

Summary File ONLY

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

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

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

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

STATE PROCUREMENT

NOTICE TO ALL TENDERERS

IMPORTANT INFORMATION REGARDING CONTRACT MANAGEMENT FEES

The requirements in respect of Contract Management Fees for NSW Government Period Contracts managed by State Procurement, NSW department of Commerce, on behalf of the State Contracts Control Board (SCCB) have been revised.

Some amendments have been introduced in some Tenders and Contracts released after the 21 August 2006.

Please refer to the appropriate clauses in each RFT's documents.

In particular your attention is drawn to: -

- the requirement for periodic sales returns
- the requirement for sales returns to identify the top 10 customers
- the removal of the provision for Contractors to supply Independent Audit reports on request
- the provision for State Procurement to appoint Independent Auditors to examine Contractor's sales records
- the provision for Contractors to pay for the cost of Independent Audits of their sales records on a sliding basis, in accordance with the outcomes of the audit
- the provision for Contractors to pay State Procurement's costs to manage the accounts of those contractors who are overdue and/or understated in provision of their sales reports and/or management fees

AND/OR

- the provision for Contractors to pay a Late Payment Fee for Management Fee arrears
- the provision for State Procurement to amend the terms of trade and/or terminate the agreement for Contractors who do not meet their Management Fee obligations

Please approach the Contract Officer identified for each RFT if you require additional information.



Tenders are invited for and on behalf of
the NSW Government State Contracts Control Board and NSW Health

Request For Tender No.	0502052
Contract Title:	Contract 217 - Medical Furniture (General Ward Beds)
Closing Date & Time:	9:30 am (Local Time - Sydney) Wednesday 2 nd November 2005
Contact Officer:	Robert Frost Senior Contract Officer State Procurement T: 02 9372 7785 E: robert.frost@commerce.nsw.gov.au
Document Structure	PART A Summary Tender information PART B The Tender Process PART C Tender Response PART D Deed of Agreement PART E Specification of Requirements
Non-Refundable Hardcopy Document Fee:	\$110.00 (includes GST)* Note: There is no charge for downloading an electronic copy from https://tenders.nsw.gov.au/commerce

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For the purposes of this RFT, inquiries should be directed to the Contact Officer nominated on the covering page to this RFT.

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PART A Summary Tender information

1 Summary information for tenderers

1.1 Introduction

- 1.1.1 This Request For Tender ("RFT") is made by the State Contracts Control Board ("the Board") for the supply to Customers of the Deliverables defined in the Specification of Requirements (Part E to this RFT). The Deliverables are to be supplied predominantly to NSW Health.
- 1.1.2 The Board is responsible for the conduct of the tender process, assisted by State Procurement.
- 1.1.3 Refer requests for information or advice regarding this RFT to the Contact Officer nominated on the covering page to this RFT.
- 1.1.4 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 over other tenderers.

1.2 Nature and duration of contract

- 1.2.1 The Requirement is to be met by means of a Standing Offer agreement to be embodied in a deed of agreement between the Board and the successful tenderer(s) on the conditions contained in Part D.
- 1.2.2 The Standing Offer agreement will be for a term of two (2) years and may be extended by up to two (2) additional terms of 12 months each at the option of the Board.

1.3 Non-exclusive Standing Offer agreement

- 1.3.1 The Board reserves the right to appoint more than one Contractor to supply the Requirement or a part of the Requirement.
- 1.3.2 The SCCB reserves the right to issue a further RFT during the term of the Standing Offer agreement for the additional intake of suppliers for the remaining term of the agreement for the supply of products and/or services covered by this RFT.
- 1.3.3 Tenderers will have to meet the same terms and conditions and will be subject to the same evaluation criteria as for this RFT.

1.4 Eligibility to tender

- 1.4.1 Tenders must be submitted by a legal entity or, if a joint Tender, by legal entities, with the capacity to contract. The Board will only enter a deed of agreement with the relevant legal entity or entities.
- 1.4.2 The Board reserves the right to reject any Tender if the Board judges the tenderer not to have appropriate financial assets.
- 1.4.3 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.

1.5 Addenda to RFT

- 1.5.1 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.
- 1.5.2 If, for any other reason, the Board requires the RFT to be amended, an Addendum will be issued.
- 1.5.3 In each case, an Addendum becomes part of the RFT.
- 1.5.4 It is the obligation of the tenderer to verify if any addenda were issued prior to closing date, even if a tender has already been submitted. They must obtain a copy of all addenda as given in clause 1.5.5 or 1.5.6.
- 1.5.5 Where the RFT has been acquired in a hard copy form, tenderers must contact the Contact Officer or the Tenders Office (Level 8 McKell Building 2-24 Rawson Place Sydney, contact number: 9372-8900, e-mail Tenders@commerce.nsw.gov.au)
- 1.5.6 Where the RFT has been acquired in an electronic form, tenderers must check the web site address and download the Addendum <https://tenders.nsw.gov.au/commerce>

1.6 Definitions of terms used in Parts A-C

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

“**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.

“**Agreement**” means the deed of agreement to be entered into by a supplier recommended by the Principal in establishing a Standing Offer or the supply of the Deliverables to Customers.

“**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:

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

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

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

“**Code**” means the NSW Government Code of Practice for Procurement and the NSW Government Procurement Policy, as amended from time to time, together with any other

codes of practice relating to procurement, including any amendments to such codes, that may be applicable to the particular RFT. The codes can be viewed and downloaded from:

http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf

“Conforming Tender” means a Tender that:

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

“Contractor” means a tenderer who has entered into a Deed of Agreement with the Board.

“Customer” (see definition contained in Part D).

“Customer Contract” (see definition contained in Part D).

“Deliverables” means the goods and services sought under this RFT, as detailed in Part E.

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

“Order” (see definition contained in Part D).

“Price” includes a price expressed as a lump sum or a rate per unit of quantity.

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

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

“Requirement” means the requirement for the Deliverables to be met by the Tender and detailed in the Specification.

“RFT” means the Request for Tender.

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

“Standing Offer” means an agreement made by a tenderer with the Board pursuant to the RFT under which there is a standing offer for the provision of the Deliverables on the Order of any Customer for whom the Board has arranged the contract. The Standing Offer will be

embodied in a deed of agreement between the Board and the Contractor in the form of Part D to this RFT.

“State Contracts Control Board” See definition for Board.

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

“Tender” means the offer to supply the 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.

PART B The Tender Process

2 Preparation of Tender – General

2.1 Conformity of Tenders

- 2.1.1 The Board seeks Conforming Tenders.
- 2.1.2 Non-Conforming 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.
- 2.1.3 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 Customer's ability to carry out its business in a more cost-effective manner.
- 2.1.4 The Board may assess an Alternative Tender against the evaluation criteria where submitted with a Conforming Tender.
- 2.1.5 An Alternative Tender must be clearly marked "Alternative Tender".
- 2.1.6 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 (not, in either case, being an Alternative Tender or part of an Alternative Tender) that, in the Board's opinion, is substantially a Conforming Tender.

2.2 Prescribed form of Tender

- 2.2.1 The Tender, including any Alternative Tender, must comprise a completed Part C and any attachments to Part C, as may be necessary.
- 2.2.2 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.
- 2.2.3 Tenderers must complete all of Part C as directed and must not amend any of the questions provided.
- 2.2.4 Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.

2.3 Tenderers to inform themselves

- 2.3.1 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 Deed of Agreement.

2.4 Minimum Tender validity period

- 2.4.1 Tenders must remain open for acceptance for a period of at least six (6) months from the Closing Date and Time for Tenders.

3 Preparation of Tender – Policy

3.1 Procurement Policy – introduction

- 3.1.1 Tenderers should read the main policy documents listed below. Their requirements are reflected in the selection criteria listed in Part B 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

- 3.1.2 Tenderers must comply with the Code of Practice for Procurement. The ability of a tenderer to comply with the Code is an essential condition of all Tenders.
- 3.1.3 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.

3.2 NSW Government Purchasing Preference Scheme

- 3.2.1 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 Contractors or Customers incur no actual costs.

- 3.2.2 The Preference Scheme is implemented by evaluating Tender Prices in the clauses below.

