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

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

PART A – THE REQUIREMENT AND TENDER INFORMATION

PART B – THE TENDER PROCESS

Contract [0601768 – Provision of the Sydney
Official Tourism Information Guide \(STIP\)](#)

RFT Number [0601768](#)

Tender Issue Date: 21 September 2006

Closing Date: Thursday 12 October 2006

Closing Time: 9:30 am Sydney Time

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

Other matters should be directed to:

Group General Manager
Contracting Services
NSW Department of Commerce
McKell Building
2-24 Rawson Place
Sydney NSW 2000
Tel: (02) 9372 7504
Fax: (02) 9372 7533

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PART A THE REQUIREMENT AND TENDER INFORMATION

1. OUTLINE DESCRIPTION OF THE REQUIREMENT

- 1.1 This Request For Tender ("RFT") covers the provision of the Sydney Official Tourism Information Guide for NSW Tourism for a term of two (2) years, with the option to extend for three further one-year periods. It is expected that the successful tenderer will form a Partnership-based relationship with the STIP Partners, and become the Prime Contractor and provide a single point of contact for NSW Tourism in the management and administration of the proposed contract. Tenderers are required to offer a % commission of advertising revenue, payable to the STIP Partners during the term of the contract. Further information regarding the project is provided at Part E – Specification.
- 1.2 The State Contracts Control Board ("the Board") is responsible for the conduct of the tender process, assisted by Contracting Services.

2. SUMMARY INFORMATION FOR TENDERERS

2.1 Interpretation

- 2.1.1 Definitions of terms used in Parts A-C are listed at the start of Part B.

2.2 Structure of Request for Tender

- 2.2.1 This RFT is made up of Parts A to E. If submitting a Tender, retain Parts A, B, D and E. The completed Part C forms the Tender.
- 2.2.2 Submit Part C in accordance with instructions in Part B.
- 2.2.3 Part D comprises the proposed conditions of Contract. This document will form the basis of the agreement entered into by the successful tenderer(s) and the Principal.
- 2.2.4 Part E comprises the Specification Requirements, defining the goods and/or services to be provided under any resultant Contract.

2.3 Contact Officer

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

Name: Peter Mylonas
Phone: (02) 9372 9249
Email: peter.mylonas@commerce.nsw.gov.au

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

2.4 Nature of Agreement

- 2.4.1 The Requirement is to be met by an agreement between the Principal and the successful tenderer on the terms of Part D.

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- 2.4.2 The agreement will be for a term of 2 years, with three 1-year options to extend.
- 2.4.3 If this RFT seeks Tenders to supply more than one Principal then, unless the context otherwise requires, a reference in Parts A-C to “Principal” shall be read as a reference to each “Principal” and a reference to “agreement” shall be read as a reference, as between the Contractor and each Principal, to an agreement between the Contractor and that Principal.

2.5 Eligibility to Tender

- 2.5.1 Tenders must be submitted by a legal entity or, if a joint Tender, by legal entities, with the capacity to contract. The Principal will only contract with the relevant legal entity or entities.
- 2.5.2 The Board may ask a tenderer to provide evidence of its legal status or capacity to contract. If Tenders from trustees are permitted this may include a copy of the relevant trust deed. Any evidence requested is to be provided within 3 working days of the request.
- 2.5.3 The Board may submit any financial information provided by the Tenderer for independent financial assessment of the Tenderer's business.
- 2.5.4 The Board reserves the right to reject any Tender if it judges the tenderer not to have appropriate financial assets.
- 2.5.5 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.

2.6 Other Eligibility Requirements

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

3. WHERE TO OBTAIN THIS RFT

3.1 RFT Copies

- 3.1.1 A tenderer may obtain either a hard copy or electronic copy of this RFT (if an electronic copy is available).
- 3.1.2 NSW Department of Commerce has adopted an electronic tendering system using the internet, which has the capacity for viewing, downloading, or ordering the RFT and for the lodgement of Tenders.

3.2 Hard Copy

- 3.2.1 A hard copy of this RFT may be obtained by:
- (a) Ordering on-line through the NSW Department of Commerce eTendering website at <https://tenders.nsw.gov.au/commerce>. Hard copy orders placed through the website will be filled by standard postal delivery.
 - (b) By prior arrangement on (02) 9372 8900 between 8.30am and 4.30pm, Mondays to Fridays (except public holidays) to pick up from Tenders Office, McKell Building, NSW Department of Commerce. Tenderers are met at Level 3 (Ground Floor), McKell Building, 2-24 Rawson Place, Sydney NSW 2000. Though the Tenders Office is currently located at Level 8, no public access is given to this floor and all public face-to-face tender transactions occur on Level 3.
 - (c) Ordering by telephone (02) 9372 8900. An additional fee is charged for delivery by express post or by courier, as required.
 - (d) First viewing a full exhibited copy at the Tenders Office by prior arrangement on (02) 9372 8900 between 8.30am and 4.30pm Mondays to Fridays (except public holidays).
- 3.2.2 A copy of the Price Schedule in CD-ROM form or on a floppy disk may in some cases be provided with the hard copy.

3.3 Electronic Copy

- 3.3.1 An electronic copy of the RFT and any Addenda that may be issued up to the Closing Date and Time, may be viewed and downloaded from the internet at the NSW Department of Commerce *eTendering* website at <https://tenders.nsw.gov.au/commerce>
- 3.3.2 A tenderer is encouraged, although not required, to obtain the RFT and to lodge a Tender electronically through the NSW Department of Commerce *eTendering* website.
- 3.3.3 In order to download an electronic copy of the RFT, a tenderer must first register as a site user.

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3.3.4 A tenderer should follow the instructions on the site to view an RFT. To locate and view an RFT and its RFT Summary, follow the instructions on the NSW Department of Commerce *eTendering* website:

- (a) First locate the RFT using the RFT Search, or by looking at the Current RFT listings screen where the additional search function may also be used.
- (b) You may see some details of the RFT by accessing them through the blue "Viewable Copy" button. This function is provided to assist in making a decision to obtain a "Responsible Copy" of the RFT.
- (c) Download the "Responsible Copy" files from the website by selecting the blue "Responsible Copy" button (if one appears for that RFT) and then follow the steps and the instructions on the NSW Department of Commerce *eTendering* website.

3.4 RFT Purchase Price

3.4.1 The non-refundable purchase price for a hard copy of this RFT is \$110.00 inclusive of GST.

3.4.2 Payment may be made:

- (a) if purchasing from the Tenders Office, McKell Building, by cheque drawn in favour of the NSW Department of Commerce, or by credit card (MasterCard, Visa and Bankcard). Cash will not be accepted; or
- (b) if ordering a hard copy through the NSW Department of Commerce *eTendering* website, by credit card (Mastercard, Visa and Bankcard).

3.5 Addenda to RFT

3.5.1 The Board, during the tender period, may issue Addenda altering the RFT. In such cases, it is the obligation of the tenderer to verify if any Addenda were issued prior to the closing date, even if a tender has already been submitted. They must obtain a copy of all Addenda as given in clause 3.5.2 or 3.5.3 as applicable.

3.5.2 Where a RFT has been acquired in hard copy form, tenderers must contact the Contact Officer named under clause 2.3 of Part A or the Tenders Office, contact number (02) 9372 8900, e-mail: Tenders@commerce.nsw.gov.au).

3.5.3 Where a RFT has been acquired in an electronic form, tenderers must check the website address, <https://tenders.nsw.gov.au/commerce> and download the Addendum.

PART B THE TENDER PROCESS

4. DEFINITIONS OF TERMS USED IN PARTS A-C

- 4.1 Unless the context indicates otherwise, the following terms, where used in Parts A-C of this RFT, shall have the meanings set out below. Note that not all defined terms will appear in all RFTs.

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

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

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

“Board” 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 Departments and other public sector agencies; and
- On-going contract administration and management,

and includes the duly authorised delegates of the Board, including officers of Contracting Services.

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

“Codes” means the *NSW Government Code of Practice for Procurement, NSW Government Procurement Policy* as amended from time to time. These codes can be viewed and downloaded from:

- 1) NSW Government Procurement Policy NSW:
<http://www.treasury.nsw.gov.au/pubs/tpp2004/tpp04-1.pdf> and
- 2) Code of Practice for Procurement:
http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf

“Conforming Tender” means a Tender that:

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

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

“Deliverables” means the goods and/or services sought under this RFT, as detailed in the Specification.

“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.

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

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

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

“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 Part D, including a Tender which seeks to qualify or amend these terms, or
- (d) does not conform to any of the other stated requirements of this RFT.

“NSW Government Procurement Policy” means the policy package outlined in this RFT.

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

“On Request Items” means any Deliverables nominated as On Request Items.

“Price” includes a price expressed as a lump sum or a rate per unit of quantity, calculated in accordance with this Part.

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

“Principal” means the party named as Principal in the proposed agreement.

“Requirement” means the requirement for goods and/or services to be met by the tenderers and detailed in the Specification.

“RFT” means the Request for Tender.

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

“Specification” means the detailed description of the required goods and/or services contained in Part E.

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

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

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

5. PREPARATION OF TENDER - GENERAL

5.1 Conformity of Tenders

- 5.1.1 The Board seeks Conforming Tenders.
- 5.1.2 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, or, in the case of electronic tenders, which cannot be effectively evaluated because the file has become corrupt, may be excluded from the tender process without further consideration, at the Board's discretion.
- 5.1.3 Tenderers may, if they choose, submit an Alternative Tender but only in conjunction with a Conforming Tender. Tenderers are encouraged to offer options or solutions that contribute to the Principal's ability to carry out its business in a more cost-effective manner.
- 5.1.4 The Board may assess an Alternative Tender against the selection criteria where submitted with a Conforming Tender.
- 5.1.5 An Alternative Tender must be clearly marked "Alternative Tender".
- 5.1.6 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, where submitted with a Conforming Tender; 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.

5.2 Prescribed Form of Tender

- 5.2.1 The Tender, including any Alternative Tender, must comprise a completed Part C and any attachments to Part C, as may be necessary. Any attachments should be labelled to identify those clauses of the RFT to which they relate.
- 5.2.2 The Tender will be taken to be for the supply of the Requirement on the terms and conditions stated in Part D except to the extent that these are amended by the Tender.

5.3 General Instructions for Completion of Tenders

- 5.3.1 Prices, responses and other information provided in the Tender are to be in writing and in English.
- 5.3.2 Tenderers must initial and date any alterations to, and deletions from, a hard copy Tender.
- 5.3.3 Tenderers must complete ALL of Part C of this RFT, as directed.
- 5.3.4 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.

5.4 Addenda to RFT Before Close of Tenders

- 5.4.1 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.
- 5.4.2 If, for any other reason, the Board requires the RFT to be amended, an Addendum will be issued.
- 5.4.3 In each case, an Addendum becomes part of the RFT.

5.5 Not Used

5.6 Tenderers to Inform Themselves

- 5.6.1 Before submitting its Tender, a tenderer must:
- (a) Examine all information relevant to the risks and contingencies and other circumstances having an effect on its Tender; and
 - (b) Satisfy itself:
 - (i) that the Tender, including the Tender Price is correct; and
 - (ii) that it is financially and practically viable for it to enter into and perform the proposed agreement.

6. PREPARATION OF TENDER – POLICY REQUIREMENTS

6.1 Procurement Policy – Introduction

- 6.1.1 Tenderers should read the main policy documents listed below. Other relevant policies and particular policy objectives to be implemented through this procurement are drawn to Tenderers' attention in this cl.6. Their requirements are reflected in the selection criteria listed in cl.9.2 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>
 - (b) NSW Government Code of Practice for Procurement:
http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf

6.2 Code Of Practice For Procurement

- 6.2.1 Tenderers must comply with the NSW Government *Code Of Practice For Procurement*. The ability of a Tenderer to comply with the Code is an essential condition of all Tenders.
- 6.2.2 Lodgement of a Tender will itself be an acknowledgement and representation by the Tenderer that it is aware of the requirements of the Code, that the Tenderer will comply with the Code and that the Tenderer agrees to provide periodic evidence of compliance with the Code and access to all relevant information to demonstrate compliance for the duration of any contract that may be awarded.

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- 6.2.3 If a Tenderer has failed to comply with the Code, this failure will be taken into account by the Board when considering its Tender or any subsequent Tender and may result in this or any subsequent Tender being passed over without prejudice to any other rights or action or remedies available to the Board.

6.3 Occupational Health Safety & Rehabilitation

- 6.3.1 Tenderers must comply with the following OHS&R requirements in the performance of any agreement awarded:

- (a) The *Occupational Health and Safety Act 2000* (NSW) and any regulation made under this Act
- (b) Codes of Practice, approved and issued pursuant to the above Act and or regulations made under the Act

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

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 Deliverables would promote this object if its Tender is accepted.

6.5 Economic Development Through Government Procurement

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

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

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

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

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

Phone: 02 9819 7200; Fax: 02 9181 3321

Email: enquiry@icnsw.org.au

Website address: www.icnsw.org.au

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

6.6 NSW Government Purchasing Preference Scheme

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

Preference – Australian and New Zealand Content

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

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

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

NSW Country Industries Preference Scheme

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

Department of State and Regional Development
Regional Development Division
Level 43, 225 George Street
Grosvenor Place
SYDNEY 1200
Telephone: (02) 9338 6717
Facsimile: (02) 9338 6726
Website address: <http://www.business.nsw.gov.au/index.asp>

Notice Regarding Free Trade Agreement Between Australia and USA:

- 6.6.11 Consequent upon the establishment of a Free Trade Agreement between Australia and the United States of America, New South Wales has a period of three years to phase in changes/removal of its offset criteria such as the price preference scheme.
- 6.6.12 Current policies are being reviewed and, within the three year period, support for local industry and regional development through the existing price preference scheme will cease to apply against relevant US suppliers bidding for applicable NSW Government contracts.

