auction.

“Chairperson” shall mean and include the Chairperson of the State Contracts Control Board and any person for the time being acting as such.

“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 aforementioned code can be viewed and downloaded from:

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 successful tenderer as a party to the proposed Contract.

“Customer” means the entity that places an Order with the Contractor under the Standing Offer agreement.

“Deceased Estate” means Estates, Trusts, Powers of Attorney and any other matters dealt with by the Public Trustee

“Delegate” means the Principal or its authorised representative.

“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 rehabilitation.

“Parties” means the Principal and the Contractor, acting in concert.

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

“Primary Contractor” means, in the case of a successful joint tender bid, the primary tenderer who shall be considered the Primary Contractor and shall, as far as the Board is concerned, be solely responsible and assume sole responsibility for the satisfactory conduct of the Contract.

“Principal” means the Public Trustee of 19 O’Connell Street Sydney New South Wales who will be a party to the Contract.

“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/s” means, depending on the context, an individual auctioneer service or auctioneer services in the aggregate, provided by the Contractor in accordance with this Contract and Specification, as itemised in the Price Schedule.

“SME” means small to medium enterprise.

“Specification” means the detailed description of the required Services contained in Part C2.

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

“Sub-Contractor” means a person or organisation who furnishes equipment or Services to the Contractor either directly or through another sub-contractor for use under the Contract.

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

“Tender Price” means, in respect of each Service offered, the commission and any other fees nominated in the Price Schedule for that Service.

2. OUTLINE DESCRIPTION OF THE REQUIREMENT

2.1 Background

- 2.1.1 The Public Trustee of NSW (PT NSW) is a NSW government business enterprise (and is a corporation sole), established by and operating under the terms of the Public Trustee Act, 1913, with a network of branches, in Sydney, Newcastle, Wollongong and rural NSW.
- 2.1.2 Among the services provided by the PT NSW is the administration of deceased estates and other matters.
- 2.1.3 In certain circumstances, the PT NSW issues instructions to an auctioneer/carter to remove items from a particular (deceased estate) property after an inventory has been compiled by PT NSW staff.
- 2.1.4 Jewellery, furniture and effects of the deceased estate are then disposed of at public auctions.
- 2.1.5 Without making any warranty that future requirements will be similar to the figures provided, the PT NSW informs potential tenderers that the total value of all sales by auction of Furniture and Effects is approximately \$200 thousand to \$250 thousand a year. Cartage and associated costs such as tipping fees have recently been approximately \$200 thousand a year.
- 2.1.6 Tenderers may tender for:
- auctioneer services only,
 - cartage services only or
 - both auctioneer and cartage services.
- 2.1.7 Joint tender bids for both auctioneer and cartage services
- 2.1.7.1 A tender for both auctioneer and cartage services made by two or more legally-separate organisations shall be deemed by the Board to be a joint tender bid.
- 2.1.7.2 A joint tender bid shall only be considered by the Board if the primary tenderer is nominated in the tender.
- 2.1.7.3 In the event that a joint tender bid is accepted by the Board the primary tenderer shall, for the purposes of the Contract, be considered the Primary Contractor and shall, as far as the Board and Principal are concerned, shall assume sole responsibility for the satisfactory conduct of the Contract.

2.2 Scope: Auctioneer Services

- 2.2.1 Tenders are hereby sought for the provision of auctioneer services for the disposal of:
- (1) Jewellery and
 - (2) Furniture & Effects
- on behalf of the PT NSW.
- 2.2.2 The proposed Contract or Contracts (if more than one Contractor is selected) will be for a three-year period from a date agreed by the Parties, with two options to extend the Contract for up to one year at a time.
- 2.2.3 The successful tenderer/s will be responsible for providing a venue and all services in relation to the management and conduct of the auction.
- 2.2.4 Tenderers may, but are not required to, offer cartage services in addition to auctioneer services. (See clause 4 of Specification, Part C2.)

- 2.2.5 Tenderers may also offer online services in addition to the auctioneer services detailed in the Specification at clauses 1 to 3, Part C2. (See clause 5 of Specification, Part C2.)

Note 1: Tenders will only be accepted from tenderers which or who are current members of the NSW Auctioneers and Agents Association.

Note 2: For the information of potential tenderers, the disposal of motor vehicles, boats and similar ARE NOT INCLUDED within the terms of this Request for Tender.

2.3 Scope: Cartage Services

- 2.3.1 Tenders are also sought for the provision of cartage services from the place at which the items (jewellery, furniture and effects) are to be found, usually a residential house, to the agreed place of auction.
- 2.3.2 The cartage services shall include all services necessary to the completion of the individual task, including but not necessarily limited to packing of the items before loading onto a vehicle, loading, carriage and unloading and unpacking of the items on arrival at the place of auction.

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 Contractual Enquiries

Name: Greg Lynn
 Phone: (02) 9372 7518
 Fax: (02) 9372 7799
 Email: Greg.Lynn@commerce.nsw.gov.au

For Technical Enquiries

Name: Joe Dougall, Manager Technical Services, Public Trustee NSW
 Phone: (02) 9240 0861 or 0411 263 496
 Fax: (02) 9231 0497
 Email: jdougall@pt.nsw.gov.au

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

3.3 Nature of Contract

- 3.3.1 The Requirement is to be met by a Contract between the Principal and the successful tenderer 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.**
- 3.3.2 The Contract will be for a term of three years and may be extended by two further terms, each of one-year duration. 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 Tenders will only be considered from suitable companies/organisations who are able to demonstrate they have the resources, capability and expertise to provide the full range of services described herein.

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

5. PREPARATION OF TENDER - PRICE SCHEDULE AND PROJECT PLAN

5.1 Fee Schedule

- 5.1.1 Tenderers must complete the Fee Schedule at Part C1.

5.2 Calculating the Tender Price

5.2.1 General

- 5.2.1.1 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; and
 - (d) include all costs associated with the preparation and submission of the Tender.

5.3 Price Basis

5.3.1 Price (Commission) Basis: Auctioneer Services

- 5.3.1.1 The rate of commission for the provision of Auctioneer Services shall remain firm throughout the term of the Contract.

5.3.2 Price Basis: Cartage Services

5.3.2.1 The tenderer may determine the Tender Price for Cartage Services on the basis of either of the two options below. The tenderer will be asked to indicate which option(s) is or are selected in Part C.

- (1) Firm for the first twelve months of the term of the agreement then subject to review at the end of that period and each twelve months following and at the request of the Contractor based on variations in the Consumer Price Index (Sydney).
- (2) Firm for the first twelve months of the term of the agreement then subject to review at the end of that period and each twelve months, including for any extension period following based on variations in **labour and material** factors.

5.3.2 If option (2) is selected, variation will be on the basis of the following formulae.

Labour and Material Factors

$$CP = CPo \times \left(\frac{0.1 + \frac{Y(L)}{Lo}}{1} + \frac{Z(M)}{Mo} \right)$$

Where:

CP = Current Contract Price.

CPo = Contract Price at start date.

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

L = The Weekly Award Rate of pay, or the Effective Award Hourly Rate (EAHR) calculated in accordance with the EAHR formula detailed hereunder, for the category of labour primarily employed on the agreement/s [make singular or plural, as appropriate], most recently published at the date of application for price variation.