Preference – Australian and New Zealand Content

- 3.2.3 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:

<i>Tender Price:</i>	<i>\$1,000.00</i>
<i>Imported Content:</i>	<i>80%</i>
<i>Preference margin</i>	<i>20% x 80% x \$1,000.00= \$160.00</i>
<i>Price used for evaluation:</i>	<i>\$1,000.00 + \$160.00 = \$1,160.00</i>

- 3.2.4 No preference margin is applied when assessing Tenders for the provision of services alone.
- 3.2.5 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.
- 3.2.6 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

- 3.2.7 A further preference loading of up to 5% is applied if the tenderer is 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.
- 3.2.8 The Country Industries Preference Scheme is intended primarily to benefit manufacturers located outside the metropolitan areas of the State that, in comparison with their city-based competitors, suffer definable economic disadvantages which can be directly attributed to their country location.
- 3.2.9 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 (Phone(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.
- 3.2.10 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
225 George Street
Level 43
Grosvenor Place
SYDNEY 1200
Telephone: (02) 9338 6717
Facsimile: (02) 9338 6726

3.3 Electronic Procurement (Smartbuy®)

- 3.3.1 The NSW Government seeks to maximise the use of electronic procurement and progressively move significant volumes of NSW Government purchasing on to smartbuy®.
- 3.3.2 Successful tenderers may be required to enrol with smartbuy®.
- 3.3.3 smartbuy® is an electronic procurement system, maintained on behalf of the NSW Government. smartbuy® is located at <http://www.smartbuy.nsw.gov.au>.

4 Submission of Tenders

4.1 General instructions for submission of Tenders

- 4.1.1 A Tender must be received by the Closing Date and Closing Time.
- 4.1.2 A Tender may be submitted by any of the following methods:

- (a) by delivery into the Tender Box, and marked:

Tender Box
NSW Department of Commerce
Level 3, McKell Building
2-24 Rawson Place
Sydney, NSW 2000

If delivery personnel require a signature as evidence of delivery, the Tender must be delivered between 8:30 a.m. and 4:30 p.m., Mondays to Fridays (except public holidays).

- (a) by post, and addressed to:

Tender Box
NSW Department of Commerce
Level 3, McKell Building
2-24 Rawson Place
Sydney, NSW 2000

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

4.2 Electronic Tenders to the NSW Department of Commerce *eTendering* website

4.2.1 Tenderers are encouraged, although not required, to lodge the Tender electronically through the NSW Department of Commerce *eTendering* website.

4.2.2 If a tenderer intends to submit electronically through the *eTendering* website, the following must be considered:

- (a) The *eTendering* website is at peak use on the morning when Tenders close. 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. It is recommended that a Tender be lodged well in advance of the Closing Date and Closing Time.
- (b) The *eTendering* website may experience difficulties in accepting a large Tender. A tender lodged via the *eTendering* website should ideally be below 7 megabytes (MB) in total file size.
- (c) an electronic Tender may be supported by documents in hard copy or on CD-ROM. Supporting documents, to be submitted in hard copy or on CD-ROM, may be designated throughout the RFT. If submitting an electronic tender with supporting documents, supporting documents should be clearly designated as "Supporting Documents to the RFT."

4.2.3 If a tenderer provides multiple submissions, the tenderer should clearly state on the front page of the Tender whether it is the original or a copy.

4.2.4 A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given no lesser level of confidentiality, probity and attention than Tenders lodged by other means.

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

4.2.6 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 *eTendering* website and any instructions which may have been supplied with the RFT Summary and/or Responsible Copy.
- 4.2.7 Signatures are not required for a Tender submitted to the *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.
- 4.2.8 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.
- 4.2.9 If a tenderer experiences any persistent difficulty with the *eTendering* website in submitting a Tender or otherwise, it is encouraged to advise the Contact Officer.

4.3 Custody of Tenders after receipt

- 4.3.1 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 the Closing Date and Closing Time.
- 4.3.2 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."
- 4.3.3 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.
- 4.3.4 The e-mail receipt that is sent to the Tenderer after successfully up-loading the Tender is the only evidence of Tender lodgement provided.

4.4 Late Tenders

- 4.4.1 In accordance with the requirements of the Code of Tendering NSW Government 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 compromised.
- 4.4.2 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 over the internet and the dispatch of the electronic communication of the Tender has occurred after the Closing Date and Time, including where delay may be due to the receiving internet facility being engaged, faulty or otherwise inoperative.

4.5 Extension of the Closing Date and Time

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

5 Evaluation of Tenders

5.1 Selection criteria

5.1.1 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.

- (a) Fitness for purpose of Deliverables offered including compliance with the Specification and relevant Standards, quality, innovative aspects, product design, operational and ergonomic performance and warranties.
- (b) Warranty, Maintenance and support service levels;
- (c) Price (including Whole-of-Life costs)
- (d) Delivery considerations.
- (e) Capacity to perform the Standing Offer agreement including:
 - (i) Production/technical capacity
 - (ii) Human resource capacity, qualifications, skills and experience
 - (iii) Warehousing, inventory and distribution systems
 - (iv) Past Performance
- (f) Compliance with the conditions of the Deed Of Agreement (in RFT Part D).
- (g) Compliance with NSW Government procurement policy and other applicable NSW Government policies.

5.1.2 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.

5.2 Variation of Tenders

5.2.1 At any time before the Board accepts any Tender received in response to this RFT, a tenderer may, subject to clause 5.2.2, vary its Tender:

- (a) by providing the Board with further information by way of explanation or clarification;
- (b) by correcting a mistake or anomaly, or
- (c) by documenting agreed changes to the Tender negotiated under clause 6.1.

5.2.2 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 under clause 5.2.1(a) - 5.2.1(b), it appears to the Board reasonable in the circumstances to allow the tenderer to provide the information or correct the mistake or anomaly, or
 - (d) in the case of variation under clause 5.2.1(c), the Board has confirmed that the draft-documented changes reflect what has been agreed.
- 5.2.3 If a Tender is varied in accordance with clause 5.2.1(a) or 5.2.1(b), the Board will provide all other tenderers whose Tenders have similar characteristics with the opportunity of varying their Tenders in a similar way.
- 5.2.4 A variation of a Tender under clause 5.2.1 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 under clause 5.2.1(a) or 5.2.1(b), it would result in the revising or expanding of a Tender in a way that would give a tenderer an unfair advantage over other tenderers.

5.3 Samples

- 5.3.1 Samples of Deliverables will be required to assist in determining the outcome of the tender process. Tenderers will be contacted and specifically asked to provide samples and will be provided with details. Failure to submit sample upon request may result in the Tender being given no further consideration.
- 5.3.2 All costs incurred in relation to the preparation, delivery and subsequent collection of samples shall be borne by the tenderer and will not be remunerated regardless of the outcomes of the tender process.

5.4 Exchange of information between government agencies

- 5.4.1 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 contract 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.
- 5.4.2 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.
- 5.4.3 In the evaluation of Tenders, the Board may take into account any information about the tenderer that the Board receives from any source.
- 5.4.4 To avoid doubt, information that 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 5.4.
- 5.4.5 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.

6 Outcomes

6.1 Negotiations before determination of outcome

- 6.1.1 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, including those who have submitted Alternative Tenders or who have submitted substantially Conforming Tenders, to mutually improve outcomes.

6.2 Acceptance or rejection of Tenders

- 6.2.1 The Board may accept all or any part or parts of any Tender or Tenders, including, in accordance with clause 2.1, any Alternative Tender or other Non-Conforming Tender.
- 6.2.2 The Board is not bound to accept the lowest or any Tender.
- 6.2.3 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 clause 6.6.

6.3 Discontinuance of the Tender process

- 6.3.1 In addition to its rights under clause 6.2, the Board reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of Tenders.
- 6.3.2 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.

6.4 Notification of outcome

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

6.5 Entry into Standing Offer agreement

- 6.5.1 Acceptance of a Tender or part Tender will be subject to the execution of a formal deed of agreement in the terms of Part D. Until the Board and the successful tenderer(s) execute a formal deed there will be no legally enforceable agreement concluded between them.

6.6 Post Tender negotiations in the event all Tenders are rejected

- 6.6.1 If the Board rejects all Tenders on the basis that all Tenders are Non-Conforming, but considers that conformity with the requirements of this RFT is achievable, it may enter into negotiations with the least non-conforming tenderer with a view to achieving a Conforming Tender and entering into a Standing Offer 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.
- 6.6.2 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.

6.7 Complaints

- 6.7.1 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 contact the Contact Officer for this RFT or write to:

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

6.8 Disclosure of information concerning successful and unsuccessful Tenders

- 6.8.1 In accordance with NSW Government Policy to publicly disclose details of its contracts, the Board may publish the following information about a Standing Offer agreement awarded under this RFT:
- (a) Details of the Standing Offer (description of the goods/services to be provided; commencement date and the term of the Standing Offer);
 - (b) The full identity of the successful tenderer including details of cross ownership of relevant companies;
 - (c) The prices payable and the basis for future changes in prices;
 - (d) The significant selection criteria used in Tender assessment and their weightings;
 - (e) Provisions for re-negotiation (where applicable).
- 6.8.2 The Board will not disclose the following information about any Standing Offer 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, cost structure or profit margins;
 - (b) 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.);
 - (c) 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 Standing Offer agreement and at any later date when there would be an effect on future competitive arrangements.
- 6.8.3 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 a Standing Offer agreement what information it agrees not to disclose (unless legally required to do so).
- 6.8.4 The Board will not disclose the identities of unsuccessful tenderers or any 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.
- 6.8.5 For all Standing Offer agreements valued over \$100,000, the Board will normally publish the information about the Standing Offer agreement specified in clause 6.8.1 on the Internet within 90 days after the award of the Standing Offer agreement.