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- 6.6.13 In the meantime, until the policy reviews are complete, both the NSW Government Purchasing Preference Scheme and NSW Country Industries Preference Scheme shall apply.

6.7 Small to Medium Enterprise (SME) Involvement

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

6.8 Regional Development

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

6.9 Competitive Neutrality

- 6.9.1 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.
- 6.9.2 A tenderer who is either a Government agency (including an organisational unit of such an agency) or a Government Trading Enterprise will be required to adhere to the NSW Government Policy Statement on the Application of Competitive Neutrality, January 2002, where applicable.
- 6.9.3 Copies of the Policy Statement are available from the Cabinet Office at Level 37, Governor Macquarie Tower, 1 Farrer Place, Sydney 2000.
- 6.9.4 The principal or other appropriate senior officer of a tenderer who constitutes either a Government agency or a Government Trading Enterprise is required to affirm, in Part C, that the tenderer does or does not comply with this policy.

6.10 Electronic Procurement (Smartbuy®)

- 6.10.1 Department of Commerce actively encourages all SCCB suppliers to register with smartbuy® to facilitate NSW government agencies to view and purchase goods and services on line. The Client Services division in smartbuy® provides support services for all suppliers in completing the supplier enrolment process giving, ensuring maximum exposure to the government market. Outlined below are steps required to become established in the smartbuy® system.
- 6.10.2 The NSW Government seeks to maximise the use of electronic procurement and progressively move significant volumes of NSW Government purchasing on to smartbuy®.
- 6.10.3 smartbuy® is an electronic procurement system, maintained on behalf of the NSW Government. smartbuy® is located at <http://www.smartbuy.nsw.gov.au>.

6.10.4 smartbuy® enables eligible clients to electronically procure goods and services, generally on terms established in Government Contracts. It is intended that all goods and services provided under the Board's Standing Offer Agreements will be browsed, searched and where appropriate, purchased online via smartbuy®. Similarly, any procurement agreement between eligible clients and suppliers can be facilitated in smartbuy®.

6.10.5 All successful tenderers are required to accept Orders and other business documents and communications by electronic communication in accordance with the Electronic Transactions Act (NSW) 2000. More information on the NSW Government's policy about electronic procurement and smartbuy® can be seen at

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

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

Smartbuy® Operational Requirements

6.10.6 The smartbuy® solution is comprised of a number of procurement-related applications and services including the smartbuy® electronic trading hub (e-hub). The Smartbuy® e-Hub, based on an IBM MQ Series platform, is a full service B2B hub offering a wide range of integration, document transformation and trading partner management capabilities.

6.10.7 The Smartbuy® e-Hub is tightly integrated to the Smartbuy® Procurement Application, and may be connected to Agencies and Suppliers via a number of integration mechanisms. The transmission types and document formats for the different integration options are explained in more detail below.

6.10.8 All electronic documents transmitted out of or into the Procurement Application are routed via the Smartbuy® e-Hub. The Smartbuy® e-Hub may also be used for document transmission directly between Agencies and Suppliers, without passing through the Procurement Application.

6.10.9 The Smartbuy® e-Hub supports the following business documents:

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

Smartbuy® e-Hub Trading Channels

6.10.10 The following Transmission Types and Document Types can be received by the Smartbuy® e-Hub. The combination of Transmission Type and Document Type is termed a Trading Channel:

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

Smartbuy® Security

- 6.10.11 Smartbuy® is committed to a high level of security, and is working towards full AS/NZS7799 accreditation. Smartbuy® security systems have been created to protect buyers, suppliers and information maintained on or transmitted from or to smartbuy®
- 6.10.12 Key elements of the security regime include:
- a) Data Centre certified to BS7799, ASIO T4 rating and Suntone 2 Accreditation;
 - b) Robust firewalls;
 - c) Multi level system design;
 - d) Virus protection using Sophos Anti Virus software;
 - e) Password protection and restricted access permissions;
 - f) Intrusion detection systems;
 - g) Audit trails of user activities;
 - h) Where encryption is used, HTTPS protocol with 128 bit technology has been selected;
 - i) Programme of system upgrades to ensure security compliance.

7. PREPARATION OF TENDER - PRICE SCHEDULE AND PROJECT PLAN

7.1 Price Schedule

- 7.1.1 Complete the Price Schedule at Part C.

7.2 Calculating the Tender Price

7.2.1 General

- 7.2.1.1 The Tender Price must:

- (a) be in Australian dollars;
- (b) cover all costs of performing the agreement, including packing and delivery (if applicable);
- (c) include Goods and Services Tax if it is payable and all other applicable taxes, duties and charges at the rates applicable at the Closing Date and Time for Tenders;
- (d) include all costs associated with the preparation and submission of the Tender.

7.3 Not Used.

7.4 GST Free or Input Taxed Supplies

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

7.5 Project Plan

- 7.5.1 Tenderers are to provide a project plan, to be attached to their Tender, detailing how and when the Deliverables would be supplied under the agreement. If advance or progress payments are required, tenderers are to include details of these in the project plan, together with milestones against which such payments are to be made.

7.6 Minimum Tender Validity Period

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

8. SUBMISSION OF TENDERS

8.1 General Instructions for Submission of Tenders

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

- 8.1.2 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
2-24 Rawson Place
Sydney NSW 2000

- (b) by facsimile to (02) 9372 8974

- (c) by electronic lodgement through the NSW Department of Commerce, *eTendering* website at <https://tenders.nsw.gov.au/commerce>

- 8.1.3 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 Closing Time than at other times.

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- 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 Closing 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 clause governing electronic Tenders to the NSW Department of Commerce *eTendering* website for instructions 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 designated 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 Closing Time, and
 - (b) Supporting documents should be clearly designated as "Supporting Documents to RFT 05/3066"
- 8.1.4 A tenderer is not required to provide multiple copies of a Tender.
- (a) If a tenderer provides multiple submissions, the tenderer should clearly state on the front page of the Tender whether it is:
- (1) A "Copy." A copy must be identical to an earlier or simultaneous submission in every respect.
 - (2) A "Variation." A variation of an earlier Tender will be deemed as superseding a prior submission.
 - (3) An "Alternative Tender".
- (b) In the event that a Tenderer fails to designate whether a submission is a Copy or a Variation, the latest Tender received in the NSW Department of Commerce Tender Box will be deemed as the definitive submission.
- 8.1.5 If required, a tenderer must provide a copy of the Price Schedule on a CD-ROM or an IBM compatible 1.44MB floppy disk in a file format that can be read, formatted, displayed, manipulated and printed by Microsoft Excel 97.
- 8.2 Electronic Tenders to the NSW Department of Commerce *eTendering* Website**
- 8.2.1 A tenderer is strongly encouraged, although not required, to lodge its Tender electronically through the NSW Department of Commerce *eTendering* website at <https://tenders.nsw.gov.au/commerce>. A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given no

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lesser level of confidentiality, probity and attention than Tenders lodged by other means.

8.2.2 A tenderer, by electronically lodging a Tender, is taken to have accepted conditions shown in the Conditions of Tendering and on the NSW Department of Commerce *eTendering* website.

8.2.3 A tenderer must follow the following directions:

- (a) RFT for which electronic lodgement is available through the website can be identified by the blue "Lodge a Response" button on the web pages for the RFT.
- (b) To lodge a Tender electronically, the files containing the Tender Response must be up-loaded through the website. Access to the up-loading process is through the blue "Lodge a Response" button, then follow the steps and instructions on the NSW Department of Commerce *eTendering* website and any instructions which may have been supplied with the RFT Summary and/or Respondable Copy.

8.2.4 A tenderer must observe the following format for submissions:

- (a) 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.
- (b) If a tenderer compresses files, it must be possible to decompress them using WinZip. A tenderer must not submit self-extracting (*.exe) zip files.
- (c) A tenderer must not change pre-existing text in the RFT other than to insert the required information.

8.2.5 Signatures are not required for a Tender submitted to the NSW Department of Commerce *eTendering* website. A tenderer must ensure that a 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.

8.2.6 Electronically submitted Tenders may be made corrupt or incomplete, for example by computer viruses. The Board may decline to consider for acceptance a Tender that cannot be effectively evaluated because it is incomplete or corrupt. Note that:

- (a) To reduce the likelihood of viruses, a tenderer must not include any macros, applets, or executable code or files in a Tender.
- (b) A tenderer should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.

8.2.7 If a tenderer experiences any persistent difficulty with the NSW Department of Commerce *eTendering* website in submitting a Tender or otherwise, it is encouraged to advise the Contract Officer. A tenderer should note:

- (a) There are usually alternative Tender lodgement methods described in the RFT. It is always the tenderer's responsibility to lodge the Tender by Closing Date and Closing Time.
- (b) If there is a defect or failure of the NSW Department of Commerce *eTendering* website and the Board is advised, the Tender Closing Date and

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Closing Time may be extended provided that, in the view of the Board, the tender process will not be compromised by such an extension.

8.3 Custody of Tenders After Receipt

- 8.3.1 All hard copy tenders submitted (and any accompanying CD-ROMS or floppy disks) are kept in the NSW Department of Commerce Tender Box, which is a locked tender box, until after Closing Date and Closing Time.
- 8.3.2 Tenders lodged electronically to the NSW Department of Commerce Tenders website 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.
- (a) On receipt of Tenders lodged electronically to the NSW Department of Commerce *eTendering website*, Tenders are encrypted and stored in a secure “electronic tender box.”
 - (b) For reasons of probity and security, NSW Department of Commerce is prevented from interrogating the electronic tender box to ascertain whether tenders have been received or for any reason, until after the Closing Date and Closing Time.
 - (c) The e-mail receipt that is sent to the Tenderer after successfully up-loading the Tender is the only evidence of Tender lodgement provided.

8.4 Late Tenders

- 8.4.1 In accordance with the requirements of the *NSW Government Code of Practice For Procurement*, Late Tenders will not be considered except when the Board is satisfied that the integrity and competitiveness of the tendering process will not be comprised.
- 8.4.2 Normally, Late Tenders will not be considered for acceptance if they are:
- (a) hand delivered, including hand delivered by courier; or
 - (b) received through Australia Post unless the envelope is clearly postmarked before the Closing Date and Time; or
 - (c) received through Australia Post with only the tenderer’s own franking machine on the envelope; or
 - (d) received by electronic communication (facsimile or over the internet) and the despatch of the electronic communication of the Tender has occurred after the Closing Date and Time, including where delay may be due to the receiving facsimile or internet facility being engaged, faulty or otherwise inoperative.

8.5 Extension of the Closing Date and Time

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

9. EVALUATION OF TENDERS

9.1 General

- 9.1.1 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.
- 9.1.2 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.

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- 9.1.3 If any criterion or sub-criterion is stated to be “mandatory”, a failure by the Tender to fully comply with that criterion or sub-criterion will result in automatic exclusion of the Tender without further consideration.

9.2 Selection Criteria

1. *Ability to meet the commercial requirements including:*
 - a) Demonstrated experience generating revenue for similar projects of similar value (as evidenced by reference checks, etc);
 - b) % commission offered;
 - c) Terms offered for additional advertising (ref. Part E Cl. 3.11.2 (g)).
2. *Demonstrated ability to meet the functional/technical requirements including:*
 - a) Human resource capacity including qualifications, skills, experience and proposed extent of the tenderer’s key personnel involvement;
 - b) Experience, reliability and successful performance in undertaking similar projects, as evidenced by reference checks;
 - c) Knowledge and understanding of tourism environment in NSW;
 - d) Additional benefits and/or services that can be offered to Tourism NSW.
3. *Extent to which the tenderer’s proposed approach and resources to service start-up and delivery are likely to meet the requirements, including:*
 - a) Proposed delivery methodology for each stage of the project and each type of brochure;
 - b) Demonstrated ability to mobilise and deliver the required outputs and outcomes.
4. *General*
 - a) Compliance with specification;
 - b) Compliance with proposed conditions of contract
 - c) Compliance with applicable Government policies.

9.3 Variation of Tenders

- 9.3.1 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 B.

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9.3.2 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.

9.3.3 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.

9.3.4 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.

9.4 Exchange of Information Between Government Agencies

9.4.1 Lodgement of a Tender will itself be an authorisation by the tenderer to the Board to make available, on request, to any NSW government agency information, including but not limited to, information dealing with the tenderer's performance for any agreement that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of contract.

9.4.2 The provision of the information by the Board to any other NSW Government agency is agreed by the tenderer to be a communication falling within section 22(1) of the *Defamation Act 1974* (NSW), and the tenderer shall have no claim against the Board and the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the tenderer arising out of the communication.

9.4.3 In the evaluation of Tenders, the Board may take into account any information about the tenderer that the Board receives from any source.

9.4.4 To avoid doubt, 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, and to use and exchange such information in accordance with this clause.

9.4.5 The tenderer's attention is drawn to the *Freedom of Information Act 1989* which may confer rights, subject to the terms of that Act, to access, and to require the correction of, information held by certain agencies.

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- 9.4.6 The successful tenderer's performance of the agreement may be monitored and assessed. Performance assessment reports, including substantiated reports of unsatisfactory performance, can be taken into account by NSW government agencies and may result in future opportunities for NSW government work being restricted or lost.

9.5 Corrupt or Unethical Conduct

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

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

this may result in the Tender not receiving further consideration.

- 9.5.2 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.