Lo = The Weekly Award Rate of pay, or the EAHR calculated in accordance with the EAHR formula detailed hereunder, for the category of labour primarily employed on the agreement/s [make singular or plural, as appropriate], most recently published at twenty-one days before tender closing.

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

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

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

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

EAHR Formula:

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

$$EAHR = \underline{AW} \times \left(\frac{52 + LL}{52} \right) \times (1 + WC + PT + S)$$

HW (52 - LA)

Where:

AW	=	Weekly award rate of pay for the labour primarily engaged in the agreement/s <u><i>[make singular or plural, as appropriate]</i></u> , including industry allowances and site-specific allowances approved by the appropriate State or Commonwealth Authority.
HW	=	Award hours per week.
LL	=	Award annual leave loading (expressed as a decimal) multiplied by the number of days paid recreation leave covered by the award divided by 5.
LA	=	Award leave allowance divided by 5.
WC	=	The recommended rate (expressed as a decimal) of contribution of Workers Compensation in accordance with the relevant legislation.
PT	=	Payroll tax percentage (expressed as a decimal).
S	=	Rate of employer's superannuation as a percentage of the employees' wages in accordance with the relevant award (expressed as a decimal).

5.4 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 Not Used

5.6 Minimum Tender Validity Period

- 5.6.1 Tenders must remain open for acceptance for a period of at least six 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 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 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

- 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 contract awarded:
- (a) The *Occupational Health and Safety Act 2000* (NSW) and any regulation made under this Act, including the OHS Regulation 2001, and
 - (b) Codes of Practice, approved and issued pursuant to the above Act and or regulations made under the Act
- 6.3.2 Tenderers must ensure that the tenderer's Sub-Contractors will comply with the OHS&R requirements listed in clause 6.3.1 in the performance of any contract awarded.
- 6.3.3 Tenderers must indicate in Part C, compliance with OHS&R requirements, including any specific requirements in clause 16 Compliance with Laws of Part B.

6.4 Environmental Management

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

6.5 Not Used

6.6 Economic Development Through Government Procurement

- 6.6.1 Economic development is a key policy objective in all government procurement. This objective may incorporate policies regarding:
- (a) the giving of purchasing preferences to Deliverables of Australian and New Zealand origin;
 - (b) local industry participation, and;
 - (c) Small to Medium Enterprise (SME) involvement, employment and workforce development.
- 6.6.2 Policies of particular relevance to this procurement are drawn to tenderers' attention in this Part. Further details are to be found in the NSW Government Procurement Policy and from sources identified in this clause.
- 6.6.3 Tenderers are encouraged to take up the services offered by the Industry Capability Network (NSW) Ltd (ICN) to assist in maximising the local content of Tenders. The ICN is a business advisory service, managed by industry and funded by the NSW Government, primarily to assist business and buying organisations to source their requirements from local producers who can provide goods, equipment and services against imports. The ICN provides a free service of identifying the supply capabilities of Australian manufacturers and import

replacement. The ICN also assists in the preparation of Local Industry Participation Plans. Contact details are given below.

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

Phone: 02 9819 7200

Fax: 02 9181 3321

E-mail: enquiry@icnsw.org.au

Website address: www.icnsw.org.au

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

6.7 Not Used

6.8 Not Used

6.9 Not Used

6.10 Not Used

6.11 Not Used

6.12 Not Used

6.13 Not Used

6.14 Not Used

6.15 Not Used

6.16 Not Used

6.17 Not Used

6.18 Competitive Neutrality

- 6.18.1 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.

- 6.18.2 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.

- 6.18.3 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.

- 6.18.4 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.

6.19 Not Used

6.20 Not Used

6.21 Not Used

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 0601336."
- 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 Micro station 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 Selection Criteria

- 8.1.2.1 Offers for Cartage Service and Auctioneer Services shall be assessed separately and jointly, and the Board reserves the right to award Contracts either to one Contractor for provision of both Services or to two or more Contractors for the provision of each Service individually if the latter option offers better over-all value for money.
- 8.1.2.2 The selection criteria for this Request for Tender for Auctioneer Services that do not relate to price will account for 50% of the total evaluation score. The selection criteria for this Request for Tender that relate to price will account for 50% of the total evaluation score. (See 8.2.1.1 below.)
- 8.1.2.3 The selection criteria for this Request for Tender for Cartage Services that do not relate to price will account for 50% of the total evaluation score. The selection criteria for this Request for Tender that relate to price will account for 50% of the total evaluation score. (See 8.2.1.2 below.)
- 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

- 8.2.1.1 The selection criteria to be used in the evaluation of tenders for Auctioneer Services are as follow:
- (a) the tenderer's ability to provide a good financial return to the Principal, measured by reference to location and quality of the tenderer's places of auction, ability to auction higher-value items online (see 8.2.3 below), presentation of the lots, quality of the tenderer's catalogues, marketing and advertising, and the tenderer's experience and similar contracts;
 - (b) the number and quality of the tenderer's storage facilities and places of auction;
 - (c) the tenderer's capacity and ability to provide appropriate, skilled personnel;

- (d) the tenderer's demonstrated expertise and experience in the successful delivery of similar auction services;
- (e) the quality of the tenderer's catalogues, advertising and marketing;
- (f) the tenderer's degree of compliance with the Specification (Part C2) and the Conditions of Contract (Part B) of this Request for Tender;
- (g) the tenderer's financial capacity and stability;
- (h) the tenderer's membership of at least the NSW Auctioneers and Agents Association;
- (i) the tenderer's compliance with relevant NSW Government procurement policy;
- (j) satisfactory tenderer's referees' reports; and
- (k) cost of the auctioneer services to the PT NSW.

8.2.1.2 The selection criteria to be used in the evaluation of tenders for Cartage Services are as follows:

- (a) the tenderer's ability to provide a satisfactory cartage service in as wide an area of New South Wales as possible;
- (b) the tenderer's ability to store goods safely between the time of collection and delivery to auction;
- (c) the tenderer's ability to deliver goods to auction safely and on time;
- (d) the tenderer's capacity and ability to provide appropriate personnel;
- (e) the tenderer's demonstrated expertise and experience in the cartage industry;
- (f) the tenderer's degree of compliance with the Specification (Part C2) and the Conditions of Contract (Part B) of this Request for Tender;
- (g) the tenderer's financial capacity and stability;
- (h) the tenderer's compliance with relevant NSW Government procurement policy;
- (i) satisfactory tenderer's referees' reports; and
- (j) cost of the cartage services to the PT NSW.

8.2.2 The criteria listed at 8.2.1.1 and 8.2.1.2 are not in any particular order and are not necessarily exhaustive or to be given equal weight.

8.3 Variation of Tenders

8.3.1 At any time before the Board accepts any Tender received in response to this RFT, a tenderer may vary its Tender:

- (a) by providing the Board with further information by way of explanation or clarification ("provide an explanation");
- (b) by correcting a mistake or anomaly ("correct a mistake"), or
- (c) by documenting agreed changes to the Tender negotiated under this Part A.