6.9 Ownership of Tenders

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

END of RFT PARTS A & B

PART C

TENDER RESPONSE

for

Request For Tender No.	0502052
Contract Title:	Contract 217 - Medical Furniture (General Ward Beds)
Closing Date & Time:	9:30 am (Local Time - Sydney) Wednesday 2 nd November 2005
Contact Officer:	Robert Frost T: 02 9372 7785 E: robert.frost@commerce.nsw.gov.au

If submitting an electronic Tender, please answer the following and clearly indicate Yes or No:	<input type="checkbox"/> Are you providing any supporting documents in hard copy or on CD-ROM? Yes/No
	<input type="checkbox"/> Did you clearly mark the supporting documents as "Supporting Documents to RFT No 0502052" Yes/No

PART C Tender Response

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TENDER COMPLETION GUIDANCE TO TENDERERS

Introduction

The information provided by the Tenderer in response to this Part will be used for the assessment of Tenders.

Requests for information have been framed to elicit responses relevant to the selection criteria.

References to “you” in this Part means the tenderer and all responses given will be taken to be responses of the tenderer.

Instructions for Completing Your Tender

IMPORTANT NOTE: Your Tender response must be composed as follows:

OPTION 1: If you are using an electronic copy of this RFT to complete your tender response, you may complete this Part C by inserting information (wherever “*Response*” is indicated) - however, you must not change the content of any pre-existing text in the RFT other than to insert the required information. Please note that the pre-existing text in this document does contain some formatting, including automatic paragraph numbering.

or

OPTION 2: Tenderers may find it more practical to not use an electronic copy of this Part C to complete the tender response. In these cases tenderers must compose their own tender response to reflect the “***Schedule***” and “***Response Item***” structure contained in this Part C. Failing to do so may result in a Non-Conforming tender.

If you offer an Alternative Tender (refer to RFT Parts A and B), submit separate schedules providing information about the non-conformance. Clearly identify each alternative and the Part C “Schedule” and “Response Item” to which it applies.

Electronic tenders

An electronically lodged Tender must be lodged in a file format which can be read, formatted, displayed and printed by Microsoft Word 97. If a tenderer compresses files, it must be possible to decompress them using WinZip. A tenderer must not submit self-extracting (*.exe) zip files. Detailed instructions for lodging your electronic tender are provided in Part B.

Schedule 1. General Information

Response Item No. 1.1 Tenderer Identification Details

1.1.1 Type or write your identification details as required below.

Company Registered Name:	<Response>
Australian Business Number (ABN):	<Response>
Trading Name:	<Response>
Business Postal Address:	<Response>
Site address of principal place of business:	<Response>
Website Details (if any):	<Response>
Name and official position of the authorised officer submitting the Tender:	<Responses below>
Name:	
Official position:	
Telephone No:	
E-mail:	
Contact for Tender enquiries:	<Responses below>
Name:	
Telephone No:	
Fax No:	
E-mail:	
Contact for proposed Contract Administrator:	<Responses below>
Name:	
Telephone No:	
Fax No:	
E-mail:	

Response Item No. 1.2 Tender validity period

The Tender will remain valid for acceptance within <...**Response**.....> months from the lodgement of tenders, in accordance with Part B. (NB The minimum validity period is stated in Part B of the RFT.)

Response Item No. 1.3 Acknowledgment and Confirmation of Tender**1.3.1 Respond below if submitting a hardcopy Tender:**

I affirm that this is the 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 our Tender, and that the information given in our Tender is correct:

Signature of tenderer (authorised officer / partner)

or

1.3.2 Respond below 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 eTendering website is sufficient to verify and affirm that this is the Tender to supply the Deliverables at the prices tendered on the conditions contained in Part D (except as expressly amended in the Tender) and that the information contained in the Tender is correct?

Yes/No

Response Item No. 1.4 Details of ownership

If you are a company, please provide details of your ownership, that is, Australian or Overseas, name of each shareholder holding 20% or more of your issued share capital, paid-up capital and other relevant ownership details.

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

<Response>

Response Item No. 1.5 Contracting as agent/trustee

If awarded the Standing Offer Agreement, do you intend to contract in your own right or as agent or trustee for some other entity? If the latter, provide full details.

- a) In the case of an agent, identify the principal who will be bound by the Deed of Agreement and any authority given by that principal to you to execute any such agreement as its agent. .
- b) In the case of a trustee, provide a copy of the trust deed and provide full details below of your capacity to enter any Deed of Agreement as a result of this RFT.

<Response>

Response Item No. 1.6 Current Legal Proceedings

Are you or any of your directors currently, or have you, or have your directors been at any time within the last five years, the subject of any (or any pending):

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

Yes/No

If "Yes", please supply full details:

<Response>

Response Item No. 1.7 Years in business

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

<Response>

Response Item No. 1.8 Financial information

Provide information in support of your financial viability, including as a minimum your annual Australian turnover in \$A and the annual turnover of the Deliverables tendered.

Provide (or attach) any other relevant information which supports your financial viability (eg independent ratings, compliance with regulatory requirements etc).

Note: During the course of the tender process, you may be requested to submit a copy of your last three annual financial reports to the Board, or to an agent nominated by the Board.

<Response>

Response Item No. 1.9 Addenda to this RFT after issue

Did you receive any Addenda to this RFT after the issue of this RFT:

Yes / No

If "Yes", indicate below whether you have read and allowed for the Addenda in your Tender.

<Response>

Response Item No. 1.10 Further information

Provide any further information you believe is relevant to the information sought by this Schedule, and cross-reference to any part of this RFT if applicable.

<Response>

Schedule 2. Goods and Services (Deliverables)

Information for tenderers

This Schedule seeks detailed responses regarding the goods and services offered. The Response Items are a guide to the minimum response information required to be submitted with your tender. It will be the Tenderer's responsibility to include all information considered necessary and appropriate to allow for the full and proper assessment of the goods and services offered.

Beds and accessories offered will be assessed to determine compliance with the Specification of Requirements and to assess their quality and functional performance capabilities. Tenderer's must therefore include all information considered necessary to demonstrate compliance and to allow for the proper assessment of the product's performance capabilities.

Any product that does not meet a mandatory requirement of the Specification will not be considered for acceptance.

Some General Ward Beds and accessories offered by tenderers will be identified for further physical evaluation. This will require a representative of the tenderer to provide a product demonstration and respond to questions regarding the products. Tenderers will be required to deliver the bed/s to a site in the metropolitan area at several days notice from State Procurement.

Response Item No. 2.1 General Ward Beds and Accessories

Product Function and Performance

Provide detailed information that clearly demonstrates how the products offered meets all of the specified functional requirements and clearly demonstrates the quality and functional performance capabilities of the product.

Further, provide detailed information that also clearly demonstrates the product's performance capabilities with regard to:

- a) minimising the risk to the health and safety of bed operators and patients (considering the risks associated with the forces required to use, adjust and manoeuvre the bed; the risks associated with the cleaning, care and maintenance of the bed; the required manual handling of patients (e.g. repositioning and transferring patients); and the minimisation of infection risks including the accumulation of debris/materials;
- b) contributing to the efficiency of bed operators in the workplace (considering the ease of understanding and use of the beds controls/functions, the ease of cleaning and maintaining the bed, and the performance/speed/effectiveness/range of the bed functions);
- c) maximising the comfort, mobility and independence of patients using the bed.

The above should be supported by validated compliance with relevant Standards, risk assessments undertaken for TGA or other purposes, and other supporting information relating to the design, construction and materials used with the bed and accessories.

To allow for the full and proper assessment of the goods and services offered, written responses are to be supported by photographic images and/or illustrations of the product and its key components.

<Response>

Mattress compatibility

Provide details of mattresses that are compatible with, or appropriate for use with the bed offered.

Provide details of the risks or effects on any function or performance of the bed when it is used with compatible mattresses of varying types, dimensions, purposes etc.

<Response>

Applicable Standards

Provide details to demonstrate the product's level conformance to the various aspect of the specified Australian or international Standard(s) and identify any non-conformance or inconsistencies.

<Response>

Guarantees and Warranties

Provide details of your product performance and reliability guarantees, the warranties offered (including the warranty period/s offered), and the expected useful life of the products.

Note: Tenderers are required to provide the details of the warranty support services and facilities offered to Customers in the separate "Services" Response Item included herein.