10. OUTCOMES

10.1 Negotiations Before Determination of Outcome

- 10.1.1 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.

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

10.2 Acceptance or Rejection of Tenders

- 10.2.1 The Board may accept all or any part or parts of any Tender or Tenders, including, in accordance with this Part B, any Alternative Tender or other Non-Conforming Tender.

- 10.2.2 The Board is not bound to accept the lowest or any Tender.

- 10.2.3 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 B.

10.3 Discontinuance of the Tender Process

- 10.3.1 In addition to its rights in relation to acceptance and rejection of Tenders, the Board reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of Tenders.

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- 10.3.2 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.

10.4 Notification of Outcome

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

10.5 Entry into Agreement

- 10.5.1 The Board may enter into an agreement with a successful tenderer by execution of a formal deed of agreement in terms of Part D.

10.6 Post Tender Negotiations in the Event all Tenders are Rejected

- 10.6.1 If the Board rejects all Tenders on the basis that they are all Non-Conforming, but considers that conformity with the requirements of this RFT is achievable, it may enter into negotiations with any tenderer with a view to achieving a Conforming Tender and entering into an agreement. If such negotiations are unsuccessful, the Board may then enter negotiations with the next most acceptable tenderer. This process may be repeated with each of the rejected Tenders in order of potential acceptability. However, the Board is not obliged to enter into negotiations with any tenderer.
- 10.6.2 The purpose of the negotiations will be advised by the Board and made clear to the participants before the commencement of negotiation. Negotiations will not seek to play off tenderers' prices against other tenderers' prices.

10.7 Complaints

- 10.7.1 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 D 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

10.8 Disclosure of Information Concerning Successful and Unsuccessful Tenders

- 10.8.1 In accordance with NSW Government Policy to publicly disclose details of its contracts, the Board may publish the following information ("public information") about an agreement awarded under this RFT:
- (a) Details of the agreement (description of project to be completed or goods/services to be provided or property to be transferred; commencement date of the agreement; if applicable, the term of the agreement);
 - (b) The full identity of the successful tenderer including details of cross ownership of relevant companies;
 - (c) The price payable by the agency and the basis for future changes in this price;
 - (d) The significant selection criteria used in Tender assessment and their weightings;
 - (e) Provisions for re-negotiation (where applicable).

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10.8.2 The Board will not disclose the following information about any agreement awarded under this RFT unless the tenderer agrees, or release is determined under the *Freedom of Information Act 1989* or is otherwise legally required:

- (a) The Contractor's financing arrangements;
- (b) The Contractor's cost structure or profit margins;
- (c) Items of the Contractor having an intellectual property characteristic (eg. non-tangible property that is the result of creativity, such as patentable ideas or inventions, trademarks, copyrights, etc.);
- (d) Any other matters where disclosure would, in the Board's view, place the Contractor at a substantial commercial disadvantage with its competitors both at the time of entering into the agreement and at any later date when there would be an effect on future competitive arrangements.

10.8.3 A tenderer may request that the Board not disclose particular information included in its Tender but must give the reasons for requesting this. The Board will advise a tenderer in contention for an agreement what information it agrees not to disclose (unless legally required to do so). If the Board and a tenderer cannot agree about what should be disclosed, the Board will seek the advice of the Chair of the Board. The Board's decision is however final and is at the Board's absolute discretion. Neither a decision by the Board, nor a recommendation by the Chair of the Board under this paragraph is a decision that falls within any dispute resolution procedures specified in Part D.

10.8.4 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.

10.8.5 For agreements valued over \$100,000, the Board will normally publish the names of tenderers when Tenders close, and the other public information about the agreement on the internet, within 90 days after award of the agreement. For other agreements the Board will disclose the public information on request.

10.9 Ownership of Tenders

10.9.1 All Tenders become the property of the Board on submission.

10.9.2 The Board may make copies of the Tenders for any purpose related to this RFT.

10.10 Monitoring of Contractor Performance

10.10.1 It is proposed that a Service Level Agreement will be negotiated with the Contractor. The Service Level Agreement will detail agreed minimum levels of service to be provided by the Contractor. Service levels will be measured against an agreed set of key performance indicators.

10.10.2 The Service Level Agreement will form an integral part of the agreement between the parties.

ANNEXURE 1 TO PART B ADDITIONAL INFORMATION

A Security & Confidentiality

- A1 This Request for Tender document, including all Parts, Attachment and Annexures, are to be regarded as Commercial-in-Confidence and any other associated reference documents should be considered as confidential.
- A2 Organisations that submit a tender are required to complete the 'Deed of Confidentiality in Part C Response, Form 7, as part of their response, for and on behalf of their own organisation. Any nominated subcontractors must also execute the Deed.
- A3 The respondent is not to disclose any information contained in this RFT, or to make any public statements in relation to this RFT or to the subsequent awarding of any Contract pursuant to this RFT without the prior written authorisation of NSW DPI.
- A4 The tenderer and/or the tenderer's staff must observe the requirements of the Privacy and Personal Information Protection Act 1998 and ensure that the activities of NSW DPI and its personnel remain strictly confidential.



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

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

PART C - TENDER RESPONSE

Contract **0601768 – STIP: PROVISION OF THE OFFICIAL SYDNEY TOURISM INFORMATION GUIDES**

Opening Date: 21 September, 2006

Closing Date: Thursday 12 October 2006

Closing Time: 9:30 am Sydney Time

Your Company's Legal Name: <Insert Company name>

Your Company's Trading Name: <Insert Trading name>

Your Company's ABN number: <Insert ABN number>

Contact Name: <Insert name of Contract Administration Officer>

Contact Tel. Numbers: <Insert Contract Administration tel no.>

Contact Email Address: <Insert Contract Administration email>

If submitting an electronic Tender, please answer the following and indicate Yes or No below:

- Are you providing supporting documents in hard copy or on CD-ROM?
Yes/No
- Did you clearly mark the supporting documents as "Supporting Documents to RFT No 0601768"?
Yes/No

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FORM 1: PRIME CONTRACTOR DETAILS

Please write or type into this Response Form identification details of the legal identity that will enter into a contract.

If Prime Contractor is a company: Registered Company Name	
ACN	
Trading Name:	
If Prime Contractor is partnership, Partnership Name:	
If Prime Contractor is an individual, Individual's name and ABN:	
Registered Office:	
Site Office (Principal Place of Business)	
Postal Address (Principal Place of Business):	
Alternative Address:	
Contract Administration	
Name of prime contact for the purposes of this RFT:	
Job Title	
Telephone Number:	
Fax number	
Email Address:	
Chief Executive Officer's name:	
Switchboard telephone number:	
Company Email Address:	
Website Address:	
Respondent Background Information	

Year of incorporation in Australia (if applicable):	
Number of years in providing tendered Products and Services in Australia:	
Number of years in providing tendered Products and Services in other countries (please specify):	
Lines of Business: List all lines of business activities related to the legal entity who may be signing the Contract and express as a percentage of the gross turnover in Australia. (Add extra rows as necessary.)	
Activity	% of Gross Turnover

PROBITY

Will the awarding of this Contract give rise to any real or potential conflicts of interest which require disclosure? **Yes/No** If Yes, please give details:

--

QUALITY CERTIFICATION

Respondent Prime Contractor:

1. Do you have a Quality system in place that meets the specified QA requirements for this contract?

Yes / No

2. If No to 1. above, is your organisation currently in the process of obtaining quality certification?

Yes, full certification:

☐

Selected elements only:

☐

Give details:

--

3. If Quality Certified or substantial progress in obtaining Quality Certification, provide contact details below for the Certifying Company:

Certifying Company Name:	
Quality Certification Contact:	
Telephone Number:	
Fax Number:	
Email or web address:	

4. If not seeking formal Quality Certification, please describe in the following box what measures are in place within your organisation to ensure a high level of quality is achieved for work undertaken:

--

SUB-CONTRACTOR DETAILS

Will you be using any sub-contractors? **Yes/No** If Yes, please supply following details:

Company Name	Address	Relationship to Contractor	Proposed Role

EMPLOYEE DISTRIBUTION

Provide details of employee numbers servicing the Australian market in the following areas of activity:

Location	Management	Administration	Sales/Marketing	Technical	Service/Support	Total
NSW						
Australia						

PROPOSED PROJECT PERSONNEL

Respondents are required to provide a summary description of employees to be involved in this project. Additional details may be required in this RFT.

Name	Company name	Position in Company	Experience (Years)	Qualifications	Proposed Role and extent of involvement in proposed project

Note: This table may be expanded.

PROPOSED PROJECT MANAGER

Provide details of the relevant experience and capabilities of the proposed project manager:

Text box expands as you type:

Answer:

PROJECT EXPERIENCE

Provide a summary of the **relevant project experience** of your company **and** any nominated sub-contractors over the last three (3) years, which will support your claim to relative experience and capability. Failure to provide adequate references may result in disqualification of your tender.

These references should be capable of verification by the Department of Commerce. You should make any necessary arrangements with referees prior to submitting your response. Simply providing a contact officer within your organisation is not acceptable and may result in elimination of your response.

Reference Project (1)	Response
State whether your company was a Prime or Sub-Contractor for the project:	
Brief Description of the Client	
Provide details of the goods/services that your company provided:	
Project start date:	
Project Completion date:	
Value of project:	
Resource Developed:	
Name of Client:	
Project site:	
Frank Indication of levels of client satisfaction achieved:	
Client Contact Person (include Name and Position/Title):	
Contact Tel. Number:	
Is a written testimonial attached to your quotation?	

Reference Project (2)	Response
State whether your company was a Prime or Sub-Contractor for the project:	
Brief Description of the Client Organisation	
Provide details of the goods/services that your company provided:	
Project start date:	
Project Completion date:	
Value of project:	
Resource Developed:	
Name of Client:	
Project site:	
Frank Indication of levels of client satisfaction achieved:	
Client Contact Person (include Name and Position/Title):	
Contact Tel. Number:	
Is a written testimonial attached to your quotation?	

Reference Project (3)	Response
State whether your company was a Prime or Sub-Contractor for the project:	
Brief Description of the Client Organisation	
Provide details of the goods/services that your company provided:	
Project start date:	
Project Completion date:	
Value of project:	
Resource Developed:	
Name of Client:	
Project site:	

Reference Project (3)	Response
Frank Indication of levels of client satisfaction achieved:	
Client Contact Person (include Name and Position/Title):	
Contact Tel. Number:	
Is a written testimonial attached to your quotation?	

FORM 2: % COMMISSION AND OTHER INFORMATION

- a This section describes the information that must be provided by the Tenderer. Information requested must be provided for not only the Tenderer's organisation but for all subcontracted companies and all partners providing any major components or services.
- b Tenderers are to complete Part C as their tender response, and submit their response in the same sequence as represented in this document.
- c The Respondent shall be deemed to have:
 - Examined the RFT and any other information made available in writing by the Customer or its Consultant for the purpose of quoting;
 - Examined all further information relevant to the risks, contingencies, and other circumstances having an effect on their Response which is obtainable by the making of reasonable inquiries; and
 - Satisfied themselves as to the correctness and sufficiency of their Responses that shall be deemed to cover the cost of complying with all the conditions of the RFT and of all matters necessary for the due and proper performance and completion of the work described in this Request for Tender.

A. TENDERERS ARE TO FAMILIARISE THEMSELVES WITH PART E SPECIFICATION BEFORE RESPONDING TO THIS PART C.

B. RESPONSES SHALL BE SCORED AGAINST THE EVALUATION CRITERIA PROVIDED AT CL. 9.2 PART A/B.

C. CROSS-REFERENCES TO ANY ATTACHMENTS MUST ALSO BE PROVIDED.

D. WHERE A RESPONSE IS NOT APPLICABLE, TENDERERS MUST STATE “N/A”.

E. FAILURE TO RESPOND MAY RESULT IN ELIMINATION OF YOUR QUOTATION.

1. ABILITY TO MEET COMMERCIAL REQUIREMENTS

Selection Criteria 1(a) - Demonstrated experience generating revenue for similar projects of similar value (as evidenced by reference checks, etc).

Tenderers are to demonstrate its organisations ability to identify and recruit advertisers for the brochure, including indicating your existing network of contacts and strategy for attracting advertisers (responses provided at Form 1 – Project Experience will also contribute to evaluating this criterion):

(Text boxes will expand as you type)

Answer 1(b) - % Commission offered:

Selection Criteria 1(b) - % Commission offered.

Tenderers are to state its offered level of percentage commission of gross (less GST) advertising revenue, payable to STIP Partners across all Publications:

(Text boxes will expand as you type)

Answer 1(b) - % Commission offered:

Selection Criteria 1(c) – Terms offered for additional advertising (ref. Part E Cl. 3.11.2 (g))

Tenderers are to state its terms for additional advertising to the STIP partners. The terms should include % discount from current market rates offered to a 3rd party and any other terms that the tenderer considers applicable:

(Text boxes will expand as you type)

Answer 1(c) – Terms of additional advertising to STIP Partners:

2. DEMONSTRATED ABILITY TO MEET THE FUNCTIONAL/TECHNICAL REQUIREMENTS

Selection Criteria 2(a) – Human resource capacity including qualifications, skills, experience and proposed extent of the tenderer’s key personnel involvement.

No answer required – Tenders will be scored against response provided at Part C – Form 1 Proposed Project Personnel.

Selection Criteria 2(b) – Experience, reliability and successful performance in undertaking similar projects, as evidenced by reference checks.

No answer required – Tenders will be scored against response provided at Part C – Form 1 Project Experience. (Note that failure to provide referees will result in a zero score for this criterion).