8.3.2 Such a variation may be made either:

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

but only if,

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

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

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

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

8.4 Exchange of Information Between Government Agencies

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

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

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

8.5 Corrupt or Unethical Conduct

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

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

this may result in the Tender not receiving further consideration.

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

9. OUTCOMES

9.1 Negotiations Before Determination of Outcome

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

- 9.1.2 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 \$150,000, the Board will normally publish the names of tenderers when Tenders close, and the other public information about the contract on the internet, within 90 days after award of the contract. For other contracts the Board will disclose the public information on request.

9.7 Ownership of Tenders

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



Contracting Services, NSW Procurement is a Business Unit of the NSW
Department of Commerce

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

PART B – CONDITIONS OF CONTRACT

Contract No. 0601336

**Provision of Auctioneer Services for the Disposal of
Jewellery and Furniture & Effects
and preliminary Cartage of Goods to Auction
on behalf of the Public Trustee NSW**

**PERIOD: 3 years from Date of Acceptance
Plus 2 x 1-year extension options**

Part B – Conditions of Contract

TABLE OF CONTENTS

PART B	CONDITIONS OF CONTRACT	4
1.	INTERPRETATION	4
1.1	Definitions	4
1.2	Rules for interpreting this Contract	6
2.	NATURE OF THE CONTRACT BETWEEN PRINCIPAL AND CONTRACTOR	6
3.	TERM	7
4.	CONTRACTOR'S REPRESENTATIVE	7
5.	PERFORMANCE OF WORK	7
6.	FEE BASIS	7
7.	GOODS AND SERVICES TAX	8
8.	GOVERNMENT TAXES, DUTIES AND CHARGES	8
9.	NO WARRANTY GIVEN: AUCTIONEER SERVICES	8
10.	REMITTANCE OF SALE PROCEEDS: AUCTIONEER SERVICES	8
11.	RIGHT TO OBTAIN SERVICES ELSEWHERE	9
12.	CONFLICT OF INTEREST	9
13.	RESERVED	9
14.	MISTAKES IN INFORMATION	9
15.	MINIMUM INSURANCE REQUIREMENTS	10
16.	GENERAL INDEMNITY	11
17.	COMPLIANCE WITH LAWS	11
18.	PAYMENT OF WAGES AND ALLOWANCES	11
19.	THE CONTRACTOR'S ON-COSTS	11
20.	LICENCES AND APPROVALS	11
21.	KEEPING OF RECORDS AND ACCESS TO RECORDS	12
22.	ACCESS TO CONTRACTOR'S PREMISES	12
23.	MONITORING OF PERFORMANCE	12
24.	EXCHANGE OF INFORMATION BETWEEN GOVERNMENT AGENCIES	12
25.	THE CONTRACTOR'S PERSONNEL/SPECIFIED PERSONNEL	13
26.	CONTRACTOR TO ESTABLISH NECESSARY FACILITIES	13
27.	PRIVACY AND PERSONAL INFORMATION PROTECTION	14
28.	DELIVERY OF CONTRACT MATERIAL AND INFORMATION	14
29.	CONFIDENTIAL INFORMATION	14
30.	VARIATIONS	15
31.	TERMINATION FOR CAUSE	15
32.	TERMINATION FOR THE PRINCIPAL'S CONVENIENCE	16
33.	NO ASSIGNMENT OR NOVATION	16
34.	ISSUE RESOLUTION	16
34.1	General	16
34.2	Amicable Resolution	16
34.3	Expert Determination	17
35.	PERFORMANCE OF CONTRACT DURING ISSUE RESOLUTION	18
36.	WAIVER	18
37.	SEVERABILITY	18
38.	NOTICES	18
39.	STAMP DUTY	18
40.	COUNTERPARTS	18
41.	APPLICABLE LAW	19
42.	RIGHTS CUMULATIVE	19
43.	NO AGENCY/NO EMPLOYMENT/NO PARTNERSHIP	19
44.	CONTRACTOR'S WARRANTIES	19

45.	CONTRACTOR'S WARRANTIES (GENERAL)	20
46.	SUB-CONTRACTING OF CONTRACT	20
SCHEDULE 1	EXPERT DETERMINATION PROCEDURE.....	21

PART B CONDITIONS OF CONTRACT

1. INTERPRETATION

1.1 Definitions

“Cartage Service” shall mean the carriage, on behalf of the Principal, of jewellery, furniture and effects from the place in which they are to be found to the agreed place of auction and shall include all other services necessary to the completion of the individual task, including but not necessarily limited to packing of the items before loading onto a vehicle, loading, carriage and unloading and unpacking of the items on arrival at the place of auction.

“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 Material” means:

- (a) any material brought into existence as part of, or for the purpose of providing the Deliverables 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” means this Contract concluded between the Principal and the Contractor, including all special conditions, specifications, schedules and other documentation incorporated with and forming part of the Contract.

“Contractor” means the organisation or individual who by the contract undertakes to provide the Deliverables 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.

“Date of Acceptance” means the date on which there is a formal agreement to accept a tender.

“Delegate” means the Public Trustee of NSW or its authorised representative.

“Deceased Estate” means Estates, Trusts, Powers of Attorney and any other matters dealt with by the Public Trustee

“Deliverables” means the services to be supplied by the Contractor in accordance with this Contract and itemised in the Auction Fee Schedule and Specification Schedule.

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

“Parties”, means the Principal and the Contractor.

“Period Contract” means the standing offer constituted by the acceptance of the Contractor’s tender for the term set out in the Tender Request;

“Primary Contractor” means, in the case of a successful joint tender bid, the primary tenderer who shall be considered the Primary Contractor and shall, as far as the Board is concerned, be solely responsible and assume sole responsibility for the satisfactory conduct of the Contract.

“Principal” means the Public Trustee of New South Wales, of 19 O’Connell Street Sydney New South Wales who will be a party to the Contract.

“Principal’s Material” means any material, document, or Information supplied by the Principal, or any department or agency of the Crown, to the Contractor by whatever means.

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

“Schedule” means any schedule to this Contract.

“Specification” means the detailed description of the Services to be provided under this Contract. 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.

“Sub-Contractor” means a person who furnishes Supplies to the Contractor either directly or through another Sub-Contractor for use under the Contract;

“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 12 (Conflict of Interest),
- (b) clause 15 (Insurance),
- (c) clause 16 (General Indemnity)
- (d) clause 20 (Licences and Approvals),
- (e) clause 29 (Confidential Information)
- (f) clause 33 (No Assignment or Novation)

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

1.2 Rules for interpreting this Contract

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

1.2.2 A reference to:

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

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

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

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

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

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

2. NATURE OF THE CONTRACT BETWEEN PRINCIPAL AND CONTRACTOR

Note: The eventual form of clause 2.1 will depend on the nature of the Contract between the Parties.

2.1 This Contract covers the provision of Auctioneer Services for the sale of Jewellery, Furniture and Effects on behalf of the Principal in accordance with the Specification set out at Part C2 of the Request for Tender.

OR

- 2.1 This Contract covers the provision of Cartage Services for the cartage of goods to auction on behalf of the Principal, in accordance with the Specification set out at Part C2 of the Request for Tender.