<Response>

Compliance with Therapeutic Goods Act 1989

Provide details of the AUSTR number (for registered goods), or the AUSTL number (for listed goods), or indicate whether the product offered is exempted.

Provide copies of any relevant certification issued by the Therapeutic Goods Administration.

<Response, and refer to any information attached to the tender >

Health and Safety

Provide 1 electronic copy (or 4 hard copies) of the information proposed to be supplied to Customers to ensure that the products can be safely used (as per the Specification of Requirements).

<Response, and refer to any information attached to the tender >

Further information

Provide any other details you may wish to add, particularly regarding the innovative aspects of the tendered Deliverables and any additional/alternative functionality that may be offered by the product.

<Response, and refer to any information attached to the tender >

Referees

To assist in the evaluation of the products offered it may be necessary to seek information from organisations that currently use them.

Provide details of hospitals to which the products have recently been supplied. If possible, provide the names of appropriate contact persons with these organisations.

<Response, and refer to any information attached to the tender >

Response Item No. 2.2 Services

The services offered will be assessed to determine compliance with the specified requirements and the outcomes proposed to be delivered by those services to Customers across New South Wales. It will be the Tenderer's responsibility to include all information necessary to allow for the proper assessment of the services offered.

For each service offered, tenderers should address the following issues as a minimum:

- a) details of the proposed method of delivering the services.

- b) the outcomes that Customers should expect from the services.
- c) the names, details and roles and responsibilities of each of the tenderer's (or sub-contractor's) personnel proposed to be involved in the delivery of the services.

Product Use Information and Training

Provide details of the product use training offered to Customers, on the basis of both (1) the training to be provided at no additional cost to the Customer, and (2) the scope of other training offered for an additional charge to the Customer.

Provide details of the training (and any certification) and other technical support offered to Customers who elect to undertake their own servicing, maintenance or repairs of the products in-service.

Tenderers are to provide 1 electronic copy (or 4 hard copies) of the product-use information proposed to be supplied to Customers.

<Respond, and refer to any information attached to the tender>

Warranty support services

Provide details of the Warranty support services and facilities to be provided at the Contractor's own cost and expense for warranted Deliverables, and describe any limitations and exclusions.

<Response>

Product Servicing, Maintenance, Repairs and Technical Support

Provide details of the after-sales servicing, maintenance, repair and other technical support offered to Customers.

Provide details of the range of alternative service scopes offered to Customers. The service alternatives are to extend from the minimal "product breakdown/defect rectification service" (where the product is primarily supported by the Customer), through to a "comprehensive product service and support" arrangement that may be negotiated by Customers.

Provide details of the spares/replacement parts, consumables and other technical resources that will be made available to Customers who elect to undertake their own servicing, maintenance or repairs of the products in-service.

Provide details of any Product Loan or Exchange arrangement that may be offered for when products are required to be serviced/repaired off-site.

Provide details of the routine inspection and maintenance schedules for the products and include details of which parties are normally expected to undertake the routine servicing, and what additional scope may be undertaken by a Customer where approved or certified.

Provide details of any help desk number (or other customer assistance arrangements) you are able to offer, including the geographical area covered, the contact number(s), any corresponding charges, and help desk hours.

<Response>

Product Rentals

A Customer may seek short-term rental alternatives for products available under the Agreement.

Tenderers are to describe the rental arrangements able to be offered to Customers.

<Response>

Response Item No. 2.3 Capacity to Supply the Deliverables

Tenders will be assessed to determine the suitability and capacity of the tenderer's resources, facilities and procedures to fulfil the requirements of the proposed agreement.

To allow for the proper assessment of your tender, detailed information should be provided to demonstrate the scope of the requirement that you would be suitable and capable of providing, up to and including providing the entire requirement as a sole contracted supplier.

Experience in providing similar Deliverables

Demonstrate your expertise and experience in the successful provision of goods and services on a similar scale to the requirements, including as a minimum:

- a) the number of years in business providing similar goods and services.
- b) the provision of similar requirements in a contractual relationship (include details of contract name, value, client name, date commenced, date completed).
- c) the qualifications and experience of the personnel to be involved in key roles for the operation of the proposed agreement.
- d) provide copies of records of any assessment undertaken of your performance or records of client satisfaction.
- e) provide names and contact details of previous clients willing to act as contactable referees.

<Response>

Capacity to Supply the Deliverables

Demonstrate the suitability and capability of your resources, facilities and procedures to fulfil the requirements.

Provide details of your technical, warehousing, inventory and distribution capabilities, and specific arrangements with any suppliers or sub-contractors.

Provide details of the proposed Order placement arrangements and include details of where Orders may be directed.

Provide details of your guaranteed delivery times for all Deliverables from receipt of Order, and how you would maintain guaranteed delivery times.

Describe your stock level management and any issues you may experience in maintaining necessary levels.

Provide details of your capacity to fulfil the requirements in the context of other commitments of your organisation.

<Response>

Response Item No. 2.4 Further information

Provide any further information you believe is relevant to the information sought by this Schedule, and cross-reference to any part of this RFT if applicable.

<Response>

Schedule 3. Pricing and Related Factors

Response Item No. 3.1 Prices

3.1.1 General Guidance

The Tendered Prices must:

- a) be in Australian dollars.
- b) include all costs associated with the preparation and submission of the Tender.
- c) cover all costs of performing the Standing Offer agreement.
- d) take account of the Management Fee, which is not to be shown as a separate charge.
- e) include all applicable taxes, duties and charges.
- f) be provided in consideration of the Price Basis and Price Variation Method to be completed at Response Item No. 3.3.

The prices should be supported with statements that demonstrate why the prices are favourable in comparison to prices paid by other customers who purchase similar goods and services.

3.1.2 Completing the Price Schedules

The Tendered Prices are to be provided in the format and structure shown in the example Price Schedules shown below. The Price Schedules should be submitted in an electronic form (in either Microsoft Word or Excel).

Responses must be provided for each of the column headings contained in the example Price Schedules. You should include clear cross-references in the Price Schedule to other parts of your tender that provide clarifications, explanations, conditions and other related information to support the pricing.

The Price Schedules should be completed so that each of the following are priced separately as a minimum:

- a) The price of each product and accessory able to be separately Ordered as a discrete item. The price is to include the cost of delivery free-into-store throughout NSW for a single unit.

- b) The price for each consumable, replacement part etc. able to be separately Ordered as a discrete item. The price is to include the cost of delivery free-into-store throughout NSW for a single unit.
- c) Labour rate prices to be applied for each of the service types to be provided. These are prices for the service types that are able to be separately Ordered (and are not provided free of charge to Customers).
- d) Travel, Accommodation and other related charges to be applied for each of the service types to be provided. These are service types able to be separately Ordered and for which prices have not been included in the product prices (and are not provided free of charge to Customers).
- e) Prices for product rental alternatives.
- f) Other prices and charges proposed to be applied.

3.1.3 Example Price Schedule for Products/Accessories/Parts/Consumable Items etc.

Product Model	Product Brand Name	Product Code	Manufacturer's Name	Order Unit	Price (excl. GST)	GST	Total Price	Imported content of product (%) (see note below)
GENERAL WARD BED (Minimum Bed Configuration)								
				Each				
GENERAL WARD BED (Optional Accessories)								
				Each				
GENERAL WARD BED (Parts/Consumable items)								

Note: Tenderers are to identify the imported (non-Australian and New Zealand) content in the Price Schedule and provide details to substantiate the imported or local content claimed. 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.

3.1.4 Example Price Schedule for Services and related charges

Service Description	Labour category description	Name of Service Provider	Order Unit. (i.e. hourly rates)	Price (excl. GST)	GST	Total Price
SERVICING, MAINTENANCE, REPAIRS AND TECHNICAL SUPPORT SERVICES						
PRODUCT USE TRAINING						

Response Item No. 3.2 Pricing Scenarios and Lump Sum estimates

3.2.1 Pricing Scenarios for Volume/Bulk Purchase Discounts and Sole Supplier arrangements

Tenderers are to provide details in response to the following pricing-effect scenarios. The scenarios are both less complex pricing discount scenarios for bulk purchases of beds only, and more complex lump-sum pricing scenarios for the bulk purchases of beds together with the associated after-sales services. The responses will be used to assist with pricing comparisons during tender evaluation, and may be used as a basis to agreeing on the final pricing information to be incorporated into an Agreement.