Selection Criteria 2(c) – Knowledge and understanding of tourism environment in NSW

Tenderers are to provide a response below to address this criterion, including, with examples, your organisation's and key contract personnel's knowledge and understanding of the tourism environment in NSW:

(Text boxes will expand as you type)

Answer 2(c):

Selection Criteria 2(d) – Additional benefits and/or services that can be offered to Tourism NSW

Tenderers are to detail any benefits and or services that can be offered to Tourism NSW to enhance the Sydney Tourism Information Program:

(Text boxes will expand as you type)

Answer 2(d):

3. EXTENT TO WHICH THE TENDERER'S PROPOSED APPROACH AND RESOURCES TO SERVICE START-UP AND DELIVERY ARE LIKELY TO MEET THE REQUIREMENTS

Selection Criteria 3(a) - Proposed delivery methodology for each stage of the project and each type of brochure.

Tenderers are to detail their proposed delivery methodology for each stage of the project and each type of brochure, including details of resources for service start-up and delivery:

(Text boxes will expand as you type)

Answer 3(a):

Selection Criteria 3(b) – Demonstrated ability to mobilise and deliver the required outputs and outcomes.

Tenderers are demonstrate their ability to address this criterion, in accordance with the timeframes specified in Part E Cl. 3.9. Tenderers should also include a high-level project and implementation plan that includes the major project milestones:

(Text boxes will expand as you type)

Answer 3(b):

4. GENERAL

Selection Criteria 4 (a) – Compliance with Specification

No answer required – Tenders will be scored against response provided at Part C – Form 5 – Statement of Compliance with Specification.

Selection Criteria 4 (b) – Compliance with Proposed Conditions of Contract

No answer required – Tenders will be scored against response provided at Part C – Form 3 and Form 4 – Statement of Compliance with Proposed Conditions of Contract.

Selection Criteria 4 (c) – Compliance with applicable Government Policies

No answer required – Tenders will be scored against the relevant responses provided in this Part C.

5 ENVIRONMENTAL MANAGEMENT

The NSW Government seeks to promote ecologically sustainable development through procurement. Tenderers are required to highlight how the provision of the contract would promote this object if your Tender is accepted.

A5:

6 OTHER COMMENTS ON CAPACITY OR ABILITY TO PERFORM THE AGREEMENT

State here any other details you may wish to add. Please also address your capacity to perform the agreement in the context of the current commitments of your organisation.

7 CODE OF PRACTICE FOR PROCUREMENT

Have you read the *NSW Government Code Of Practice For Procurement* and taken it into consideration in preparing and submitting your Tender?

Yes/No

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

Yes/No

Provide any other relevant information below

A7:

8 OCCUPATIONAL HEALTH SAFETY AND REHABILITATION

Do you currently comply with your OHS&R statutory obligations and will you continue to do so for the duration of any agreement awarded?

Yes/No

If “**No**”, provide details below

A8:

9 NSW COUNTRY INDUSTRIES PREFERENCE SCHEME

You must complete the following details if you are eligible under the Country Industries Preference Scheme and wish to make use of the CIPS margin:

(a) Have you registered with the Country Industry Preference Scheme?

Yes/No

If “**Yes**”, supply Preference Registration Number

A9(a):

(b) Supply details of the location(s) (town(s)) of your manufacturing or other facilities

A9(b):

(c) Will the Deliverables be wholly or substantially manufactured or produced at the above location(s)?

Yes/No

If “**No**” explain below

A9(c):

10 VALUE-ADDED ACTIVITY

Indicate the level of local value-added activity proposed to be undertaken in the event of award of any agreement.

A10:

11 SME INVOLVEMENT

Provide details of the likely percentage of the value of the Deliverables to be provided under the agreement that will be sourced from Small to Medium Enterprises (SME's) and of the activities that will be carried out by SME's under the agreement.

A11:

12 ELECTRONIC COMMERCE (SMARTBUY®)

Describe below your present capabilities and services or future strategies in relation to Electronic Commerce, including any existing or planned B2B connections with corporate partners or government departments. Please specify whether these capabilities are current (operational), under construction, planned or under consideration.

A12:

13 REGIONAL DEVELOPMENT

- (a) Provide details of the positive impact that the work flowing to the local region will generate, and any adverse effect should the same work be awarded to a capital city based organisation.

A13(a):

- (b) Indicate the measures to be taken if the agreement is awarded to enhance local industry participation, SME involvement, employment and workforce development.

A13(b):

- (c) Indicate your commitment to and measures to be taken to implement best practice and the fostering of industry development.

A13(c):

14 COMPETITIVE NEUTRALITY

If you are 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

A14:

15 ADDENDA TO THIS RFT AFTER ISSUE

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

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

If **NO**, provide reasons below

A15:

16 FURTHER INFORMATION

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

A16:

17 TENDER VALIDITY PERIOD

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 is as stated in Part B.



FORM 3: STATEMENT OF COMPLIANCE WITH TENDER INFORMATION AND PROCESS

REQUEST FOR TENDER

RFT IT 05/3066

Statement Of Compliance With Tender Information And Process

Req. No.	Item	Read & Understood (Yes/No)	Compliance (Yes/No)	Modification Proposed (Yes/No)	Alternative Proposed (Yes/No)	Tenderer's Reference/Comments Indicate relevant location in your response
PART A	THE REQUIREMENT AND TENDER INFORMATION					
1.	Outline Description Of The Requirement					
2.	Summary Information For Tenderers					
3.	Where To Obtain This RFT					
PART B	THE TENDER PROCESS					
4.	Definition Of Terms Used In Parts A-C					
5.	Preparation Of Tender – General					
6.	Preparation Of Tender – Policy Requirements					
7.	Preparation Of Tender – Price Schedule And Project Plan					
8.	Submission Of Tenders					
9.	Evaluation Of Tenders					
10.	Outcomes					
ANNEXURE 1 TO PART B.						



FORM 4: STATEMENT OF COMPLIANCE WITH PROPOSED CONDITIONS OF CONTRACT

REQUEST FOR TENDER

RFT IT 05/3066

Statement Of Compliance With Proposed Conditions Of Contract

Req. No. Item	Applicable For Proposed Solution? (Yes/No)	Compliance (Yes/No)	Modification Proposed (Yes/No)	Alternative Proposed (Yes/No)	Tenderer's Reference/Comments Indicate relevant location in your response
1.Definitions					
2. Rules for Interpreting this Contract					
2.1					
2.2					
2.3					
2.4					
2.5					
2.6					
3. Nature of the Contract Between the Principal and the Contractor					
3.1					
3.2					
4. Term of contract					
4.1					
4.2					
5. Services to be supplied					
5.1					
6. Right to Obtain Services Elsewhere					

Req. No. Item	Applicable For Proposed Solution? (Yes/No)	Compliance (Yes/No)	Modification Proposed (Yes/No)	Alternative Proposed (Yes/No)	Tenderer's Reference/Comments Indicate relevant location in your response
6.1					
7. Responsibility of the Contractor					
7.1					
8. Performance of the Services					
8.1					
8.2					
9. Adjustment to Prices					
9.1					
10. Goods & Services Tax					
10.1					
10.2					
10.3					
10.4					
10.5					
10.6					
10.7					
11. Government Taxes, Duties and Charges					
11.1					
12. Conflict of Interest					

Req. No. Item	Applicable For Proposed Solution? (Yes/No)	Compliance (Yes/No)	Modification Proposed (Yes/No)	Alternative Proposed (Yes/No)	Tenderer's Reference/Comments Indicate relevant location in your response
12.1					
12.2					
12.3					
12.4					
13. Mistakes in Information					
13.1					
14. Minimum Insurance Requirements					
14.1					
14.2					
14.3					
14.4					
14.5					
14.6					
15. General Indemnity					
15.1					
15.2					
16. Compliance with Laws					
16.1					
17. Payment of Wages and Allowances					

Req. No. Item	Applicable For Proposed Solution? (Yes/No)	Compliance (Yes/No)	Modification Proposed (Yes/No)	Alternative Proposed (Yes/No)	Tenderer's Reference/Comments Indicate relevant location in your response
17.1					
17.2					
18. Contractor's On-Costs					
18.1					
19. Licences and Approvals					
19.1					
20. Keeping of Records and Access to Records					
20.1					
20.2					
21. Access to Contractor's Premises					
21.1					
22. Payments to the Principal					
22.1					
22.2					
23. Money Recoverable by Principal					
23.1					
23.2					
24. Books of Accounts					
24.1					

Req. No. Item	Applicable For Proposed Solution? (Yes/No)	Compliance (Yes/No)	Modification Proposed (Yes/No)	Alternative Proposed (Yes/No)	Tenderer's Reference/Comments Indicate relevant location in your response
25. Monitoring of Performance					
25.1					
25.2					
26. Exchange of Information Between Government Agencies					
26.1					
26.2					
26.3					
26.4					
27. The Contractor's Staff/Specified Staff					
27.1					
27.2					
27.3					
27.4					
27.5					
28. Negation of Employment					
28.1					
28.2					
28.3					
29. Confidentiality					

Req. No. Item	Applicable For Proposed Solution? (Yes/No)	Compliance (Yes/No)	Modification Proposed (Yes/No)	Alternative Proposed (Yes/No)	Tenderer's Reference/Comments Indicate relevant location in your response
29.1					
29.2					
29.3					
29.4					
29.5					
29.6					
29.7					
30. Delivery of Contract material and Information					
30.1					
30.2					
31. Intellectual Property Rights					
31.1					
31.2					
31.3					
31.4					
31.5					
32. Contractor's Additional Expenses					
32.1					
33. Occupational Health & Safety					

Req. No. Item	Applicable For Proposed Solution? (Yes/No)	Compliance (Yes/No)	Modification Proposed (Yes/No)	Alternative Proposed (Yes/No)	Tenderer's Reference/Comments Indicate relevant location in your response
33.1					
33.2					
33.3					
34. Entry to Official Sites					
34.1					
35. Damage to Property					
35.1					
36. Variations					
36.1					
37. Termination for Cause					
37.1					
37.2					
38. Termination for the Principal's Convenience					
38.1					
38.2					
38.3					
38.4					
38.5					
39. No Assignment or Novation					

Req. No. Item	Applicable For Proposed Solution? (Yes/No)	Compliance (Yes/No)	Modification Proposed (Yes/No)	Alternative Proposed (Yes/No)	Tenderer's Reference/Comments Indicate relevant location in your response
39.1					
40. Issue Resolution					
40.1					
41. Amicable Resolution					
41.1					
41.2					
41.3					
41.4					
41.5					
41.6					
41.7					
41.8					
41.9					
41.10					
42. Expert Determination					
42.1					
42.2					
42.3					
42.4					

Req. No. Item	Applicable For Proposed Solution? (Yes/No)	Compliance (Yes/No)	Modification Proposed (Yes/No)	Alternative Proposed (Yes/No)	Tenderer's Reference/Comments Indicate relevant location in your response
42.5					
42.6					
42.7					
42.8					
43. Performance of Contract During Issue Resolution					
43.1					
44. Waiver					
44.1					
45. Severability					
45.1					
46. Notices					
46.1					
46.2					
46.3					
47. Counterparts					
47.1					
48. Applicable Law					
48.1					
49. Rights Accumulative					

Req. No. Item	Applicable For Proposed Solution? (Yes/No)	Compliance (Yes/No)	Modification Proposed (Yes/No)	Alternative Proposed (Yes/No)	Tenderer's Reference/Comments Indicate relevant location in your response
49.1					
50. No Agency / No Employment					
50.1					
51. Set-Off / Money Recoverable by Principal					
51.1					
51.2					
51.3					
52. Suspension of Payments					
52.1					
53. Contractor's Warranties					
53.1					
54. Contractor's Warranties (General)					
54.1					
55. Sub-contracting of Contract					
55.1					
55.2					
55.3					
55.4					
55.5					

Req. No. Item	Applicable For Proposed Solution? (Yes/No)	Compliance (Yes/No)	Modification Proposed (Yes/No)	Alternative Proposed (Yes/No)	Tenderer's Reference/Comments Indicate relevant location in your response
55.6					
55.7					
55.8					
55.9					
56. Non-Merger					
56.1					
57. Contract Personnel					
57.1					
57.2					
57.3					
57.4					
57.5					
58. Excusable Delay and Default					
58.1					
58.2					



FORM 5: STATEMENT OF COMPLIANCE WITH SPECIFICATION REQUIREMENTS

REQUEST FOR TENDER

RFT IT 05/3066

Statement Of Compliance With Specification Requirements

Code: M – mandatory requirement; H – highly desirable requirement; D – desirable requirement

The following Response Forms contain summaries of the user requirements from Part E. Tenderers must state hereunder whether the goods/services 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 characteristic or performance standard to be met by the goods or services to be provided, that the offer is to provide the characteristics 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 characteristic 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, characteristic or performance standard the tenderer must explain and cost the required change, modification or custom development.

DOES NOT COMPLY means that the characteristic 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 system or process either does not require the feature due to inherent design or capability in the operation of the system or the tenderer's 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 goods or 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 goods/services offered must be of at least the same standard and potential. Consideration may be given, however, to deliverables of a higher standard if they are available and better suited to the Principal's 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.