OR

- 2.1 This Contract covers the provision of Auctioneer Services for the sale of Jewellery, Furniture and Effects and Cartage Services for the cartage of goods destined for auction on behalf of the Principal, in accordance with the Specification set out at Part C2 of the Request for Tender.
- 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.

3. TERM

- 3.1 This Contract will commence on the “Date of Acceptance” and will continue for a period of three years unless sooner determined in accordance with this Contract.
- 3.2 The Principal may, with thirty days notice being conveyed, extend this Contract by two further periods, each of one- year duration.

4. CONTRACTOR’S REPRESENTATIVE

- 4.1 The Contractor shall nominate a responsible person to liaise directly with the Principal in all matters relating to the Contract.

5. PERFORMANCE OF WORK

- 5.1 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.
- 5.2 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.

6. FEE BASIS

Note: The eventual form of clause 6.1 will depend on the nature of the Contract between the Parties.

- 6.1 The Commission Fee for the provision of Auctioneer Services shall be **FIRM** for the entire duration of the Contract and any extension thereto.

OR

- 6.1 The Contract Price for the provision of Cartage Services shall be either firm for the duration of the Contract and any extension thereto or variable in accordance with the terms of the tenderer’s offer at ‘Tenderer’s Response’, Part C1 of the Request for Tender.

OR

- 6.1.1 The Commission Fee for the provision of Auctioneer Services shall be **FIRM** for the entire duration of the Contract and any extension thereto.
- 6.1.2 The Contract Price for the provision of Cartage Services shall be either firm for the duration of the Contract and any extension thereto or variable in accordance with the terms of the tenderer's offer at 'Tenderer's Response', Part C1 of the Request for Tender.)

7. GOODS AND SERVICES TAX

- 7.1 In this clause and Contract:
- 7.1.1 **"Consideration"**, **"Tax Invoice"**, **"Taxable Supply"** and **"Supply"** have the same meaning as provided for in the GST Law.
- 7.1.2 **"GST"** is a goods and services tax and has the same meaning as in the GST Law.
- 7.1.3 **"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.
- 7.1.4 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.
- 7.1.5 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.

8. GOVERNMENT TAXES, DUTIES AND CHARGES

- 8.1 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.

9. NO WARRANTY GIVEN: AUCTIONEER SERVICES

- 9.1 No warranty is given as to the quality of the Items offered for auction or as to its fitness for any particular purpose and notwithstanding any representation made in respect of those Items offered for auction, it is provided as and where it lies, with all faults and with all errors or mis-statements of description, measurement, quality or otherwise, whether of a substantial nature or not and the Contractor shall have no claim against the Principal in respect of any such faults, errors or mis-statements.

10. REMITTANCE OF SALE PROCEEDS: AUCTIONEER SERVICES

- 10.1 Auctioneer fees calculated at the rate agreed and contained in the Fee Schedule, and any other costs that maybe agreed to between the parties, are to be deducted by the Contractor from total proceeds received from each auction.

- 10.2 All remaining proceeds from each auction shall be forwarded by the Contractor to the Principal by cheque or electronic funds transfer within 21 days of the date of the auction.

10.3 The Contractor's additional expenses

- 10.3.1 The Principal will only reimburse the Contractor any reasonable costs, expenses, or charges incurred by the Contractor and not provided for in the Contract where the Contractor has first obtained the Principal's written approval.

11. RIGHT TO OBTAIN SERVICES ELSEWHERE

- 11.1 If, in the Principal's opinion, any Services required cannot be promptly or conveniently obtained under the Contract or it would be inappropriate to utilise the Services provided by the Contractor under the Contract, it shall be lawful for the Principal to make, or authorise the making of, special arrangements for the provision of such Services and the Contract shall not be considered as infringed or vitiated thereby.

12. CONFLICT OF INTEREST

- 12.1 The Contractor promises 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. RESERVED

14. MISTAKES IN INFORMATION

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

15. MINIMUM INSURANCE REQUIREMENTS

- 15.1 The contractor must 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:
- (a) a public liability policy of insurance to the value of at least \$20 million in respect of each claim,
 - (b) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees; and
 - (c) contents insurance to cover items to be sold on behalf of The PT NSW while on the Contractors premises to the value of \$1 million.
- 15.2 The Contractor must obtain the approval of the Principal for all insurers and policies.
- 15.3 The Contractor must ensure that each policy is in effect for the Term of this Contract or such other period as required by the Principal.
- 15.4 All policies must:
- (a) include the Principal and any sub-contractor as a joint insured under the policy for the purposes of this Contract. A reference to the Principal in the policy must be taken to include a reference to any Customer; (This clause does not apply to Worker's Compensation Insurance policies.)
 - (b) require the insurer to notify the Principal at the same time as the insurer gives any notice concerning the policy, and at least 7 days before any proposed cancellation of a policy;
 - (c) provide that a notice of claim given to the insurer by the Principal, the Contractor or the sub-contractor will be accepted by the insurer as a notice of claim given by all of the insured; and
 - (d) contain a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured.
- 15.5 The Contractor must, when requested in writing by the Principal, supply proof that all insurance policies required by this Contract are current.
- 15.6 The Contractor must, when requested in writing by the Principal, arrange for its insurer to complete a "Confirmation of Insurances Obtained" form, and on-send this to the Principal within 30 days of this request.
- 15.7 If the Contractor fails to comply with clauses 15.1, 15.5 and 15.6, the Principal:
- (a) may effect 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.
- 15.8 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Contract.

16. GENERAL INDEMNITY

- 16.1 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 (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.
- 16.2 The Contractor’s liability in respect of, and indemnity given in, clause 16.1 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.

17. COMPLIANCE WITH LAWS

- 17.1 The Contractor must, in carrying out this Contract, comply with all applicable Commonwealth, State and Local Government Statutory Requirements, however described. (Refer also clause 20)

18. PAYMENT OF WAGES AND ALLOWANCES

- 18.1 The Contractor shall ensure that all persons employed by it in or in connection with the Services are paid wages and allowances of every kind required to be paid by or under any relevant award, determination or order of the State or Territory in which the Services are being provided or by or under any industrial agreement that is in force in the State or Territory of the Commonwealth in which the Services are being provided and that all such persons are employed under the conditions contained in any such award, judgement, order or industrial agreement.
- 18.2 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.

19. THE CONTRACTOR’S ON-COSTS

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

20. LICENCES AND APPROVALS

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

21. KEEPING OF RECORDS AND ACCESS TO RECORDS

- 21.1 The Contractor must keep proper accounts, records and time sheets in accordance with the accounting principles generally applied in commercial practice.
- 21.2 During the Term, the Contractor must, within a reasonable time 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.
- 21.3 Such information may include, but not be limited to, accounting and operating records necessary to establish that all claims for payments made by the Contractor and all moneys paid to the Contractor under the terms of this Contract are or have been properly accounted for.

22. ACCESS TO CONTRACTOR'S PREMISES

- 22.1 During the Contract period, the Contractor shall at all reasonable times 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.