- Pricing Scenario 1 –** Pricing-effect scenario (discounts etc.) based on a volume supply of between 2 and 10 beds (of minimum configuration), ordered by a Customer for a single facility, and exclusive of any chargeable after-sales services.
- Pricing Scenario 2 –** As above, but with the volume supply of between 10 and 50 beds (minimum configuration).
- Pricing Scenario 3 -** As above, but with the volume supply of over 50 beds (minimum configuration), and with a phased delivery program.
- Other Pricing Scenarios -** Tenderers are also to provide details of pricing scenarios which expand on the above three scenarios to also include lump-sum pricing estimates for the different scopes of after-sales services to be provided to Customers for the beds in-service.
- Tenderers should also provide details of pricing scenarios which expand on the above scenarios – but on the basis as a sole supplier to an Area Health Service and as a sole supplier across NSW Health.

<Responses>

3.2.2 Settlement Discounts

Tenderers are to indicate any discounts that are available for early payment:

The Tender Prices are subject to a settlement discount of _<Response>_ for payment within _<Response>_ days from the date of receipt of a correctly supported invoice.

<Response>

3.2.3 Other Discounts

Tenderers may indicate the details of any other Discounts offered.

<Response>

Response Item No. 3.3 Price Basis and Price Variation Method

3.3.1 Price Variation

The Tender Prices are to be offered on the basis that Prices are variable annually at the end of each 12 month term of the Standing Offer Agreement. Price variations are for any changes in costs to the Contractor (occurring after the start date of the Agreement) for rates of exchange and/or labour costs and/or material costs. Price variations are subject to the submission of a price review request with accompanying supporting documentation justifying the variation requested. For the purposes of establishing price variation formulae, the tenderer must nominate the following in the table provided below:

Labour Costs - If any portion of the Prices will be variable based on changes to your Labour costs, indicate: (i) the *Category of Labour* primarily employed on the Standing Offer, (ii) the *Weekly Award Rate of Pay (AW)* (or the *EAHR if selected by you*) to be used as the basis for future price variation requests, and (iii) the proportion of the Price subject to variation by Labour costs.

Materials Costs - If any portion of the Prices will be variable based on changes to your Material costs, indicate: (i) the relevant *Australian Bureau of Statistics (ABS) Materials Cost Index* (or other Materials Cost Index that is appropriate, independent, consistently reported over time, published regularly and readily available) to be used as the basis for future price variation requests, and (iii) the proportion of the Price subject to variation by Material costs.

Exchange Rate Costs - If any portion of the Prices will be variable based on changes to your costs for Exchange Rate fluctuations, indicate (i) the *Foreign Currency*, (ii) and exchange rate to be used as the basis for any future price variation request (being the relevant published selling rate 7 days prior to tender Closing Date), and (iii) the proportion of the Price subject to variation by Exchange Rate fluctuations.

Price Component Description:	Cost Index:	Proportion of Price (expressed as a decimal)
LABOUR (Category of Labour (primarily employed on the Standing Offer Agreement)) <Response>	Labour Cost Index (the Weekly award rate of pay, or the Effective Award Hourly Rate (EAHR)) <Response>	Proportion of Price Being the proportion of the Price subject to variation for Labour costs: <Response>
MATERIAL	Materials Cost Index <Response>	Proportion of Price Being the proportion of the Price subject to variation for Material costs: <Response>
EXCHANGE RATE (Name of Foreign Currency eg. US\$, Euro, Stirling etc.) <Response>	Exchange Rate Cost Index (eg. \$A1 = \$US 0.75) <Response>	Proportion of Price Being the proportion of the Price subject to variation for Exchange Rate fluctuations: <Response>
		TOTAL of above must be less than or equal to 1.00

Response Item No. 3.4 Further information

Provide any further information you believe is relevant to the information sought by this Schedule, and cross-reference to any part of this RFT if applicable.

<Response>

Schedule 4. Compliance Statements and Policy

Response Item No. 4.1 Conditions of Contract

Do you agree to be bound by all the conditions contained in Part D of this RFT?

Yes/No

If "No", provide a full statement of all amendments sought, giving reasons.

<Response>

Response Item No. 4.2 Minimum Insurance Requirements

Do you agree to comply with the Minimum Insurance Requirements contained in Part D of this RFT?

Yes/No

If "No", provide a full statement of all amendments sought, giving reasons.

<Response>

Please list the insurances you currently hold, the respective amount (or Limit of Liability) for each insurance policy and their expiry dates.

<Response>

Response Item No. 4.3 Compliance with Code of Practice and Code of Tendering

Have you have read the Code of Practice and Code of Tendering and taken them into consideration in preparing and submitting your Tender?

Yes/No

Response Item No. 4.4 NSW Country Industries Preference Scheme

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

Have you registered with the Country Industry Preference Scheme?

Yes/No

If "Yes", supply Preference Registration Number

<Response>

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

<Response>

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

Yes/No

If "No" explain below

<Response>

Response Item No. 4.5 Export potential and/or import replacement

Specify below:

- a) How this project will enable development or extend your level of export;
- b) Dollar value of net exports that may be generated by this project;
- c) Value and nature of goods and services to be sourced locally, and
- d) Dollar value of imported goods and scope for import replacement.

<Response>

Response Item No. 4.6 Small to Medium Enterprise (SME) involvement

Provide details of the likely percentage of the value of the Deliverables to be provided under the Standing Offer agreement that will be sourced from SMEs and of the activities that will be carried out by SMEs under the Standing Offer agreement.

<Response>

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

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

<Response>

Response Item No. 4.7 Further information

Provide any further information you believe is relevant to the information sought by this Schedule, and cross-reference to any part of this RFT if applicable.

<Response>

END PART C

PART D

DEED of AGREEMENT

between

NSW State Contracts Control Board

and

<.....Contractor Name.....>

for

**CONTRACT 217 MEDICAL FURNITURE
(General Ward Beds)**

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THIS AGREEMENT is made on the _____ day of _____ 2005

BETWEEN

NEW SOUTH WALES STATE CONTRACTS CONTROL BOARD for and on behalf of the Crown in right of the State of New South Wales, of McKell Building, 2-24 Rawson Place, Sydney, in the State of New South Wales ("the Principal")

AND

[.....name of contractor.....] of [.....address.....] in the State of [.....] ("the Contractor")

BACKGROUND

- A. The Principal issued the Request for Tender for the supply of the Deliverables.
- B. The Contractor submitted a Tender that was accepted by the Principal.
- C. The Principal and the Contractor have agreed to enter a Standing Offer agreement for the supply of the Deliverables in the form of this Agreement.

EXECUTED AS A CONTRACT

SIGNED by the signatory for and on behalf of the Principal but not so as to incur any personal liability, in the presence of the Witness.

Signatory

Name and position of person signing

Witness

Name

SIGNED, by the signatory for and on behalf of the Contractor, in the presence of the Witness:

Signatory (Company Director/Secretary)

Name and position of person signing

Witness (Company Director/Secretary)

Name

NOW THE PARTIES AGREE:

PART D1 – Interpretation Provisions

2 Interpretation

2.1 Definitions

“Agreement” means this Deed of Agreement including the Schedules.

“Applicable Discount” means an applicable discount offered in the Tender, including in the Price Schedule to the Tender, as varied from time to time in accordance with the Agreement, or any other applicable discount which may be offered by the Contractor from time to time.

“Circumstances Beyond the Control of the Contractor” include:

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

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

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

“Contract Material” means:

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

“Contract Price” means the total amount payable by the Customer to the Contractor for the Deliverables ordered under a Customer Contract and calculated in accordance with clause 16.

“Contractor” means the corporation referred to in item 1 of Schedule 1 who will provide the Deliverables.

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

- (a) insolvency;
- (b) the Contractor indicates that it does not have the resources to perform the Agreement or any Customer Contract;
- (c) an application for winding up is made and not stayed within 14 days;
- (d) a winding up order is made;

- (e) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed;
- (f) a mortgagee enters the possession of any property of the Contractor;
- (g) notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (h) any actions of a similar effect are taken.

“Customer” means an eligible entity that places an Order with the Contractor under the Standing Offer agreement and includes:

- (a) a NSW Health area health service;
- (b) a public sector agency of any Australian State or Territory or the Commonwealth;
- (c) a local government agency;
- (d) a charity or other community non-profit organisation;
- (e) a public or private college or university;
- (f) a contractor to a public sector agency (but only in respect of things done as such a contractor);
- (g) a Nominee Purchaser provided that it satisfies the requirements of Part D (Deed of Agreement); and
- (h) such other entities which the Principal may from time to time in its discretion, determine through a customer registration process.

“Customer Contract” means the contract that is made between the Contractor and a Customer by means of the placing of an Order by the Customer with the Contractor.

“Deliverables” means the goods and/or services to be supplied by the Contractor in accordance with this Agreement and itemised in the Price Schedule as amended:

- (a) by any document forming Schedule 3 to this Agreement; and
- (b) from time to time in accordance with this Agreement.

“Guaranteed Delivery Time” means the guaranteed time for the supply of the Deliverables specified in the Tender and agreed by the Principal, or such earlier time as may be agreed by the Customer and the Contractor in respect of a particular Order.