Clause Number	Statement of Compliance	Comments or Tenderer's Reference (including reference to alternatives or modifications; also reference location in Tender)
PART E SPECIFICATIONS		
1. INTRODUCTION		
1.1 Overview of Tourism NSW		
1.1.1		
1.1.2		
1.1.3		
1.1.4		
1.1.5 (a)		
1.1.5 (b)		
2. TOURISM NSW's RESPONSIBILITIES		
2.1 Creating a Vision for the future		
2.1.1		
2.2 Brand Leadership		
2.2.1		
2.2.2		
2.2.3		
2.3 Providing Information directly to travel purchasers		
2.3.1		
2.4 Access to Regional Communities		
2.4.1		
2.5 Providing Information Directly to the Tourism Industry		
2.5.1		
3. THE BRIEF – THE OFFICIAL SYDNEY TOURIMS INFORMATION GUIDES		
3.1 Introduction		
3.1.1		
3.1.2		
3.2 Background		
3.2.1		
3.2.2		
3.2.3		
3.2.4		
3.2.5		
3.3 Objectives		
3.3.1		

Clause Number	Statement of Compliance	Comments or Tenderer's Reference (including reference to alternatives or modifications; also reference location in Tender)
PART E SPECIFICATIONS		
3.3.2		
3.3.3		
3.4 Sydney Tourism Information Guide		
3.4.1		
3.5 Sydney – The Official Guide		
3.5.1		
3.5.2		
3.5.3		
3.6 Sydney – the Official Shopping Guide		
3.6.1		
3.6.2		
3.6.3		
3.7 Design and Production		
3.7.1		
3.7.2		
3.7.2 (i)		
3.7.2 (ii)		
3.7.2. (iii)		
3.7.2 (iv)		
3.7.2 (v)		
3.7.2 (vi)		
3.7.2 (vii)		
3.8 Publication Program		
3.8.1		
3.9 Quantities and Dates		
3.9.1		
3.9.2		
3.10 Revision of Publication Quantities		
3.10.1		
3.10.1 (a)		
3.10.1 (b)		
3.10.1 (c)		
3.10.1 (d)		
3.10.1 (e)		

Clause Number	Statement of Compliance	Comments or Tenderer's Reference (including reference to alternatives or modifications; also reference location in Tender)
PART E SPECIFICATIONS		
3.11 Obligations of the Publisher: Content of Publications		
3.11.1		
3.11.2 (a)		
3.11.2 (b)		
3.11.2 (c)		
3.11.2 (d)		
3.11.2 (e)		
3.11.2 (f)		
3.11.2 (g)		
3.12 Advertising Guidelines		
3.12.1 (a)		
3.12.2 (b)		
3.13 STIP Material		
3.13.1		
3.14 Sponsors		
3.14.1		
3.15 STIP Partners' Approval		
3.15.1		
3.15.2		
3.16 Publisher's Arrangement with Third Parties		
3.16.1		
3.17 Acknowledgement by STIP Partners		
3.17.1		
4. OBLIGATIONS OF STIP PARTNERS		
4.1 STIP Materials		
4.1.1		
4.1.2		
4.2 Distribution of Sydney The Official Guide		
4.2.1		
4.2.2		
4.2.3		
4.2.4		
4.2.5		
5. SERVICES TO BE PROVIDED BY THE PUBLISHER		

Clause Number	Statement of Compliance	Comments or Tenderer's Reference (including reference to alternatives or modifications; also reference location in Tender)
PART E SPECIFICATIONS		
5.1 Profit and Loss Statement		
5.1.1 (a)		
5.1.1 (b)		
5.1.1 (c)		
5.2 Publisher's Obligations Concerning Accounts		
5.2.1 (a)		
5.2.1 (b)		
5.2.3 (c)		
5.2.4 (d)		
5.3 STIP Partners' Right to Have Accounts Audited		
5.3.1		

FORM 6: ACKNOWLEDGEMENT AND CONFIRMATION OF TENDER

Note to tenderers: If submitting a hard copy Tender, execute this page at clause 3. If submitting an electronic Tender, only respond to clauses 4 and 5.

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 agreement.
2. I affirm that this is my Tender to supply the Deliverables 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.
3. I affirm that this is my Tender which will form part of my agreement if my Tender is successful:

Print Name and Title

Signature of tenderer (if an individual, as identified in Part C, Form 1 - Prime Contractor Profile)

OR

Signature of authorised officer of tenderer (as identified in Part C, Form 1 - Prime Contractor Profile)

OR

Signature of partner completing tender on behalf of partnership (as identified in Part C, Form 1 - Prime Contractor Profile)

4. 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 Deliverables at the prices tendered on the conditions contained in Part D, 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

5. If submitting an electronic Tender, do you confirm that this Tender is submitted by the person named in Part C, Form 1 as authorised to submit this Tender on your behalf?

Yes/No

Print Name and Title

FORM 7: DEED OF CONFIDENTIALITY

BY THIS DEED DATED THE day of 200....

BETWEEN **Tourism NSW** ("the Customer")

AND [Insert name and address for service of Confidant] ("the Confidant")

Recitals:

- A. In the course of the Confidant performing certain Services for the Customer (whether directly or indirectly), the Confidant may become aware of information belonging to or in the possession of the Customer that is confidential.
- B. Improper use or disclosure of that information would severely damage the Customer's ability to perform its governmental/statutory functions.
- C. The Customer requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Customer's Confidential Information is kept confidential and that the Confidant performs those services faithfully and without any conflicting interest.

AGREED COVENANTS:

1. RECITALS

The Parties acknowledge the truth and accuracy of the Recitals in every particular.

2. INTERPRETATION

2.1 Definitions

In the interpretation of this Deed unless the contrary intention appears or the context otherwise requires or admits the following expressions shall have the following meanings:

"Confidential Information" means information that:

- (a) is by its nature confidential;
- (b) is designated by the Customer as confidential; or
- (c) the Confidant knows or ought to know is confidential;

and includes:-

- (d) information comprised in or relating to any Intellectual Property Rights of the Customer;
- (e) information relating to the financial position of the Customer and in particular includes information relating to the assets or liabilities of the Customer and any other matter that does or may affect the financial position or reputation of the Customer;
- (f) information relating to the internal management and structure of the Customer, or the personnel, policies and strategies of the Customer;
- (g) information of the Customer to which the Confidant has access other than information referred to paragraphs (d), (e) and (f) that has any actual or potential commercial value to the Customer or to the person or corporation which supplied that information;
- (h) in the case of the Customer, relating to the policies, strategies, practices and procedures of the Government of Queensland and any information in the Confidant's possession relating to the Queensland Government Public Services; and
- (i) information in the Confidant's possession relating to the Customer's clients or suppliers, and like information;

"Intellectual Property Rights" includes copyright, trade mark, design, patent, semiconductor or circuit board layout rights, trade, business or company names, confidential or other proprietary rights, or any rights to registration of such rights, whether created before or after the date of this Deed and whether created in Australia or elsewhere;

"notice" means notice in writing given in accordance with this Deed; and

"writing" means any mode of representing or reproducing words, figures, drawings or symbols in a visible form delivered, posted or transmitted electronically.

2.2 **General**

Unless the contrary intention appears:

- (a) monetary references are references to Australia currency;
- (b) the clause and subclause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a clause number is a reference to all its subclauses;
- (d) words in the singular number include the plural and vice versa;
- (e) words importing a gender include any other gender;
- (f) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (g) a reference to a clause or subclause is a reference to a clause or subclause of this Deed; and
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

3. **NON DISCLOSURE**

- 3.1 The Confidant must not disclose the Confidential Information to any person without the prior written consent of the Customer.
- 3.2 The Customer may grant or withhold its consent in its absolute and unfettered discretion.
- 3.3 If the Customer grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, the Customer may require that the Confidant procure the execution of a Deed in these terms by the person to whom the Confidant proposes to disclose the Confidential Information.
- 3.4 If the Customer grants consent subject to conditions, the Confidant must comply with those conditions.
- 3.5 The obligations of the Confidant under this Deed shall not be taken to have been breached where the Confidential Information is legally required to be disclosed.

4. **RESTRICTION ON USE**

The Confidant will use the Confidential Information only for the purpose of its dealings with the Customer (whether directly or indirectly).

5. **SURVIVAL**

This Deed will survive the termination or expiry of the contract providing for the performance of services by the Confidant (whether directly or indirectly).

6. POWERS OF THE CUSTOMER

Production of Documents

- 6.1 The Customer may demand (without needing to reduce the demand to writing) the delivery up to the Customer of all documents in the possession or control of the Confidant containing the Confidential Information.
- 6.2 The Confidant must immediately comply with a demand under this clause 6.
- 6.3 If the Customer makes a demand under this clause 6, and the Confidant has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.
- 6.4 In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

Legal Proceedings

- 6.5 The Confidant acknowledges that the Customer may take legal proceedings against the Confidant or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

7. CONFLICT OF INTEREST

- 7.1 The Confidant warrants that before entering into this Deed it has disclosed to the Customer all the past, current and anticipated interests of the Confidant which may conflict with or restrict the Confidant in performing services to the Customer fairly and independently.
- 7.2 The Confidant shall not during the course of this Deed engage in any activity or obtain any interest likely to conflict with or restrict the Confidant in providing services to the Customer fairly and independently and shall immediately disclose to the Customer such activity or interest.

8. NO EXCLUSION OF LAW OR EQUITY

This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

9. WAIVER

- 9.1 No waiver by the Customer of one breach of any obligation or provision herein contained or implied shall operate as a waiver of another breach of the same or of any other obligation or provision herein contained or implied.
- 9.2 None of the provisions hereof shall be taken either at law or in equity to have been varied waived discharged or released by the Customer unless by its express consent in writing.

10. REMEDIES CUMULATIVE

Cumulative

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

Other Instruments

- 10.2 Subject to the other covenants of this Deed, the rights and obligations of the Parties pursuant to this Deed are in addition to and not in derogation of any other right or obligation between the Parties under any other deed or agreement to which they are Parties.

11. VARIATIONS AND AMENDMENTS

No term or provision of this Deed may be amended or varied unless such amendment or variation is reduced to writing and signed by the Parties hereto in the same manner as this instrument.

12. APPLICABLE LAW

This Deed shall be governed and construed in all respects in accordance with the law of New South Wales and the parties hereto hereby submit to the jurisdiction applicable of the Courts of the said Queensland Government and the Commonwealth of Australia in respect of all matters arising hereunder or relating hereto.

13. NOTICES

- 13.1 A notice or other communication which may be given to or served on the Confidant under this Deed shall be deemed to have been duly given or served if it is in writing signed by the Customer and is either delivered by hand, posted or a copy transmitted electronically to the Confidant at any registered office of the Confidant or posted to the Confidant's address set out herein or such other address as may be notified in writing to the Customer from time to time.
- 13.2 A notice or other communication which may be given to or served on the Customer under the Deed shall be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Confidant and is either delivered by hand, posted or a copy transmitted electronically to the Customer at the address set out herein or such other address as may be notified in writing to the Confidant from time to time.
- 13.3 A notice sent by post shall be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent.
- 13.4 A notice sent by facsimile transmission or transmitted electronically shall be deemed to have been given when the machine on which the notice is sent reports in writing that the notice has been transmitted satisfactorily.

Executed as a Deed

SIGNED SEALED AND DELIVERED)	
)	
by)	
[insert name of Customer representative])	(signature of Customer representative)
)	
in the capacity as)	
[insert Position])	
)	
in the presence of)	
)	
[insert name of Witness])	(signature of Witness)
)	
SIGNED SEALED AND DELIVERED)	
)	
by)	
[insert name of Confidant])	(signature of Confidant)
)	
in the presence of)	
[insert name of Witness])	
)	
)	(signature of Witness)



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

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

PART D – CONTRACT TERMS & CONDITIONS

Contract 0601768

Between

Tourism NSW (on behalf of the STIP Partners)

And

<.....Supplier name.....>

For

**PROVISION OF THE OFFICAL SYDNEY
TOURISM INFORMATION GUIDES**

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PART C Contract Terms and Conditions

1. Definitions

“Circumstances Beyond the Control of the Contractor” include:

- (a) acts of God;
- (b) fire, flood (through natural causes and not attributable to negligence or foul play), or earthquake;
- (c) national emergency or war;

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

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

“Contract” means this Contract concluded between the Principal and the Contractor including all special conditions, Specifications, Schedules and other documents incorporated and forming part of the Contract.

“Contract Material” means:

- (a) any material brought into existence as part of, or for the purpose of providing the Services 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 Term” means the period of this Contract, set out in clause 4.1.

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

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

- (a) insolvency;
- (b) the Contractor indicates to the Principal 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.

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

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

“Parties” mean the Principal and the Contractor.

“Price Schedule” (where applicable) means the Price Schedule attached to the Contract.

“Principal” means Tourism New South Wales for and on behalf of the Crown in right of the State of New South Wales who will be a party to the Contract.

“Principal’s Material” means any material, document, or information supplied by the Principal to the Contractor by whatever means.

“Principal’s Representative” means the person who is responsible for administering the Contract on behalf of the Principal. The Contractor must comply with any reasonable direction given by the Principal’s Representative in connection with the performance of the Contract.

“Schedule” means a schedule to this Contract.

“Services” means the Services and associated deliverables to be supplied by the Contractor in accordance with this Contract.

“Specification” means the detailed description of the Service to be provided under this Contract that is at Part E. 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.

“Specified Staff” means the key staff set out in the Specification who is required to supply the Services or part of the work constituting the Services or such other staff as the Principal agrees to, in writing, to supply the Services.

“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.

“STIP Representative” means the representative nominated from Tourism NSW to manage the Contract.

“Substantial Breach” means in the case of this Contract, a substantial breach of a term of this Contract by the Contractor and includes 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 14 (Insurance),
- (c) clause 15 (General Indemnity)
- (d) clause 19 (Licences and Approvals),
- (e) clause 29 (Confidentiality),
- (f) clause 31 (Intellectual Property Rights); and

“Term” means the period of this Contract, set out in clause 4.1.

2. Rules for Interpreting this Contract

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.