23. MONITORING OF PERFORMANCE

- 23.1 The Contractor shall permit the Principal to monitor the provision of the Services and shall:
- (a) supply to the Principal such information with respect to the progress of the Services as may be required from time to time;
 - (b) not deny to the Principal any information reasonably required for the purposes of monitoring the provision of the Services; and
 - (c) co-operate with the Principal in any enquiry of and conferral with the Contractor, its employees and agents in relation to the provision of the Services.
- 23.2 The Contractor must meet with the Principal from time to time, as reasonably directed by the Principal, to evaluate and monitor performance of this Contract by the Contractor.
- 23.3 Nothing in this clause shall limit the Contractor's obligations under this Contract.

24. EXCHANGE OF INFORMATION BETWEEN GOVERNMENT AGENCIES

- 24.1 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.
- 24.2 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.
- 24.3 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).

- 24.4 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.

25. THE CONTRACTOR'S PERSONNEL/SPECIFIED PERSONNEL

- 25.1 The Contractor warrants that all personnel engaged in the provision of the Deliverables are appropriately qualified, competent and experienced.
- 25.2 The Contractor must employ only such persons:
- (a) as are careful, skilled and experienced in the provision of the Deliverables or similar Deliverables;
 - (b) (where applicable) who hold all necessary licences, permits and authorities; and
 - (c) whose standards of workmanship are entirely suitable for the supply of the Deliverables and the requirement of this Contract.
- 25.3 The Contractor shall ensure that no staff are engaged prior to the Contractor obtaining all clearances required under this clause.
- 25.4 The Contractor shall ensure that all persons for whom approval is sought to be engaged as staff complete an individual consent form "Application for Criminal Record Check" including, but not limited to, the full name, former names(s), marital status and place and date of birth.
- 25.5 The Contractor shall submit the completed application forms to the Delegate at least seven days prior to the engagement of persons for whom clearances are sought.
- 25.6 The Contractor acknowledges that the Delegate may undertake investigations, including a check of Police records, of any staff or proposed staff of the Contractor or any Sub-contractor employed.
- 25.7 The Delegate shall inform the Contractor, in writing, if it approves of the engagement of the persons who are the subject of the submission.
- 25.8 The Delegate may, without being required to give any reason, direct the Contractor, in writing, not to engage a particular person as staff for Contract purposes and the Contractor shall forthwith comply with such direction.
- 25.9 If any person engaged as staff is, in the reasonable opinion of the Delegate, guilty of misconduct relative to the Contract or otherwise is, in the reasonable opinion of the Delegate, unsuitable to be engaged as staff, the Delegate may direct the Contractor to no longer engage that person as staff for Contract purposes and the Contractor shall forthwith comply with such direction.

26. CONTRACTOR TO ESTABLISH NECESSARY FACILITIES

- 26.1 The Contractor must establish all facilities necessary for the proper and effective conduct and management of all its obligations under this Contract.

27. PRIVACY AND PERSONAL INFORMATION PROTECTION.

- 27.1 The Contractor acknowledges it is aware the Privacy and Personal Information Protection Act applies to any personal information collected, used, stored or disposed of by the contractor for the PT NSW. The Contractor warrants it has obtained legal advice about the manner in which personal information is to be handled by it in the course of the performance of its contractual obligations and agrees to establish systems which may be demonstrated and reviewed by the PT NSW or its nominee during the term of the contract and the contractor agrees to observe the information protection principles established in the Privacy and Personal Information Protection Act.
- 27.2 The Contractor acknowledges it is aware that penalties apply under the Privacy and Personal Information Protection Act for failure to comply with certain provisions of the Privacy and Personal Information Protection Act.
- 27.3 The Contractor agrees to ensure that the PT NSW and the State Contracts Control Board are able to provide access to any applicant for personal information lawfully made under the Privacy and Personal Information Protection Act for access to personal information held by the Contractor under the contract

28. DELIVERY OF CONTRACT MATERIAL AND INFORMATION

- 28.1 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.
- 28.2 The Contractor may in good faith keep a copy of the Contract material and information for its records provided that the provisions of the Privacy and Personal Information Protection Act are observed in so doing.

29. CONFIDENTIAL INFORMATION

- 29.1 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.
- 29.2 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.
- 29.3 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.

- 29.4 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.
- 29.5 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.
- 29.6 Each party shall on demand by the other party return any document supplied by the other party to it.
- 29.7 This clause shall survive the termination of this Contract.

30. VARIATIONS

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

31. TERMINATION FOR CAUSE

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

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

- 31.2 Effect of Termination for Cause

- 31.2.1 If the Principal terminates this Contract for Cause the Principal may:

- (a) contract with any other person to complete the provision of the Service including but not limited to any Order remaining to be filled;
- (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.

32. TERMINATION FOR THE PRINCIPAL'S CONVENIENCE

32.1 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.

32.2 Effect of Termination for convenience

32.2.1 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.

32.2.2 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.

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

33. NO ASSIGNMENT OR NOVATION

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

33.2 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.

34. ISSUE RESOLUTION

34.1 General

34.1.1 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.34.2);
- (b) Expert Determination (cl.34.3)

34.2 Amicable Resolution

34.2.1 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.

- 34.2.2 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.
- 34.2.3 If the Party giving the Issue Notice is the Principal, it must give the Issue Notice to the Contractor.
- 34.2.4 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.
- 34.2.5 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.
- 34.2.6 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice.
- 34.2.7 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided (“the Referral Notice”).
- 34.2.8 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Principal.
- 34.2.9 If the Party giving the Referral Notice is the Principal, it must give the Referral Notice to the Contractor.
- 34.2.10 If a Referral Notice has not been given within 28 days of becoming entitled under clause 34.2.6 then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

34.3 Expert Determination

- 34.3.1 If a Referral Notice is given under clause 34.2, the expert is to be agreed between the Principal and the Contractor. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated by the Chief Executive Officer, Australian Commercial Disputes Centre, Sydney.
- 34.3.2 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.
- 34.3.3 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.
- 34.3.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 34.3.5 The procedure for expert determination is set out in Schedule 1.

- 34.3.6 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off, or counter-claim.
- 34.3.7 If the expert determines that one Party must pay the other an amount exceeding the \$10,000.00 (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.
- 34.3.8 Unless a Party has a right to commence litigation under clause 34.3.7:
- (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 28 days.

35. PERFORMANCE OF CONTRACT DURING ISSUE RESOLUTION

- 35.1 The Parties agree to continue performing their obligations under this Contract while the issue is being dealt with in accordance with this clause 34.

36. WAIVER

- 36.1 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.

37. SEVERABILITY

- 37.1 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.

38. NOTICES

- 38.1 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.
- 38.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.
- 38.3 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.

39. STAMP DUTY

- 39.1 Stamp Duty, if any, shall be payable in full by the Contractor.

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 and/or agent of the Principal.

- 43.2 Contractor personnel allocated for the purposes of the Contract shall operate under the following specific terms and conditions:

"The Contractor agrees that it will at all times hereafter indemnify and keep indemnified the Principal against all actions, proceedings, claims and demands, costs, damages and expenses which may be levied, brought or made against the Principal or which it may pay sustain or incur by reason of statute or otherwise in the event that the personnel supplied by the Contractor are deemed to be or alleged to be deemed to be employees of the Principal".

44. CONTRACTOR'S WARRANTIES

- 44.1 In relation to 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 subcontractors 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.

45. CONTRACTOR'S WARRANTIES (GENERAL)

- 45.1 The Contractor warrants that the Service shall conform to any legally applicable standards.