“Intellectual Property” includes copyright, patent, trademark, design, semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before or after the date of this Agreement.

“Management Fee” means the fee payable by the Contractor to the Principal in accordance with clause 6.11.

“Nominee Purchaser” means a contractor to a public sector agency, nominated by the public sector agency to be authorised to place Orders under Standing Offer Agreements for things done as such a contractor and registered by State Procurement.

“NSW Department of Commerce Customer Number” means the identification number issued by State Procurement to a Customer for the purposes of the Customer entering into the Customer Contract.

“Order” means a written request by a Customer for the supply of any or all of the Deliverables.

“Payment Period” means each period nominated in item 6 of Schedule 1 or where this Agreement expires or is terminated before the conclusion of one such period, the period up to and including the date of expiration or termination.

“Parties”, where used in relation to the Agreement, means the Principal and the Contractor, and where used in relation to a Customer Contract, means the Customer and the Contractor.

“Price” means the price payable for a Deliverable as set out in the Price Schedule and includes a price expressed as a lump sum or a rate per unit of quantity.

“Price Schedule” means the Price Schedule attached to the Tender and any variations to the Price Schedule made by the documents forming Schedule 3 to this Agreement and/or variations made in accordance with this Agreement.

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

“Schedule” means a schedule to this Agreement.

“Specification” means the detailed description of the Deliverables to be provided under this Agreement that is attached as Schedule 2, as amended by any document attached as Schedule 3. In the event of any inconsistency between the Specification and any part of this Agreement, this Agreement will prevail to the extent of the inconsistency.

“Standing Offer” means an agreement under which there is a standing offer for the provision or disposal of goods or services over the period of the agreement, on the order of any Customer for whom the Principal has arranged the contract.

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

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

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

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

“Substantial Breach” means:

- (a) in the case of this Agreement, a substantial breach of a term of this Agreement 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 Agreement):
 - (i) clause 3.4 (Prices for the Deliverables),
 - (ii) clause 3.5 (Price Variations),
 - (iii) clause 3.6 (Best Price),
 - (iv) clause 6.5 (Minimum Insurance Requirements),

- (v) clause 6.10 (Licences and Approvals),
 - (vi) clause 6.11 (Management Fee),
 - (vii) clause 7.3 (The Contractor's Personnel),
 - (viii) clause 8 (Confidentiality),
 - (ix) clause 9 (Copyright and Intellectual Property); and
 - (x) clause 12.2 (Assignment or novation)
- (b) in the case of a Customer Contract, a substantial breach of a term of the Customer Contract, and includes any breach of the following clauses (which will be taken in each case to be a substantial breach of the Customer Contract):
- (i) clause 3.6 (Best Price);
 - (ii) clause 14 (Time for Delivery)

“Tender” means the tender submitted by the Contractor including any accepted variation to the tender, identified in Schedule 3.

“Term” means the period of this Agreement, set out in item 2 of Schedule 1 and any extension of the Term in accordance with clause 2.3.2.

“Warranty Period” means, in relation to a particular Deliverable, the period of warranty of that Deliverable offered in the Tender.

2.2 Rules for interpreting this Agreement

- 2.2.1 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.
- 2.2.2 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 agreement, or a provision of a document or agreement, is a reference to that document, agreement 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.
- 2.2.3 If the Contractor consists of more than one person or corporation, this Contract binds each of them separately and any two or more of them jointly and severally.
- 2.2.4 An obligation, representation or warranty made by the Contractor in the tender and in any contract made pursuant to an acceptance of the tender shall bind each person or corporation separately and jointly and each person or corporation shall alone be responsible for the performance of every obligation, representation or warranty contained in the tender or any contract made pursuant to the tender.
- 2.2.5 A singular word includes the plural, and vice versa.

- 2.2.6 A word which suggests one gender includes the other genders.
- 2.2.7 If a word is defined, another part of speech of that word has a corresponding meaning.
- 2.2.8 The Parties may undertake business by the electronic exchange of information and the provisions of this Agreement will be interpreted to give effect to undertaking business in this manner.
- 2.2.9 Subject to clause 2.2.10, if there is any conflict between the terms and conditions of this Agreement and any provisions of the Schedules, the terms and conditions of this Agreement will take precedence over the Schedules.
- 2.2.10 To the extent that documents in Schedule 3 (Documents notifying the Principal's acceptance) expressly modify or replace clauses of this Agreement or the Specification, those documents will take precedence, in chronological order, over the Agreement or the Specification, as applicable.

PART D2 - Provisions of the Agreement between Principal and Contractor

2 Supply under a Standing Offer for the Term

2.1 Nature of the Agreement between the Principal and the Contractor

- 2.1.1 This Agreement describes the terms and conditions of the Standing Offer between the Principal and the Contractor under which the Contractor agrees with the Principal that it will supply the Deliverables to Customers, as and when Orders are placed, on the terms and conditions of the Customer Contract and subject to this Agreement.
- 2.1.2 This Agreement constitutes the entire agreement between the Parties. Any prior arrangements, agreements, representations or undertakings are superseded. No notification or alteration of any clause of this Agreement will be valid except in writing signed by both Parties.
- 2.1.3 The Parties agree that any Customer, although not a Party to this Agreement, may take the benefit of, and seek to enforce, this Agreement in its own name.

2.2 Formation of Customer Contracts

- 2.2.1 The Contractor agrees that each time a Customer places an Order a separate Customer Contract is formed on the date of receipt of the Order by the Contractor. The terms and conditions of the Customer Contract are those appearing in:
- (a) Part D1 of this Agreement, including any Schedules referred to in Part D1;
 - (b) Part D3 of this Agreement;
 - (c) the Order (including any Additional Conditions agreed); and
 - (d) any variations of the Customer Contract as may be made in accordance with that contract.

2.3 Term

- 2.3.1 This Agreement commences and expires on the dates specified in item 2 of Schedule 1, unless sooner determined in accordance with this Agreement.
- 2.3.2 The Principal may in its sole discretion extend this Agreement for the periods specified in item 2 of Schedule 1.

3 Deliverables and Pricing

3.1 List of Deliverables

- 3.1.1 The list of Deliverables offered by the Contractor is contained in the Price Schedule.

3.2 Variation of Deliverables offered

- 3.2.1 The Contractor must notify State Procurement in writing as soon as practicable of any variation to the description of a Deliverable offered in the Price Schedule.
- 3.2.2 A variation under clause 3.2.1 may include a variation to the description of the item number, name or Specification of the Deliverable but excludes a variation:

- (a) to the Price of the Deliverable;
- (b) that modifies or upgrades the Deliverable; or
- (c) that introduces a new Deliverable to the Price Schedule.

3.2.3 State Procurement will notify the Contractor of its acceptance or rejection of the variation to the description of a Deliverable. If the variation is accepted, it shall be taken to be incorporated in the Price Schedule.

3.3 Improvements to Deliverables

3.3.1 Where the Contractor improves a Deliverable (whether as a result of technological advances, revised Australian Standards or Customer requirements) the Contractor will submit a request in writing to State Procurement to replace the Deliverable listed in the Price Schedule with an improved version of the Deliverable. The request will consist of:

- (a) a full description of the current Deliverable;
- (b) the current sales figures for the current Deliverable;
- (c) if other Deliverables are used in conjunction with the Deliverable;
- (d) a comparison table listing the characteristics of the Deliverable and the characteristics of the improved version; and
- (e) a description of the benefits that would accrue to Customers should the improved version be included in the Agreement.

3.3.2 Upon receipt of the request, the Principal will have the sole discretion as to one or more of the following actions to be taken:

- (a) evaluate the improved version (including the institution of trials of the improved version);
- (b) invite a supplementary tender for the improved version from any interested tenderers; or
- (c) decline the request for inclusion of the improved version in this Agreement.

3.4 Prices for the Deliverables

3.4.1 Subject to clauses 3.5 and 3.6 the price of a Deliverable to be supplied under a Customer Contract shall be the Price for that Deliverable, less any Applicable Discount.

3.4.2 Clause 3.4.1 does not prevent the Contractor from offering, or the Contractor and Customer from negotiating, to reduce the Price or increase the discount for a particular Deliverable provided that the Price or discount is consistent with clause 3.6.

3.5 Price Variations

3.5.1 The Contractor may not vary the Price of a Deliverable except in accordance with the Price mechanism selected in the Tender.

3.5.2 The Contractor must apply in writing to the Principal to vary Prices in the Price Schedule. Sufficient documentation to justify applications for Price variation must accompany the application.