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.

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.

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

2.5 A word which suggests one gender includes the other gender.

- 2.6 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.

3. Nature of the Contract Between the Principal and the Contractor

- 3.1 This Contract covers the provision of The Official Sydney Tourism Information Guides for Tourism New South Wales (on behalf of STIP partners) (The Principal), in accordance with the Specification.
- 3.2 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 and signed by both Parties.

4. Term of the Contract

- 4.1 A period of two (2) years from the date of contract execution, with three 1-year extension options, to be exercised as agreed between the Parties.
- 4.2 The Principal may by notice in writing to the Contractor not less than 2 months prior to the expiry of the current term require the term of this Contract to be extended for 12 months but in no circumstances will the term be extended for more than three periods of 12 months.

5. Services to be Supplied

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

6. Right to Obtain Services Elsewhere

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

7. Responsibility of the Contractor

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

8. Performance of the Services

- 8.1 The Services under this Contract shall be executed in accordance with the terms and conditions detailed herein and the Contractor shall carry out and perform the

Services in a thoroughly sound and competent manner, to the reasonable satisfaction of the Principal and in accordance with its general directions.

- 8.2 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.

9. Adjustment to Prices

- 9.1 The % Commission of gross (less GST) advertising revenue, payable to the Principal, and as tendered by the Contractor at Part C, Form 2 (1(b)), is firm for the term of the contract unless otherwise agreed between the Parties.

10. Goods and Services Tax

- 10.1 In this clause and Contract:
- 10.2 “**Consideration**”, “**Tax Invoice**”, “**Taxable Supply**” and “**Supply**” have the same meaning as provided for in the GST Law.
- 10.3 “**GST**” is a goods and services tax and has the same meaning as in the GST Law.
- 10.4 “**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.
- 10.5 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.
- 10.6 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.
- 10.7 Any contract entered into by a Party to this Contract with a third party which involves a Supply being made, the cost of which will affect the cost of any Supply made under or in connection with this Contract, must include a clause in equivalent terms to clause 10.6.

11. Government Taxes, Duties and Charges

- 11.1 All taxes, duties (including stamp duty) and charges imposed or levied in Australia in connection with the performance of the Contract shall be borne by the Contractor.

12. Conflict of Interest

- 12.1 The Contractor warrants that, to the best of its knowledge, no conflict of interest of the Contractor, its staff, 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 38.1 if in its view a conflict of interest exists which prevents the proper performance of the Contract.

13. Mistakes in Information

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

14. Minimum Insurance Requirements

- 14.1 The Service Provider must hold and maintain and must ensure that all sub-contractors are beneficiaries under, or otherwise hold and maintain, the following insurances for the Term, or for such other period as may be specifically required by this Agreement for the particular policy:
- (a) a broad form public and products liability policy of insurance to the value of at least \$10 million, that in relation to the public liability component of the policy is the Limit of Indemnity in respect of each claim; and
 - (b) workers’ compensation insurance in accordance with applicable legislation for all the Supplier's employees; and
 - (c) professional indemnity insurance of not less than \$5 million and for the currency of the Contract. The Supplier shall continue to maintain a professional indemnity policy for 2 years after the conclusion of the Contract term, including any extension options exercised, for an amount sufficient to indemnify the Supplier in respect of all liabilities arising out of the Contract. The Supplier’s liability to the Principal shall not be limited or otherwise affected by the terms of any such insurance policy. In the event that the Principal suffers loss or damage directly attributable to the Supplier’s

negligence, the rights of the Principal to recover damages shall not be affected by any terms of the professional indemnity insurance held by the Supplier.

- 14.2 All policies of insurance must be affected with an insurer approved by the Principal (which approval will not be unreasonably withheld).
- 14.3 During the Term, the Contractor must when requested in writing by the Principal:
- (a) supply proof that all insurance policies required by this Contract are current; and
 - (b) if required, arrange for its insurer to complete and sign a “Confirmation of Insurances Obtained Form”, and on-send this to the Principal within 30 days of the request. Equivalent evidence as to the currency of insurance policies required by this Contract will be acceptable to the Principal.
- 14.4 If the Contractor fails to comply with clauses 14.2, 14.3, 14.4, 14.5 and 14.6, the Principal
- (a) may affect and maintain that insurance and pay the necessary premiums; and
 - (b) may recover from the Contractor the cost of the premiums and the Principal’s reasonable costs of effecting and maintaining the insurance.
- 14.5 Where the Contractor is insured under a foreign company’s or holding company’s insurance policy, that insurance policy must clearly indicate that it applies to and extends coverage to the Contractor.
- 14.6 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

15. General Indemnity

- 15.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Principal and its officers, employees and agents against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together “the loss”) as a result of:
- (a) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Contractor (or its employees, agents or subcontractors or their employees) in the performance of this Contract; or
 - (b) any breach of this Contract or the confidentiality deeds required by this Contract.
- 15.2 The Contractor’s liability in respect of, and indemnity given in, clause 15.1 shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Principal, its officers, employees or agents caused or contributed to the loss.

16. Compliance With Laws

- 16.1 The Contractor must at all times act in a lawful manner in the provisions of the Service and the conduct of its business including, without limitation, complying with all taxation legislation, privacy legislation, workers compensation and occupational health and safety requirements. In providing the Service the Contractor shall also comply with:
- (a) any other Legislative requirement; and
 - (b) the provisions of this Contract.

17. Payment of Wages and Allowances

- 17.1 The Contractor shall ensure that all persons employed by it in or in connection with the Service are paid wages and allowances of every kind required to be paid by or under any relevant award, determination or order of the State or Territory in which the Service are being provided or by or under any industrial agreement that is in force in the State or Territory of the Commonwealth in which the Services are being provided and that all such persons are employed under the conditions contained in any such award, judgement, order or industrial agreement.
- 17.2 It shall be a precondition, notwithstanding any other provision of this Contract, to the obligation to pay any monies due to the Contractor that wherever requested by the Principal, the Contractor shall give the Principal a statutory declaration to the effect that no wages are due and owing by the Contractor in respect of work undertaken pursuant to this Contract.

18. The Contractor's On-Costs

- 18.1 The Principal will not be liable for any of the Contractor's staff "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.

19. Licences and Approvals

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

20. Keeping of Records and Access to Records

- 20.1 The Contractor must keep proper accounts, records and time sheets in accordance with the accounting principles generally applied in commercial practice.
- 20.2 During the Term, the Contractor must, within seven (7) days of a request from the Principal, give the Principal access to, and copies of, any material relevant to the performance of the Contractor's obligations under this Contract, and any financial information, that the Principal reasonably requires.

21. Access to Contractors Premises

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

22. Payments to the Principal

- 22.1 The Contractor shall, subject to the terms and conditions of this Contract, pay the Principal the Commission (Yearly in arrears) as tendered in Part C response and at the times agreed between the Contractor and the Principal. Payments are to be accompanied by a correct statement of account and any necessary supporting documentation.
- 22.2 Failure by a Contractor to pay the Commission at the due time will not be grounds for the Contractor to avoid this Contract.

23. Money Recoverable by Principal

- 23.1 Any damages, costs and expenses recoverable by the Principal from the Contractor in consequence of the Contractor's breach of the Contract will be a debt due by the Contractor to the Principal and may be:
- (a) In the form of recovery of outstanding Commissions; or
 - (b) recovered from the Contractor by the Principal in an appropriate court.
- 23.2 Nothing in this clause will affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

24. Books of Account

- 24.1 The Contractor shall, for the purposes of this Contract:
- (a) institute and maintain proper books of account and operating records necessary to afford a correct record and explanation of all claims for payment made by the Contractor under this Contract and all expenditure by the Contractor of moneys received by it from the Principal under this Contract; and
 - (b) permit the Principal's Representative access at all reasonable times to all relevant operating records necessary to establish that all claims for payment made by the Contractor and all moneys paid to the Contractor under the terms of this Contract are or have been properly accounted for.

25. Monitoring of Performance

- 25.1 The Contractor must meet with the Principal from time to time, as reasonably directed by the Principal and as a minimum on a quarterly basis, to evaluate and monitor performance of this Contract by the Contractor.

- 25.2 At all times during the term and any extensions of the term of the Contract, the Contractor shall perform the services to the standards set out in the specification and also strictly in accordance with requirements of the specification.

26. Exchange of Information Between Government Agencies

- 26.1 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.
- 26.2 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.
- 26.3 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).
- 26.4 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.

27. The Contractor's Staff/Specified Staff

- 27.1 The Contractor warrants that all staff engaged in the provision of the Service is appropriately qualified, competent and experienced.
- 27.2 The Contractor must employ only such persons:
- (a) as are careful, skilled and experienced in the provision of the Service or similar Services; and
 - (b) (where applicable) who hold all necessary licences, permits and authorities.
 - (c) whose standards of workmanship are entirely suitable for the supply of the Services and the requirements of this Contract.
- 27.3 The Contractor shall notify the Principal of any changes to the Specified Staff undertaking activities pursuant to the Contract.
- 27.4 Where changes to the Specified Staff are proposed by the Contractor, it must give the Principal at least fourteen (14) days prior written notice of the date of effect of the proposed change.

- 27.5 Incoming Specified Staff must have expertise and experience to the satisfaction of the Principal. The Principal shall notify the Contractor, in writing, of its acceptance or rejection of the proposed change to the Specified Staff.

28. Negation of Employment

- 28.1 The Contractor shall not represent itself, and ensure that its employees do not represent themselves, as being employees or agents of the Government.
- 28.2 Contractor personnel allocated for the purposes of the Contract shall operate under the following specific terms and conditions:
- 28.3 "The Contractor agrees that it will at all times hereafter indemnify and keep indemnified the Government against all actions, proceedings, claims and demands, costs, damages and expenses which may be levied, brought or made against the Government 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 Government".

29. Confidentiality

- 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. Delivery of Contract Material and Information

- 30.1 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.
- 30.2 The Contractor may in good faith keep a copy of the Contract material and information for its records.

31. Intellectual Property Rights

- 31.1 The Contractor must not at any time breach or infringe any Intellectual Property rights of the Principal or of any other person whether in the course of providing the Service or otherwise.
- 31.2 The Contractor agrees to indemnify and keep indemnified the Principal (which term includes in this clause, any Principal, and their officers, employees and agents) from and against any actions, claims, proceedings, demands, costs, expenses, losses and damages, arising from or in connection with any infringement or alleged infringement of any Intellectual Property rights.
- 31.3 The Principal may take legal proceedings including injunctive proceedings against the Contractor if there is any actual, threatened or suspected breach of clause 28.1 despite the provisions of clause 38.
- 31.4 The Contractor acknowledges that, in the event of a breach of clause 28.1 the Principal may terminate this Contract in accordance with clause 38 without prejudice to any accrued rights or remedies of the Principal.
- 31.5 In the event of any claim being made or brought against the Principal in respect of any breach or alleged breach by the Contractor of any Intellectual Property rights, the Principal will notify the Contractor. The Contractor will, with the reasonable assistance, if required, of the Principal, but at the Contractor's sole expense, conduct all negotiations for the settlement of such claims or any litigation that may arise in connection with the claim. If the Contractor fails to conduct such negotiations or settlement the Principal may suspend payment of any money due to the Contractor under the Contract until such claim has been satisfied, settled, or withdrawn.

32. Contractor's Additional Expenses

- 32.1 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.

33. Occupational Health and Safety

- 33.1 The Contractor will comply with the following OHS&R requirements in the performance of this Contract:
- (a) The Occupational Health and Safety Act 2000 (NSW) and any regulation made under this Act, including the OHS Regulation 2001;
 - (b) Codes of Practice, approved and issued pursuant to the above Act and/or regulations made under the Act; and
 - (c) any other directions issued to the Contractor by the Principal in relation to any Occupational Health, Safety and Rehabilitation issues at the Premises
- 33.2 The Contractor will follow the Safe Work Procedures developed for this Contract which are to include the following:
- (a) procedures that are relevant to the Contractor's operations at the Sites;
 - (b) a description of the tasks and associated hazards;
 - (c) all precautions to be undertaken to protect health and safety;
 - (d) control measures and methods to minimise health and safety risks;
 - (e) reference to health and safety legislation, codes or standards applicable to the work.
- 33.3 The Contractor will provide reports to the Principal on OHS&R performance under the Contract, if requested.

34. Entry to Official Sites

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

35. Damage to Property

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

36. Variations

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

37. Termination for Cause

37.1 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 Contract 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;
- (f) in the case of the Contractor’s Insolvency;
- (g) if in the Principal’s view a conflict of interest exists for the Contractor which prevents the proper performance of the Contract.

37.2 Effect of Termination for cause

- (a) If the Principal terminates this Contract for cause the Principal may:
 - (i) Contract with any other person to complete the provision of the Service;
 - (ii) 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 Deposit (if any); and
 - (iii) 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.

38. Termination for the Principal’s Convenience

38.1 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.

- 38.2 Effect of Termination for convenience
- 38.3 The Principal shall reimburse the Contractor its unavoidable costs directly incurred as a result of termination provided that any claim by the Contractor:
- (a) must be supported by written evidence of the costs claimed;
 - (b) will be in total satisfaction of the liability of the Principal to the Contractor in respect of this Contract and its termination.
- 38.4 The Principal shall not in any circumstances be liable for any consequential loss or loss of profits suffered by the Contractor as a result of the termination of this Contract by the Principal.
- 38.5 The Contractor must, wherever possible, include in all sub-contracts and supply Contracts an equivalent provision to this clause.

39. No Assignment or Novation

- 39.1 The Contractor must not enter into any sub licence in relation to this Contract.