46. SUB-CONTRACTING OF CONTRACT

- 46.1 The Parties agree that the Contractor will not sub-contract the Contract without first obtaining the written consent of the Principal, which may be subject to any conditions which the Principal may impose.
- 46.2 A consent under this clause does not relieve the Contractor from its liabilities or obligations under the Contract.
- 46.3 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.
- 46.4 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.
- 46.5 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.
- 46.6 This clause will not merge on the completion or earlier termination of the Contract.
- 46.7 The Contractor will ensure that a sub-contractor is aware of and complies with all the terms and conditions of the Contract.
- 46.8 This clause 46 does not apply in the event that the Principal requests a particular sub-contractor to provide the Deliverables.

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 34.3.3 of the Contract.
- 2.3 The other party must respond within 15 business days after receiving a copy of that submission. That response may include cross-claims.
- 2.4 The Party referred to in clause 2.2 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 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 above.
 - 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.



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

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

PART C: TENDER RESPONSE

Contract 0601336

**Provision of Auctioneer Services for the Disposal of
Jewellery and Furniture & Effects and preliminary Cartage
of Goods to Auction on behalf of Public Trustee NSW**

**Period: 3 years from Date of Acceptance
Plus 2 x one-year Options**

Closing Date: 6th September 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 copies of the tender. Tenders are to be marked "Original", "Copy 1" and "Copy 2" accordingly.

TABLE OF CONTENTS

PART C1	INFORMATION SUPPLIED IN RESPONSE TO PART A.....	3
1.	INTRODUCTION	3
2.1	AUCTION FEE AND RELATED FACTORS.....	3
2.2	CARTAGE PRICE AND RELATED FACTORS	5
3.	SELECTION CRITERIA	8
4.	CAPACITY TO PERFORM CONTRACT	18
5.	COMPLIANCE WITH POLICY REQUIREMENTS	19
6.	SCHEDULE OF INSURANCE.....	21
7.	OTHER INFORMATION REQUIRED.....	22
8.	ADDENDA TO THIS RFT AFTER ISSUE	25
PART C2	SPECIFICATION AND STATEMENT OF COMPLIANCE	26
1.	GENERAL: AUCTIONEER SERVICES	27
2.	PT NSW RESPONSIBILITIES IN RELATION TO AUCTIONS	27
3.	CONTRACTOR'S RESPONSIBILITIES IN RELATION TO AUCTIONS	28
4.	ONLINE AUCTIONS (OPTIONAL).....	30
5.	CARTAGE SERVICES	30
PART C3	TENDERER IDENTIFICATION DETAILS AND CONFIRMATION OF	
TENDER	31
1.	TENDERER IDENTIFICATION DETAILS	31
2.	ACKNOWLEDGEMENT AND CONFIRMATION OF TENDER	32

PART C Tender Response

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.

2.1 AUCTION FEE AND RELATED FACTORS

- 2.1.1 The tendered Auction Fee must include all costs and charges, with the exception of Valuation Services, involved in the provision of the services under the Contract.
- 2.1.2 Expenses incurred in the conduct of each Auction including, but not necessarily limited to the following and any other cost necessarily incurred in the provision of the Service are to be included in the Auction Fee:
- conduct of the Auction, reporting and remittance of sale proceeds;
 - provision of a catalogue;
 - preparation and placement of print and electronic media advertising;
 - assistance in the lotting and layout of items entered for sale;
 - provision of materials-handling equipment and personnel to unload sale items;
 - provision of pallets, as required;
 - provision of general assistance and advisory services to maximise sale proceeds;
 - having in place all licences;
 - having in place appropriate insurance while the sale items are under the control of the Contractor; and
 - having in place appropriate security arrangements.

P.T.O.

2.1.3 You must complete the schedule provided below. **All rates must include the GST.**

Type of fee	GST-inclusive Fee
2.1.3.1 <u>Auction fee for the disposal of Jewellery</u> in accordance with the terms of the Contract (Part B) and Specification (Part C2, 1 to 3 and, if applicable, Part C2, 4)	_____ %
2.1.3.2 <u>Auction fee for the disposal of Furniture & Effects</u> in accordance with the terms of the Contract (Part B) and Specification (Part C2, 1 to 3 &, if applicable, Part C2, 4)	_____ %
2.1.3.3 <u>Valuation Service</u>	\$_____ per hour

All rates must include the GST.

2.1.4 If you propose any other charges for provision of Auctioneer Services you must provide very clear details below.

2.1.5 **Fee Basis: Auctioneer Services only**

The tendered fee and other charges are **FIRM** for the duration of the Contract including any optional extensions.

2.2 CARTAGE PRICE AND RELATED FACTORS

2.2.1 The tendered Cartage Price must include all services necessary to the completion of the individual task, including but not necessarily limited to packing of the items before loading onto a vehicle, loading, carriage and unloading and unpacking of the items on arrival at the place of auction.

2.2.2 You must complete the schedule provided below. **All rates must include the GST.**

Cartage Services in accordance with the terms of the Contract **GST-inclusive Rate**
(Part B) and Specification (Part C2, 5)

2.2.2.1 Labour rate, per hour: driver \$ _____

2.2.2.2 Labour rate, per hour: carriers other than driver \$ _____

2.2.2.3 Rate per kilometre: vehicle \$ _____

All rates must include the GST.

2.2.3 Fee Basis: Cartage Services only

2.2.3.1 You must nominate one of the price variation methods set out below.

2.2.3.2 The Contract Price for the provision of Cartage Services shall be firm for the first twelve months of the term of the agreement then subject to review at the end of that period and each twelve months following and at the request of the Contractor based on variations in the Consumer Price Index (Sydney).

YES/NO

2.2.3.3 The Contract Price for the provision of Cartage Services shall be firm for the first twelve months of the term of the agreement then subject to review at the end of that period and each twelve months following and at the request of the Contractor based on variations in labour and material factors.

YES/NO

(If you answer 'yes' to 2.2.3.3 you must complete 2.2.3.4 below)

2.2.3.4 Where you have nominated the price-variation method set out at 2.2.3.3 above, you must nominate the following:

- (a) **The Weekly Award Rate of Pay (AW) at the time of tendering for the labour primarily engaged in the agreement that will be used for any future price variation request.**

Labour category	AW
Driver	\$_____ / week
Carriers other than driver	\$_____ / week

- (b) **Labour and Material Factors**

The Labour and Material Factors must be expressed as a decimal and together, must total 0.9. 0.9 is the proportion of the Tender Price subject to price variation by labour and material costs.

Item	Factor (Expressed as a decimal) Total: 0.9
Labour: driver	
Labour: carriers other than driver	
Material	

- (c) **Materials Cost Index**

The relevant Australian Bureau of Statistics index or other relevant Materials Cost Index that will be used as the basis for any future price variation request. Note that variation on the basis of a material cost index other than those provided by the ABS must be appropriate, independent, consistently reported over time, published regularly and be readily available.

Materials Cost Index

Materials Cost Index

2.2.4 Settlement Discount: Cartage Services only

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 NET.)

2.3 Tender Validity Period (Auctioneer and Cartage Services)

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

N.B. The minimum validity period of six (6) months is required.