- 3.5.3 Subject to the Contractor having provided the Principal with sufficient documentation, the Principal will approve or reject in writing a price variation within six (6) weeks of lodgement of the application.
- 3.5.4 Varied prices shall apply to all Customer Contracts made on or after the date upon which the Principal accepts the price variation. No price variation shall be applied retrospectively.
- 3.5.5 Where the Price variation is accepted, the Price Schedule will be taken to include the varied Price. The varied Price becomes the basis from which any future applications for Price variations will be calculated.
- 3.5.6 The provision of Deliverables under a Customer Contract shall not be withheld or disrupted by formalities or disputes associated with the variation of a Price.
- 3.5.7 The Principal reserves the right to delete a Deliverable from the Price Schedule or terminate this Agreement if it considers a Price variation application to be unreasonable.
- 3.5.8 Notwithstanding a variable price basis for the Agreement, the Contractor may apply in writing to the Principal to decrease its Prices at any time without any supporting documentation.

3.6 Best Price

- 3.6.1 The Price for a Deliverable taking into account any Applicable Discounts on the Price must be no less favourable than the price paid by any other purchaser of substantially similar goods or services ("the similar goods or services") to the Contractor.
- 3.6.2 Where the Contractor offers more favourable prices to any other purchaser of similar goods or services, it must make the more favourable price available to all Customers entitled to the benefit of this Agreement.
- 3.6.3 A failure to comply with this clause will entitle the Principal to terminate this Agreement in accordance with clause 10.1.
- 3.6.4 If a Customer has paid a Price for a Deliverable during a period when the Contractor has offered a more favourable price, then the Contractor agrees to reimburse the Customer the difference between the amount represented by the Price less any Applicable Discount that has been paid by the Customer and the more favourable price.

3.7 Maximum Ceiling Price

- 3.7.1 The Price for each Deliverable in the Price Schedule is a maximum ceiling Price which cannot be exceeded without the Contractor applying for a Price variation under clause 3.5 of this Agreement.
- 3.7.2 Where the Contractor offers a temporary or periodical price special that is lower than a Price specified in the Price Schedule it will make available that lower price to all Customers without prior notification to the Principal. Such prices do not apply to permanent price decreases which must be submitted to the Principal for its approval in accordance with clause 3.5 of this Agreement.

3.8 Goods and Services Tax

- 3.8.1 In this clause and Agreement:

"Consideration", "Tax Invoice", "Taxable Supply" and "Supply" have the same meaning as provided for in the GST Law.

"GST" is a goods and services tax and has 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 based on those Acts.

- 3.8.2 The Contractor must hold an Australian Business Number (ABN) and be registered for GST.
- 3.8.3 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.
- 3.8.4 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.
- 3.8.5 Any contract entered into by a Party to this Agreement 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 Agreement, must include a clause in equivalent terms to clause 3.8.3.
- 3.8.6 The Parties agree that this clause will apply to the Management Fee payable by the Contractor to the Principal.

4 Customers

4.1 Contractor must supply to all Customers

- 4.1.1 If a Customer, other than a Nominee Purchaser, places an Order with the Contractor during the Term, the Contractor must supply the required Deliverables to the Customer on the terms and conditions of the Customer Contract and in accordance with this Agreement.

4.2 Nominee Purchasers

- 4.2.1 Subject to clause 4.2.2, the Contractor must satisfy any Order placed under this Agreement by a Nominee Purchaser, provided that the Nominee Purchaser provides in its order:
 - (a) its State Procurement Registration Number;
 - (b) the identity of the Nominating Agency;
 - (c) the contract number, name and location of the contract in respect of which the purchase is being made; and
 - (d) a statement saying that the goods or services ordered are related to carrying out its obligations under a contract with a public sector agency.
- 4.2.2 If at any time during the Term of this Agreement, the Contractor wishes to restrict its dealings with a Nominee Purchaser, the Contractor shall so request in writing to the Principal. The Principal may approve the request if there are genuine commercial reasons for the Contractor's request.
- 4.2.3 Where the Principal does not approve a request of the Contractor under clause 4.2.2 and the Contractor refuses to deal with a Nominee Purchaser, the Principal may terminate this Agreement under clause 10.
- 4.2.4 If the Contractor makes a supply under the Agreement to an entity purporting to be a Nominee Purchaser, the Contractor is taken to be satisfied that the supply is properly made under this Agreement.

5 Orders

5.1 No Assurance of Orders and Non-Exclusive supply

5.1.1 This Agreement does not:

- (a) imply that the Contractor is the exclusive provider of the Deliverables to the Customer; or
- (b) oblige the Customer to place an Order for the Deliverables with the Contractor.

5.1.2 The Contractor acknowledges that the Principal may appoint other suppliers under a Standing Offer agreement to supply the Deliverables, at any time and from time to time, and that the Contractor will make no objection to such appointment.

5.2 Supply through dealers and distributors

5.2.1 The Contractor may supply the Deliverables through a dealer or distributor of the Contractor approved by the Principal from time to time and identified in Schedule 1 ("Approved dealer or distributor") on the terms of this clause.

5.2.2 The Contractor must make the approved dealer or distributor aware of this Agreement and the standard terms and conditions of Customer Contract and of this clause.

5.2.3 The approved dealer or distributor must offer to supply under the terms and conditions of the Customer Contract and otherwise on terms that enable the Contractor to comply with this clause.

5.2.4 The Contractor guarantees the dealer or distributor's performance under the Customer Contract as if the Customer Contract had been entered into by the Contractor.

5.2.5 The Contractor must ensure the approved dealer or distributor has an adequate system in place to supply sales information to the Contractor so as to enable the Contractor to comply with its own obligations under this Agreement to supply sales information to the Principal for calculation of the Management Fee.

5.2.6 The Contractor must ensure the approved dealer or distributor supplies the Contractor with the above sales information.

5.2.7 The Contractor must obtain the approved dealer or distributor's agreement to the Principal at its own cost taking such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the sales information supplied by the approved dealer or distributor to the Contractor.

5.3 Supply through Sub-contractors

5.3.1 The Contractor may sub-contract part or all of a Customer Contract to a sub-contractor approved by the Principal from time to time and identified in Schedule 1 ("approved sub-contractor") on the terms of this clause.

5.3.2 The Contractor will continue to be bound by, and responsible for performance of, the Customer Contract notwithstanding that part or all of it may have been sub-contracted.

5.3.3 The Contractor must make the approved sub-contractor aware of the terms and conditions of the Customer Contract and this clause.

5.3.4 The terms and conditions of the sub-contract must be consistent with the Customer Contract.

- 5.3.5 The Principal may, without incurring liability, withdraw its approval of a sub-contractor if in its reasonable opinion the sub-contractor is not meeting the requirements of a Customer Contract. The Principal will notify the Contractor and the Customer in writing that its approval is withdrawn and the Contractor will immediately terminate its arrangement with the sub-contractor.
- 5.3.6 To the extent that loss is not attributable to the Principal's withdrawal of approval of a sub-contractor:
- (a) 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
 - (b) the Contractor will indemnify and release the Customer from any liability or loss resulting from the acts or omissions of any sub-contractor.
- 5.3.7 The indemnity given under this clause may be enforced by the Customer to the relevant Customer Contract as if it was itself a party to this Agreement.

6 Specific Obligations of the Contractor

6.1 Contractor to Fulfil all Orders

- 6.1.1 The Contractor must fulfil all Orders during the Term in accordance with this Agreement and the Customer Contract.
- 6.1.2 If quantities or values of the Deliverables are described as 'approximate' in the Specification, they are an estimate only and the Customer is not required to take or accept the estimated quantities or values.
- 6.1.3 The Customer may place an Order for any one type or item of the Deliverables either at one time or in instalments or in such quantities as may be required from time to time.

6.2 Conflict of Interest

- 6.2.1 The Contractor promises that, to the best of its knowledge, no conflict of interest of the Contractor, its employees, agents or sub-contractors exists or is likely to arise in the performance of its obligations under the Agreement.
- 6.2.2 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.
- 6.2.3 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 Agreement.
- 6.2.4 The Principal may terminate the Agreement in accordance with clause 10.1 if in its view a conflict of interest exists which prevents the proper performance of the Agreement.

6.3 Mistakes in Information

- 6.3.1 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 the Principal may have approved that material or Information.

6.4 Contractor's Obligation to supply Deliverables at Prices in the Price Schedule

- 6.4.1 The Contractor must supply the Deliverables on the basis of the Prices in the Price Schedule except where provided in this Agreement. The Prices, except as specifically provided, are inclusive of all the costs and expenses that the Contractor incurs in the supply of the Deliverables.