40. Issue Resolution

- 40.1 In order to resolve any conflicts or issues between the Parties promptly and to the satisfaction of the Parties, the issue resolution process shall be in accordance with the Expert Determination Procedure outlined in Schedule 2.

41. Amicable Resolution

- 41.1 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.
- 41.2 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.
- 41.3 If the Party giving the Issue Notice is the Principal, it must give the Issue Notice to the Contractor.
- 41.4 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.
- 41.5 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.
- 41.6 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice.
- 41.7 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided (“the Referral Notice”).

- 41.8 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Principal.
- 41.9 If the Party giving the Referral Notice is the Principal, it must give the Referral Notice to the Contractor.
- 41.10 If a Referral Notice has not been given within 27 days of becoming entitled under clause 41.6 then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

42. Expert Determination

- 42.1 If a Referral Notice is given under clause 41.7, the expert is to be agreed between the Principal and the Contractor. If they cannot agree within 27 days of the Referral Notice, the expert is to be nominated by the Chief Executive Officer, Australian Commercial Disputes Centre, Sydney.
- 42.2 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.
- 42.3 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 2.
 - (d) any other matter which is relevant to the engagement.
- 42.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 42.5 The procedure for expert determination is set out in Schedule 2.
- 42.6 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off, or counter-claim.
- 42.7 If the expert determines that one Party must pay the other an amount exceeding \$100,000.00 (calculating the amount without including interest on it, and after allowing for set-offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 42.8 Unless a Party has a right to commence litigation under clause 42.7

- (a) the Parties must treat each determination of the expert as final and binding and give effect to it; and
- (b) if the expert determines that one Party owes the other money, that Party must pay the money within 27 days.

43. Performance of Contract During Issue Resolution

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

44. Waiver

- 44.1 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.

45. Severability

- 45.1 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.

46. Notices

- 46.1 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.
- 46.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post, email or facsimile transmission.
- 46.3 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.

47. Counterparts

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

48. Applicable Law

- 48.1 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.

49. Rights Cumulative

- 49.1 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.

50. No Agency/No Employment

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

51. Set-Off/Money Recoverable by Principal

- 51.1 The Principal may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Principal in connection with the supply of the Service.
- 51.2 Without limiting clause 51.1, any damages, costs and expenses recoverable by the Principal from the Contractor in consequence of the Contractor's breach of the Contract may be deducted from money then due to the Contractor under the Contract. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Principal and may be:
- (a) set off against any other money due to the Contractor by the Principal under this or any other Contract between the Principal and the Contractor; or
 - (b) recovered from the Contractor by the Principal in an appropriate court.
- 51.3 Nothing in this clause will affect the right of any Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

52. Suspension of Payments

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

53. Contractor's Warranties

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

54. Contractor's Warranties (General)

54.1 The Contractor warrants that:

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

55. Sub-Contracting of Contract

55.1 For the purposes of this and other relevant conditions "Sub-Contractor" is defined as any person or organisation whose services are utilised by the Contractor for the purposes of this Contract and who is not an employee of the Contractor.

55.2 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. The Principal may however decline to approve the subcontract and without providing reasons for withholding such approval.

55.3 A consent under this clause does not relieve the Contractor from its liabilities or obligations under the Contract.

55.4 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.

55.5 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.

55.6 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.

55.7 This clause will not merge on the completion or earlier termination of the Contract.

55.8 The Contractor will ensure that a sub-contractor is aware of and complies with all the terms and conditions of the Contract.

55.9 This clause 55 does not apply in the event that the Principal requests a particular sub-Contractor to provide the Service.

56. Non-merger

56.1 The obligations of the parties under the Contract, do not conclude at the cessation of the Contract, whether such cessation is through termination, short-closure, suspension or expiry of the Contract.

57. Contract Personnel

- 57.1 Where the Principal and the Contractor have agreed in writing that some or all of the Services are to be performed by a specified person then the Contractor shall ensure that the Services or that part of the Services is performed by the person specified.
- 57.2 The Principal reserves the right to require the removal or replacement at any time on fourteen (14) days notice without giving any reason, of any person working for or provided by the Contractor who, in the opinion of the Principal, does not perform in a satisfactory manner or is otherwise considered unacceptable. Such removal or replacement in accordance with this clause or any withholding of approval by the Principal of the Contractor's proposed replacement personnel shall not limit the Contractor's obligations under this Contract.
- 57.3 The Contractor may remove or replace persons provided by it to perform the Services only with the consent of the Principal. Where, in the opinion of the Principal, the removal or replacement is not likely to cause unreasonable disruption to the performance of the Services, such consent will not be withheld.
- 57.4 If the Contractor, pursuant to exercising its right under the preceding paragraph, is unable to provide replacement personnel reasonably acceptable to the Principal within sufficient time to enable the Contractor to complete the services as provided for by this Contract, then the Principal may terminate the Contract upon seven (7) days notice in accordance with clause 5 (apart from the notice requirement therein).
- 57.5 Any termination by the Principal shall include in the notice issued the reasons for the Principal's opinion that the relevant replacement personnel is/are not acceptable.

58. Excusable Delay and Default

- 58.1 The Contractor shall not be liable for delays, which arise out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or the public enemy, acts of any government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delay must be beyond the control and without the fault or negligence of the Contractor. If the delay is caused by the default of a Sub-Contractor and arises out of causes beyond the control of both the Contractor and Sub-Contractor and without the fault or negligence of either of them, the Contractor shall not be liable for damages for the delay unless the supplies or services to be furnished by the Sub-Contractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.
- 58.2 Neither party to the Contract shall be entitled to exercise its rights and remedies upon default by the other party if such default is caused by acts of God, acts of any government in its sovereign capacity, acts of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather or is due to any other cause or circumstance that is beyond the control and without the fault or negligence of the said other party and, in the case of the Contractor, is beyond the control and without the fault or negligence of a Sub-Contractor.

Schedule 1 Contact Information

Principal:

Tourism New South Wales for and on behalf of the Crown in right of the State of New South Wales

For notices to the Principal, the address of the Principal's Representative is:

Name:

Address:

Telephone:

Fax:

E-mail:

Contractor:

[...Contractor's Name and A.B.N will be included....]

For notices to the Contractor, the address of the Contractor's Contact is;

Name:

Address:

Telephone:

Fax:

E-mail:

Schedule 2 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).
- 1.2 Is there an event, act or omission, which gives the claimant a right to compensation under the Agreement
 - a) for damages for breach of the Agreement, or
 - b) otherwise in law?
- 1.3 If so, what is the event, act or omission?
- 1.4 In the light of the answers to clauses 1.1 and 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?
- 1.5 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 Agreement, 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 the Agreement.
- 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 Developer 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 Agreement 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 Agreement. 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 arbitration.

4. Role of Expert

4.1 The Expert:

- a) acts as an expert and not as an arbitrator
- b) 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
- c) 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 the Agreement.

- 4.2 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.



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

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

PART E – SPECIFICATIONS

Request for Tender (RFT) [0601768 – STIP:
Provision of the Sydney Official Tourism
Information Guide](#)

Opening Date: 21 September, 2006
Closing Date: Thursday 12 October, 2006
Closing Time: 9:30 am Sydney Time

PART E Specification

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1. Introduction

1.1 Overview of Tourism NSW

- 1.1.1 Tourism NSW is the NSW Government's tourism policy and marketing agency and is aligned with the Department of State and Regional Development. Its key overarching mission is to:
- (a) Achieve economic and social benefits for the people of NSW through the development of tourism;
 - (b) Promote travel to and within NSW; and
 - (c) Coordinate the development of ventures relating to tourism.
- 1.1.2 As part of its Corporate Strategy, Tourism NSW has identified 4 outward-looking Corporate Objectives to:
- (a) Build and convert awareness of NSW destinations in target markets;
 - (b) Share Tourism NSW's knowledge and expertise to improve industry effectiveness and stimulate investment;
 - (c) Demonstrate the organisation's effectiveness to government; and
 - (d) Develop private and public sector partnerships to grow and manage tourism.
- 1.1.3 Tourism NSW leads the tourism industry in NSW, using its expertise to best position and build the destination brands of Sydney and NSW, and provides creative business opportunities which add distinct value for many partners both within and outside the tourism industry.
- 1.1.4 Tourism NSW is seeking to build a highly effective relationship-based approach with key partners who can contribute significantly to the success of the Official Sydney Tourism Information Guide.
- 1.1.5 This document has three purposes:
- (a) To provide potential vendors/Partners with an understanding of the Scope of Works of Tourism NSW's Sydney Tourism Information Program (STIP) requirements so that they can prepare a response to Tourism NSW's advertised tender.
 - (b) To provide potential vendors/Partners with the selection criteria that will be used to select a preferred vendor/Partner for the scope of works.

2. Tourism NSW's Responsibilities

2.1 Creating a Vision For The Future

- 2.1.1 Through comprehensive strategic analysis, planning and consultation with stakeholders, Tourism NSW has developed the blueprint for marketing and developing destinations in NSW over coming years.

2.2 Brand Leadership

- 2.2.1 One of Tourism NSW's core assets is its ability to build the destination brands of Sydney and NSW. Tourism NSW is seen to lead the industry in building these highly valuable brands, raising awareness in key tourism source markets of what the brands have to offer and increasing the likelihood of people making the journey to NSW.
- 2.2.2 Tourism NSW brings value in building these brands by:
- (a) Creating highly successful advertising and promotional campaigns;
 - (b) Providing a range of opportunities for the tourism industry to participate as partners in these campaigns;
 - (c) Increasing the awareness of NSW as a holiday destination; and
 - (d) Increasing the desirability and likelihood of visiting NSW.
- 2.2.3 A significant investment has recently been made in the development and launch into the market place of new brand campaigns for Sydney and regional NSW. This investment will underpin a consistent and compelling approach to destination marketing for the organisation over the next five years.

2.3 Providing Information Directly To Travel Purchasers

- 2.3.1 Tourism NSW engages with thousands of consumers through the following:
- (a) Consumer Contacts Database: Tourism NSW has a growing database of prospective travellers, which is used regularly in the promotion of Destination NSW via innovative e-marketing programs.
 - (b) Consumer Website: Tourism NSW has a comprehensive destination website that attracts over 1.8 million visitors per annum.
 - (c) Tourism NSW in-house Call Centre: Tourism NSW services over 35,000 calls per annum on a 13 information number which is promoted via road signs and Tourism NSW marketing activity. Names and addresses are databased during fulfilment of information requests for promotional purposes.
 - (d) Sydney Visitor Centre Sydney Airport: Tourism NSW operates a highly visible information centre at Sydney International Airport handling thousands of visitor holiday enquiries every week of the year.

2.4 Access to Regional Communities

- 2.4.1 Tourism NSW works in partnership with fifteen Regional Tourism Organisations in NSW on marketing and development programs. In addition, Tourism NSW consults to regional communities to assist the development of destinations that offer compelling visitor experiences and actively works to improve community understanding of the economic, community and environmental benefits of tourism for the State.

2.5 Providing Information Directly To The Tourism Industry

- 2.5.1 Tourism NSW engages directly with the tourism industry and other key stakeholders through the following:

- (a) Insights – the Tourism NSW industry newsletter: Tourism NSW produces a weekly industry newsletter that is received by 3,500 of tourism’s leading industry representatives, including tourism operators and government bodies.
- (b) Tourism Insights: Tourism NSW analyses, packages and distributes research to provide insights on tourism to industry and other key stakeholders.
- (c) Corporate Website: Tourism NSW’s corporate website provides information on Tourism NSW and its programs and activities to industry and stakeholders, with 5000 unique visitors per month.

3. The Brief - The Official Sydney Tourism Information Guides

3.1 Introduction

- 3.1.1 For the past 6 years, Tourism NSW has outsourced the creation and production of The Sydney Official Tourism Information Guide, representative of Sydney’s wide range of experiences, including Greater Sydney and the Sydney Brand on behalf of partners - Tourism NSW, Sydney Harbour Foreshore Authority, Sydney Airport Corporation Ltd, City of Sydney and Sydney Convention and Visitors Bureau that form the Sydney Tourism Information Program (STIP).
- 3.1.2 Bi-annual Sydney Official Guides are produced in English, Japanese and Chinese and an annual Shopping Guide is also published.

3.2 Background

- 3.2.1 The partners of the Sydney Tourism Information Program (STIP) seek to develop a series of free-to-user guides for Sydney visitors. The guides will be developed through a relationship approach between the successful tenderer and the STIP partners.
- 3.2.2 The STIP partners are:
 - (a) Tourism NSW
 - (b) City of Sydney
 - (c) Sydney Harbour Foreshore Authority
 - (d) Sydney Airport Corporation Ltd
 - (e) Sydney Convention & Visitors Bureau
- 3.2.3 In keeping with the Brand Sydney principles, the brochures should express the values of “Brand Sydney” (refer Part E – Attachment A). The guides will comprise a suite of quality tourist brochures, which offer value to all STIP Partners. It is proposed to produce a Master Guide on Sydney followed by the production, initially of 3 support collateral pieces as mentioned in 3.4.
- 3.2.4 The target audiences for the guides are:
 - (a) Domestic visitors to Sydney;
 - (b) International visitors; and
 - (c) Sydney residents.

- 3.2.5 For the purpose of this RFT and the Publications, “Sydney” refers to the Sydney basin – a geographical region that is bounded by the Nepean and Hawkesbury Rivers to the West and North, and by the Royal National Park to the South.

3.3 Objectives

- 3.3.1 The primary objective of the publication of these collateral pieces is:

To communicate in a clear and concise manner, information that comprehensively showcases the best of Sydney, reflective of Brand Sydney, in an unbiased way and makes the visitor’s stays more enjoyable.