Tenderers are required to respond individually to each of the selection criteria outlined in the following spaces. The information provided will be used in the assessment of tenders. Responses are to be concise and focus on key elements of the tenderer's proposal as it relates to each of the selection criteria.

No response is required; information provided elsewhere in the tender will be used to assess this criterion.

No response is required; information provided elsewhere in the tender will be used to assess this criterion.

Does the tendered service fully comply with the Conditions of Contract at Part B.

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.

[illegible]

Provision of Auctioneer Services for Public Trustee NSW

Please provide comprehensive details of the number and location of the storage facilities and places of auction you offer within NSW, with further information stating size and quality of premises and security arrangements.

[illegible]

Provision of Auctioneer Services for Public Trustee NSW

(e) Appropriate, skilled employees (applicable to both Auctioneer and Cartage Services)**Please complete the following questions**(1) Total number of all employees throughout NSW: _____(2) Number of higher-level employees in NSW:

	Management	Administration	Security
Full-time			
Part-time			

(3) Details of Key Personnel to be utilised under the contract:

Name (optional): _____

Position: _____

Roles and Responsibilities: _____

Qualifications: _____

Experience: _____

Length of service: _____

Proposed level of involvement: _____

Name (optional): _____

Position: _____

Roles and Responsibilities: _____

Qualifications: _____

Experience: _____

Length of service: _____

Proposed level of involvement: _____

Name (optional): _____

Position: _____

Roles and Responsibilities: _____

Qualifications: _____

Experience: _____

Length of service: _____

Proposed level of involvement: _____

Please photocopy this page if you are tendering for Auctioneer and Cartage Services

(f) **Expertise and experience in the successful delivery of similar auction services (applicable to Auctioneer Services only)**

Please complete the following questions

- (1) Provide details of any 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

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

- (2) Demonstrate expertise and experience in the successful provision of services on a similar scale to the Requirement.

- (3) 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.

(g) Catalogues, advertising and marketing (applicable to Auctioneer Services only)

- (1) Please provide three copies of a catalogue of the standard you would use for auctions in which lots would be offered on behalf of the PT NSW.
- (2) Please provide below details of your normal advertising schedules and other marketing devices.

- (3) Please provide below details of your advertising and marketing for special auctions.

(h) **Membership of relevant industry associations** (applicable to Auctioneer Services only)

Please provide details of the tenderer's membership of relevant industry associations. (Note: Membership of the NSW Auctioneers and Agents Association is a Condition of Contract in the case of tenderers offering Auctioneer Services.)

If you wish to offer Online Auction Services as an adjunct to the services required by clauses 1 to 3 of Part C2, please provide comprehensive details of the service you tender and the specific charges involved.

[illegible]

Please provide a description of the coverage of your service throughout NSW, including details of depots and points of departure.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Safe and timely delivery of goods to auction (applicable to Cartage Services only)

Please describe how you would ensure that goods would be delivered safely and on time to the nominated place of auction.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Please provide a description of your expertise and experience in the cartage industry.

[illegible]

4. CAPACITY TO PERFORM CONTRACT

4.1 Years in Business

- 4.1.1 State the number of years you have been in business in the form in which you are presently constituted.

State the number of years providing the required Service: _____

Scope of tenderer's current business activities

4.2 Geographical area - auctioneer services

Please state below the areas/locations in New South Wales in which you are willing and able to provide auctioneer services under the proposed contract.

4.3 Financial Capacity and Viability of the Tenderer

Give the annual Australian turnover for the past three years in \$A.

2005-2006: \$A_____

2004-2005: \$A_____

2003-2004: \$A_____

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

5. COMPLIANCE WITH POLICY REQUIREMENTS**5.1 Code of Practice for Procurement**

- 5.1.1 Have you have read the [NSW Government Code of Practice for Procurement](#) and taken it into consideration in preparing and submitting your Tender?

Yes/No

- 5.1.2 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

- 5.1.3 Provide any other relevant information below

5.2 Occupational Health Safety & Rehabilitation

- 5.2.1 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

5.3 Environmental Management

- 5.3.1 Indicate your compliance with the Government Energy Management Policy principles, including any waste minimisation, energy conservation and recycling strategies that you may have in place.

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

- 5.4.1 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

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: _____

7. OTHER INFORMATION REQUIRED**7.1 Details of Ownership**

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

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

7.2 Contracting as Agent/Trustee

- 7.2.1 If awarded a 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.

7.3.1 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?

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

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

7.4 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 the required Service.

Referee No 1.

Name: _____

Position: _____

Company: _____

No. of Years tenderer has provided required Service to Referee: _____ years

Telephone No: _____

Fax No: _____

Email Address: _____

Referee No 2.

Name: _____

Position: _____

Company: _____

No. of Years tenderer has provided required Service to Referee: _____ years

Telephone No: _____

Fax No: _____

Email Address: _____

Referee No 3.

Name: _____

Position: _____

Company: _____

No. of Years tenderer has provided required Service to Referee: _____ years

Telephone No: _____

Fax No: _____

Email Address: _____

8. ADDENDA TO THIS RFT AFTER ISSUE

- 8.1 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

PART C2 SPECIFICATION AND STATEMENT OF COMPLIANCE

The Service/s are to be in accordance with the Specification detailed on the following pages.

Tenderers must state hereunder whether the Service/s offered conform to the Specification.

The following terms are appropriate in providing a statement of compliance:

COMPLIES means:

- (a) in the case of a clause which is of an informative nature only, that the clause has been read and understood;
- (b) in the case of a clause which specifies a requirement or performance standard to be met by the Service/s to be provided, that the offer is to provide the requirement or standard.

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

PARTIALLY COMPLIES means, in the case of a clause, which specifies a requirement or performance standard, it can only be met subject to certain conditions. Where this is the case and the tenderer is prepared to make good on the condition, requirement or performance standard the tenderer must explain and cost the required change.

DOES NOT COMPLY means that the requirement or performance standard of the clause is not met by the offer. Full details of non-compliance must be stated.

ALTERNATIVE means that the tenderer's method, system or process either does not require the feature or the tenderer's method, system or process fully complies in a manner different to that described. In both cases a description must be provided.

SIGNIFICANTLY EXCEEDS REQUIREMENTS means, in some cases, the Services offered may significantly exceed the specified requirements. As this may have a bearing on the evaluation process, full details must be stated.

The Specification is indicative of the needs of the Principal, and any Service/s offered must be of at least the same standard and potential. Consideration may be given, however, to Service of a higher standard if they are available and better suited to the Principals requirements.

Any failure by the tenderer to make clear the extent of compliance or non-compliance with any clause or paragraph of the Specification may be interpreted as failure to comply with the requirement concerned when assessing the relative merits of tenders.

Tenderers are required to tender in accordance with the tender requirements.

REQUIRED SPECIFICATION	TENDERED SPECIFICATION
<p>1. GENERAL: AUCTIONEER SERVICES</p> <p>1.1 Jewellery, Furniture & Effects of deceased estates administered by the PT NSW are to be disposed of at public auctions.</p> <p>1.2 The public auctions referred to at 1.1 <u>shall incorporate</u> lots other than those under the administration of the PT NSW .</p> <p>1.3 It is expected that most lots will be offered at general auctions. However, special items, such as antiques, fine arts and special jewellery will, at the direction of the PT NSW, be offered at special auctions.</p> <p>1.4 All items sold are to be sold “as-is”.</p> <p>1.5 Unless a particular piece of furniture is nominated a “valuable item” by the PT NSW there will be no reserve price placed on items of Furniture. If a piece of furniture is nominated a valuable item that piece of furniture will be sold subject to the reserve price specified by the PT NSW.</p> <p>1.6 Jewellery whose auction value is estimated below \$100 will be sold without reserve. Jewellery whose estimated auction value is greater than \$100 will be sold subject to the reserve price specified by the PT NSW.</p>	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div>
<p>2. PT NSW RESPONSIBILITIES IN RELATION TO AUCTIONS</p> <p>2.1 Unless cartage of the items from the property of the deceased estate to the auction venue is provided by the Contractor, the PT NSW will ensure that all goods for sale are delivered to the place of auction in sufficient time for the Contractor to conduct all tasks and responsibilities required of it by the terms of clause 3 of this Specification.</p> <p>2.2 The PT NSW will provide written instructions to the Contractor as to which “valuable items” are to be sold at special auctions and which items are to be sold subject to a reserve price. These instructions will be provided in sufficient time to allow the Contractor to conduct the auction in an efficient manner.</p>	<div></div> <div></div>

REQUIRED SPECIFICATION	TENDERED SPECIFICATION
<p>2.3 This specification shall only be valid in the event that the Contractor provides cartage services as described in specification 4 below. The PT NSW shall remove or cause to be removed from the deceased estate property all items that are not intended to be offered at auction.</p>	<p>-----</p>
<p>3. CONTRACTOR'S RESPONSIBILITIES IN RELATION TO AUCTIONS</p>	<p>-----</p>
<p>3.1 The Contractor shall provide a place or places of auction satisfactory to the PT NSW and shall provide also all necessary services in relation to the management and conduct of the auctions.</p>	<p>-----</p>
<p>3.2 The Contractor will auction items sold on behalf of the PT NSW in accordance with instructions issued by the person nominated by the PT NSW to provide such instructions.</p>	<p>-----</p>
<p>3.3 The Contractor shall advertise auctions at which items are to be sold on behalf of the PT NSW in the manner in which it normally advertises such auctions.</p>	<p>-----</p>
<p>3.4 The standard of catalogues offered to those who attend an auction at which items are to be sold on behalf of the PT NSW shall be equal to or better than the standard nominated in the Contractor's tender.</p>	<p>-----</p>
<p>3.5 The Contractor shall provide sufficient staff to manage the auction, including but not necessarily limited to auctioneer, back-up auctioneer, support staff and security.</p>	<p>-----</p>
<p>3.6 The Contractor will do all things necessary to prepare items for sale.</p>	<p>-----</p>
<p>3.7 All items will be offered at auction within one month of receipt.</p>	<p>-----</p>
<p>3.8 Within 21 days of completion of an auction the Contractor shall compile a list of all items sold including against each item sold:</p> <ul style="list-style-type: none"> (a) the name of the vendor (i.e. the name of the estate on whose behalf the item has been sold); and (b) the price achieved. 	<p>-----</p> <p>-----</p>

REQUIRED SPECIFICATION	TENDERED SPECIFICATION
<p>3.9 Within 21 days of completion of an auction the Contractor shall remit to the PT NSW, either by cheque or electronic funds transfer, the proceeds of the auction of all items sold at the auction on behalf of the PT NSW, excluding all agreed contractor costs, fees and/or commissions.</p>	<p>-----</p>
<p>3.10 Any item not sold at auction shall either be dumped by the Contractor on the grounds that it is of no commercial value or offered for sale at a later auction.</p>	<p>-----</p>
<p>3.11 The Contractor shall provide, within 14 days of completion of an auction, a list of all items dumped and a list of all items held for sale at a future auction.</p>	<p>-----</p>
<p>3.12 The Contractor and its employees and agents <u>shall not</u> purchase any unsold item.</p>	<p>-----</p>
<p>3.13 Although, as noted above, the PT NSW will be responsible for the setting of reserve prices the Contractor will employ a licensed valuer who will intervene whenever he or she believes that the lack of a reserve price on a particular item is inappropriate.</p>	<p>-----</p>
<p>3.14 Whenever the Contractor's valuer intervenes in accordance with the terms of the preceding clause the particular item will be withdrawn from sale and, as soon as possible, the Contractor will inform the PT NSW of the withdrawal from sale. The Contractor will then deal with the item in accordance with instructions received from the PT NSW.</p>	<p>-----</p>
<p>3.15 The Contractor shall allow a representative or representatives of the PT NSW, to attend the auction, for the purpose of recording bids for items sold on behalf of PT NSW.</p>	<p>-----</p>
<p>3.16 The Contractor shall provide appropriate toilet facilities for the use of the public on auction days.</p>	<p>-----</p>
<p>3.17 The Contractor shall arrange appropriate catering services for the use of the public on auction days.</p>	<p>-----</p>
<p>3.18 The Contractor shall have appropriate financial services in place to handle cash, eftpos and credit card transactions on auction days.</p>	<p>-----</p>

REQUIRED SPECIFICATION	TENDERED SPECIFICATION
<p>4. ONLINE AUCTIONS (OPTIONAL)</p>	
<p>Note In the event that an offer by a tenderer or tenderers for the provision of online auction services is accepted by the PT NSW, the specifications that will apply shall be those agreed by the Parties before commencement of the Contract.</p>	<p>-----</p>
<p>5. CARTAGE SERVICES</p>	
<p>5.1 The Contractor shall remove all items from the property in accordance with general and, in most cases, special instructions provided to the Contractor in writing by the PT NSW.</p>	<p>-----</p>
<p>5.2 The Contractor shall leave the property in a reasonably neat state.</p>	<p>-----</p>
<p>5.3 The Contractor shall deliver all items for auction safely to the place of auction by the date and time nominated by the PT NSW.</p>	<p>-----</p>
<p>5.4 The Contractor shall provide all labour and equipment necessary to provide the service to the satisfaction of the PT NSW.</p>	<p>-----</p>
<p>5.5 The Contractor shall deliver to the PT NSW any paperwork, documents, valuables, jewellery or cash found at the property which are not intended for auction.</p>	<p>-----</p>
<p>5.6 Before delivering the items to the place of auction the Contractor shall mark all items with the names of the deceased/trust estate and the requesting PT NSW Branch.</p>	<p>-----</p>
<p>5.7 The Contractor shall forward a list of all items delivered to auction to the PT NSW as soon as possible.</p>	<p>-----</p>
<p>5.8 The Contractor shall dump all items considered as having no commercial value and forward a list of those items to the PT NSW as soon as possible.</p>	<p>-----</p>

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):

or

Company: [Full name]

Trading Name (if applicable):

Name and official position of authorised officer completing tender:

or

Partnership: [Trading Name of partnership]

Name of partner completing tender:

1.2 ABN:

1.3 Address of Tenderer:

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

1.4 Business Postal Address:

STD Area Code:

Telephone No.:

()

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