Other objectives of the project are to:

- 3.3.2 Avoid duplication amongst STIP partner products and to achieve great efficiencies by combining resources with other agencies, making it easier for the tourist to access quality information.
- 3.3.3 To develop comprehensive, free-to-user guides for visitors to Sydney through a relationship-based approach between the successful tenderer and all STIP Partners.

3.4 Sydney Tourism Information Guides

- 3.4.1 The proposed contract is to provide STIP Partners with promotional brochures of Sydney including:

- (a) English version of the Sydney The Official Guide;
- (b) Japanese version of the Sydney The Official Guide;
- (c) Chinese version of the Sydney The Official Guide; and
- (d) Sydney The Official Shopping Guide.

3.5 Sydney -The Official Guide

- 3.5.1 The Main Sydney Tourism Information Guide will include information on Sydney tourist precincts and attractions, shopping, nightlife, dining, arts and culture. It will also incorporate useful information on topics such as public transport, safety information, disabled access and the Sydney Airport visitor facilities.
- 3.5.2 The Official Sydney Tourism Information Guide needs to include information on the following:
- (a) General Sydney tourism information
 - (b) Essential Sydney information
 - (c) Landmarks
 - (d) Key Sydney precincts
 - (e) Transport information and maps
 - (f) Major attractions
 - (g) Shopping
 - (h) Dining, nightlife and entertainment
 - (i) Sport

- (j) Harbour/water/beaches
- (k) Tour products in and around Sydney
- (l) Maps
- (m) Walking tours
- (n) Festivals and events
- (o) Safety information

3.5.3 The Official Sydney Tourism Information Guide will be printed in English, Japanese and Mandarin.

3.6 Sydney - The Official Shopping Guide

3.6.1 This brochure will be designed to highlight the diverse and exciting range of shopping experiences in Sydney.

3.6.2 It will showcase Sydney CBD, The Rocks and Darling Harbour shopping. The publication will also include tourist precincts, which run markets or other special shopping activities e.g. Paddington, Newtown and Greater Sydney.

3.6.3 The guide will include trading hours, public transport to each of the venues, as well as opening and closing times of featured shopping precincts.

3.7 Design and production

3.7.1 Subject to clauses 3.9 (Quantities and dates) 3.10 (revision of publication quantities) 3.15 (STIP Partner approval) 4.2 (distribution of Sydney The Official Guide) the Publisher will design and produce each publication in one or more editions.

3.7.2 Each publication shall be in accordance with the Brief for that Publication provided to the Publisher by STIP Representative (or any variation to the brief) containing

- (i) A broad design concept including the Sydney Branding Principles to be refected;
- (ii) The number of editions and the date for distribution of each edition;
- (iii) The frequency of the print run and quantity for each run.
- (iv) Timelines for design and production, to be agreed in advance with the Publisher;
- (v) The number of publications required at each distribution outlet identified in the Brief and the frequency of delivery to each such outlet; and
- (vi) The consent/approval and sign off procedures to be followed by the Publisher;
- (vii) To meet the quantity and time requirements in Cl. 3.9 and set out in the Publication Program (ref. Cl. 3.8),

So as not to breach the advertising policy;

adhering to the Sydney Branding Principles, except to the extent inconsistent with the Brief; and

In compliance with all instructions from the STIP Representative and all consents and approvals received from time to time from the STIP Representative or the STIP Partners.

3.8 Publication Program

3.8.1 By no later than 1 month after the appointment of the Contract, the Publisher must prepare and provide to the STIP representative an annual program for the design and production of each Publication to be produced in the coming year ('the Publication Program') for the initial 12 mths and by 31st December for each year thereafter, for the Term of the Agreement (including any extension options exercised) to the STIP representative. The Publication Program must contain for each Publication:

- (a) A timeline for design, production and print
- (b) Critical dates/milestones, including dates for review by STIP Partners and sign off by the STIP Representative

3.9 Quantities and Dates

3.9.1 For each year during the term of the contract, and subject to clause 3.10 herein, the Publisher must produce the publications to comply with the quantities and annual timetable below (or such other dates or quantities as may be agreed between the parties from time to time):

3.9.2

Publication name	Language and number of editions per annum	Total Annual Quantity per Edition	Date ready for distribution in each year during the term
Sydney the Official Guide	English (at least 2 editions annually)	750,000	March September
Sydney The Official guide	Japanese (at least 1 edition annually)	250,000	May November
Sydney the Official Guide	Chinese (Mandarin) (at least 1 edition annually)	250,000	April October
Sydney Shopping the Official Guide	English (at least 1 edition annually)	200,000	June December

3.10 Revision of Publication Quantities

3.10.1 By no later than 31st December 2007, and in each of the subsequent years of the Contract Term (including any extension options that may be exercised), the parties agree to meet to consider whether the Publisher is to produce an additional or lesser quantity of Sydney The Official Guide (in each of the English, Japanese and Chinese versions), or whether alternatively the total annual quantity of such guide should be revised for future print runs. In considering whether additional or fewer copies are required or a revision will occur, the parties will take into account:

- (a) Distribution of Sydney The Official Guide by the STIP Partners and demand generally for the Publications;
- (b) Type and quantities of other Publications to be produced by the Publisher under this Agreement and any revisions to those Publications or quantities.
- (c) All monies received by the publisher in relation to Sydney The Official Guide for the previous 12 months;
- (d) Any future sponsor arrangements which may exist in relation to Sydney The Official Guide; and
- (e) Any new Publications or other tourist publications which the parties have agreed will be produced.

3.11 Obligations of the Publisher: Content of Publications

3.11.1 STIP Partners' right to control Publication content:

3.11.2 The Publisher:

- (a) Grants to each STIP Partner the right to provide the content of certain pages in each Publication as follows:

Publication	STIP Partner	Number of pages per edition
Sydney The Official Guide (English edition)	SACL	14 pages
	TNSW	1 page
	SHFA	1 page
	City of Sydney	1 page
	SCVB	1 page
Sydney The Official Guide (Japanese edition)	SACL	14 pages
Sydney The Official Guide (Chinese edition)	SACL	14 pages
Sydney Shopping the Official Guide	SACL	3 free pages for each 1 page purchased by SACL

- (b) The Publisher will provide a specification of where in the Publications the above pages will be provided
- (c) Subject to paragraph (b), undertakes to publish such content in the Publications unless otherwise instructed in writing by the STIP Representative.
- (d) The Publisher has the right to review all content submitted by each STIP Partner for publication. and may after discussion with the STIP Partner amend such content or, if the Publisher reasonably believes the content may breach any law or give rise to any risk of civil liability, reject the content. Immediately upon rejecting any content, will give written notice of that notification to the relevant STIP Partner specifying the reasons for the rejection and giving that STIP Partner a reasonable opportunity (being at least 10 working days) to amend or replace that content. Notwithstanding any review by the Publisher, each STIP Partner is responsible for the content it provides for the Publications.

- (e) The Publisher may for its own benefit enter into arrangements with third parties concerning the placement of Advertising in the Publications; and
- (f) The Publisher will ensure advertising does not exceed 40% of the content of each Publication
- (g) The Publisher will offer the STIP Partners the opportunity to take up advertising in the Publication before approaching any third parties. This offer will be made on the same or better terms as the best terms offered to third party. The STIP Partners acknowledge that if they have not taken up Advertising in the Publication within 10 business days of being offered the opportunity to do so, the Publisher may approach third parties with respect to the advertising.

3.12 Advertising Guidelines

3.12.1 The Publisher must:

- (a) Comply at all times with the Brand Wheel (ref. Att A) when determining the Advertising to be included in the in the Publications; and
- (b) Obtain prior written consent of the STIP Representative in relation to all Advertising, which is to appear in the Publications. The STIP Representative will be deemed to have given his or her consent to the Advertising if the STIP Representative does not notify the Publisher that he or she has refused consent to advertising within 10 business days of the Advertising being submitted to the STIP Representative by the Publisher.

3.13 STIP Materials

- 3.13.1 The Publisher may use the STIP materials in the Publications provided that any use by the Publisher is approved first in writing by the STIP Partner, which provided such materials to the publisher.

3.14 Sponsors

- 3.14.1 The Publisher will not communicate with any Sponsor in relation to the Sponsor's involvement in a Publication (whether for Sponsorship Advertising or involvement of any other nature), unless the relevant STIP Partner who notified the Publisher of that sponsor (Sponsors) has consented in writing to that communication.

3.15 STIP Partners' Approval

3.15.1 The publisher must liaise with each STIP Partner in relation to:

- (a) the Publications generally, including for their design, editorial and Advertising content; and
- (b) The inclusion of a STIP Partner's STIP materials in a Publication, allowing each STIP Partner 10 business days to review any information, materials or Publication.

- 3.15.2 A STIP Partner will be deemed to have no comments on a Publication if it does not respond to the Publisher within 10 business days of the date on which the Publisher submits to that STIP Partner the relevant material to be reviewed. The Publisher must not produce any Publication without the written

consent of the STIP Representative as to the final format, layout and contents of that Publication. The STIP Representative will be deemed to have given his or her consent to the production of the Publication if they have not responded within 10 business days of the date on which the relevant Publication is submitted to the STIP Representative by the Publisher.

3.16 Publisher's Arrangement With Third Parties

3.16.1 The Publisher must not make any agreement, arrangement or understanding, whether written or otherwise, concerning use by a third party of a Publication (other than a part of a Publication for which none of the STIP Partners owns or licences the Intellectual Property Rights) without:

- (a) first obtaining the prior written approval of the STIP Representative to such use; and
- (b) complying at all times with any conditions on use imposed by the STIP Representative.

3.17 Acknowledgement by STIP Partners

3.17.1 The STIP Partners acknowledge that the Publisher will not be in breach of any obligation or warranty under this Agreement to the extent that it is complying with any instruction, consent or approval of the STIP Representative or STIP Partners, whether that instruction, consent or approval is actual or deemed in accordance with the terms of this Agreement.

4. Obligations of STIP Partners

4.1 STIP Materials

4.1.1 Each STIP Partner agrees to make available to the Publisher, for the purposes of and use in, the Publications and to keep current:

- (a) Copies of its logos trademarks, trade names and other identifying materials;
- (b) Any information or materials concerning services or attractions relevant to its sector of operation or expertise;
- (c) Instructions concerning the approved use of STIP Materials by the publisher

4.1.2 For the avoidance of doubt, the Publisher acknowledges and agrees that the publisher has no proprietary rights to interest in any of the STIP Materials or the Intellectual Property Rights of the STIP Partners.

4.2 Distribution of Sydney The Official Guide

4.2.1 The STIP Partners agree that during the first year of the Term, the STIP Partners will distribute Sydney - The Official Guide via their outlets in the quantities set out below and the Publisher agrees to deliver the Publications to those outlets in the quantities set out below. The other Publications will be distributed and delivered amongst the STIP partners. The Shopping Guide will be delivered and distributed amongst the STIP partners as agreed.

4.2.2

Name of Publication	Indicative numbers (subject to final agreement by the parties)	STIP partner Distribution Outlet	STIP Partner Responsible
Sydney The Official Guide	100,000	CBD Tourist Information Kiosks	TNSW
	20,000	Sydney Convention and Visitor Bureau	SCVB
	5,000	Town Hall	City of Sydney
	80,000	Sydney Visitor Centre, The Rocks, Darling Harbour	SHFA
	35,000	132077 Visitor Info Line	TNSW
	510,000	Airside Distribution	Sydney Airport
Sydney The Official Guide (Japanese edition)	250,000	Airside distribution	SACL
Sydney The Official Guide (Chinese edition)	250,000	Airside Distribution	SACL
Sydney Shopping The Official Guide	200,000	To be agreed by the parties	To be agreed by the parties

- 4.2.3 STIP Partners guarantee access to their current distribution points and will make available any new distribution points which they introduce during the term of the Agreement
- 4.2.4 The Publisher is required to distribute the Publications to Regional Visitor Information Centres or conventions as required and advised by the STIP Representative
- 4.2.5 The Publisher is required to stock and maintain brochure racks for use Airside as required by SACL.

5. Services to be Provided by the Publisher

5.1 Profit and Loss Statement

5.1.1 The Publisher must provide to the STIP Representative:

- (a) A profit and loss statement for each Publication within 60 days of the date of its publication, identifying the production cost of the Publication and the advertising revenue receivable to the Publisher in relation to that Publication.
- (b) A consolidated profit and loss statement in relation to all Publication produced during the relevant period, at the end of each financial

year during the contract term (and any extension options exercised;
and

- (c) A profit and loss statement for each Publication and a consolidated profit and loss statement in relation to all publications produced by the Publisher before the commencement date in accordance with the heads of Agreement.

5.2 Publishers Obligations Concerning Accounts

5.2.1 The Publisher must:

- (a) Keep comprehensive, true and accurate accounts in connection with the production of and all monies received (whether from Advertising or otherwise) in respect of the Publications (“the Accounts”);
- (b) Maintain proper systems of internal control to enable the receipts and expenses relating to each Publication to be adequately controlled and accounted for at all times; and
- (c) Keep its financial records and have its Accounts prepared in accordance with generally accepted accounting principles in Australia, consistently applied.

5.3 STIP Partners’ Right to Have Accounts Audited

- 5.3.1 The publisher agrees that the STIP Partners will have the right (at their cost) of independent audit of the accounts, which the STIP Representative may exercise by reasonable notice at any time during the Term. The Publisher must provide suitably qualified and knowledgeable staff to liaise with STIP Partners’ auditor for the purposes of any audit.