6.5 Minimum Insurance Requirements

- 6.5.1 The Contractor must hold and maintain, and must ensure that all subcontractors are beneficiaries under or otherwise hold and maintain, the following insurances for the Term, or for such other period as may be specifically required by this Agreement for the particular policy:

- (a) a broad form liability policy of insurance which includes:
 - (i) public liability insurance for at least the amount specified in item 5 of Schedule 1 in respect of each claim; and
 - (ii) products liability insurance for at least the amount specified in item 5 of Schedule 1 for the total aggregate liability for all claims arising out of the Contractor's products for the period of cover.
- (b) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees.

- 6.5.2 All policies of insurance must be effected with an insurer approved by the Principal (which approval will not be unreasonably withheld).

- 6.5.3 The Contractor must ensure that each policy is in effect for the Term of this Agreement or such other period as required by the Principal.

- 6.5.4 All policies must, apart from workers compensation and professional indemnity insurance must:

- (a) note the interest of the Principal and the State;
- (b) not exclude liability assumed by the Contractor under this Agreement.

- 6.5.5 The Contractor shall, and shall ensure sub-contractors, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Agreement and shall ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.

- 6.5.6 The Contractor must, when requested in writing by the Principal, supply proof that all insurance policies required by this Agreement are current.

- 6.5.7 If the Contractor fails to comply with clauses 6.5.1, 6.5.4, or 6.5.5 the Principal:

- (a) may effect and maintain that insurance and pay the necessary premiums; and
- (b) may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance.

- 6.5.8 Where the Contractor is insured under its parent company's insurance policy, the parent company's insurance policy must clearly indicate that it applies and extends coverage to the Contractor.

- 6.5.9 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

6.6 General Indemnity

- 6.6.1 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 Agreement; or
 - (b) any breach of this Agreement or the confidentiality deeds required by this Agreement.
- 6.6.2 The Contractor's liability in respect of, and indemnity given in, clause 6.6.1 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.

6.7 Compliance with Laws and Standards

- 6.7.1 The Contractor must, in carrying out this Agreement, comply with:
- (a) all applicable Statutory Requirements;
 - (b) the codes, policies, guidelines and Australian standards listed in Item 4 of Schedule 1 or any other codes, policies, guidelines and Australian standards specified in writing by the Principal to the Contractor; and
 - (c) Where a particular Australian or other Standard has been agreed between the Contractor and the Principal, and that Standard is revised, the Contractor must submit evidence of compliance with the revised Standard within a reasonable period of time.
- 6.7.2 Where Therapeutic goods are supplied to a Customer, the Contractor must ensure that these goods are contained on the Australian Register of Therapeutic Goods (ARTG), unless exempted, in accordance with the Therapeutic Goods Act 1989 (Cth). The Contractor must comply in all respects with the Uniform Recall Procedure for Therapeutic Goods as called for by the Therapeutic Goods Administration. The Contractor must also comply with the Therapeutic Goods Order 37 for the labelling of therapeutic goods.

6.8 Occupational Health Safety & Rehabilitation

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

6.9 The Contractor's On-Costs

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

6.10 Licences and Approvals

- 6.10.1 The Contractor must obtain at its own cost all licences, approvals and consents necessary to perform this Agreement, including any licences listed below or otherwise offered in the Tender.

6.11 Management Fee

- 6.11.1 The Contractor must pay to the Principal a Management Fee in accordance with this clause.
- 6.11.2 The Management Fee is the GST-exclusive value of the Deliverables invoiced to a Customer, multiplied by the percentage shown in Item 5 of Schedule 1 (the Management Fee Rate), plus the GST payable on this amount.
- 6.11.3 The amount of the Management Fee will not under any circumstances be shown as a separate charge in any quote or invoice to a Customer.
- 6.11.4 The Contractor agrees that the Principal may treat all purchases of Deliverables by Customers as Orders under this Agreement, whether or not a NSW Department of Commerce Customer Number is quoted, unless the Contractor can provide evidence, to the satisfaction of the Principal, that the purchase was made under some other contract between that Customer and the Contractor.
- 6.11.5 The Contractor agrees that the Management Fee payable has been allowed for in the Prices specified in the Price Schedule together with all costs associated with the calculation and proving payment of the Management Fee.
- 6.11.6 At the end of each Payment Period, the Principal shall forward to the Contractor a request for a Report ("The Sales Report") which requires the Contractor to report the:
- (a) total amount, exclusive of GST, all authorised customers are liable to pay in respect of all items invoiced by the Contractor or its approved dealers or distributors to Customers in respect of the Agreement; and
 - (b) the sales information as set out in Item 7 of Schedule 1 ("the sales information"), or as the Principal requests in writing from time to time.
- 6.11.7 Upon receipt of a request for a Sales Report, the Contractor shall within 30 days complete the Sales Report for the relevant Payment Period and return the same to the Principal.
- 6.11.8 The Principal shall then compile a tax invoice based on the Sales Report and forward that invoice to the Contractor. The Contractor shall then forward payment to the Principal within 30 days of the invoice date for each Payment Period.
- 6.11.9 The tax invoice will set out the Management Fee payable to the Principal and the GST payable on the Management Fee.
- 6.11.10 The Principal may alter the above procedure for the collection of the Management Fee as advised in writing and from time to time during the Term.
- 6.11.11 Where the Contractor considers that an accounting adjustment to the amount of the Management Fee paid or payable during a Payment Period is required, it should consult with the Principal and the Parties may agree on the amount of any adjustment.
- 6.11.12 Where the Contractor has not issued any invoice to a Customer during a relevant Payment Period the Contractor must provide, within 30 days of the conclusion of that Payment Period, a report stating that no Deliverables were provided by the Contractor to any Customer during the Payment Period.
- 6.11.13 The Contractor must set up and maintain a system which:

- (a) in the Principal's reasonable opinion, is suitable for monitoring by the Principal of the Orders placed with and invoices issued by the Contractor or its approved dealers or distributors and for the provision of the sales information; and
 - (b) accommodates the use of the Customer's corporate credit card if the Parties have agreed to use that card for the purchases of Deliverables.
- 6.11.14 If requested in writing by the Principal, the Contractor must within 30 days after the end of the Contractor's financial year, provide to the Principal a certificate prepared by an independent auditor confirming the accuracy of all sales information provided by the Contractor as to Deliverables sold or provided and the Management Fee paid or payable.
- 6.11.15 The Principal may at its own cost, take such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the amount of the Management Fee due to the Principal by the Contractor.
- 6.11.16 If the measures taken in clause 6.11.14 and 6.11.15 verify that the Contractor has not paid the Management Fee that is actually due to the Principal, the Contractor must:
 - (a) remit the difference between the Management Fee paid to the Principal and the Management Fee actually due to the Principal within 30 days of a direction from the Principal; and
 - (b) at the discretion of the Principal, reimburse the Principal's costs and expenses of the measures taken (including any auditor's fees) under clause 6.11.15 to the Principal.
- 6.11.17 The Contractor shall during the Term of this Agreement and for a 12 month period after the Agreement has expired or is terminated, keep secure all relevant documents and Information for the purposes of this clause and give any auditor appointed by the Principal access to those documents and Information at all reasonable times.
- 6.11.18 A breach of this clause will give rise to grounds for termination in accordance with clause 10.1 including where the Contractor has not for three consecutive Payment Periods:
 - (a) provided the Principal with the sales information it requires; or
 - (b) paid the Management Fee.

6.12 Keeping of Records and Access to Records

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

6.13 The Principal's Material and Contract Material

- 6.13.1 The Contractor must keep secure the Principal's Material and the Contract Material.
- 6.13.2 The Contractor must, within 7 days of completion or termination of this Agreement, or such other period as agreed to in writing by the Principal, return to the Principal any of the Principal's Material and the Contract Material it has in its possession.
- 6.13.3 The Contractor agrees that it will not make any alteration to the Principal's Material or the Contract Material without the prior written consent of the Principal.

- 6.13.4 Clause 6.13.2 does not prevent the Contractor from retaining a copy of the Contract Material for its records.

6.14 Approved Dealers, Distributors and Sub-Contractors Information

- 6.14.1 The Contractor must notify the Principal of any change in the Approved Dealer and Distributor Information, the Approved Sub-Contractor Information and the Contractor Information (contained in Schedule 1) as and when it occurs.
- 6.14.2 The Contractor must provide this information in any manner and format requested by the Principal.

6.15 Provision of Catalogue Information for E-commerce Initiatives

- 6.15.1 From time to time the Principal may request the Contractor to supply information in the nature of catalogue information, for use in e-commerce initiatives in NSW Government contracting.
- 6.15.2 The Contractor must promptly supply any such information that is reasonably requested by the Principal in the format, and using the method of delivery, specified by the Principal at the time of the request.
- 6.15.3 The Contractor consents to the use of such information, including any personal information, in any catalogue created by NSW Department of Commerce to facilitate e-commerce in NSW Government contracting.

7 Performance Monitoring and Exchange of Information

7.1 Monitoring of Performance

- 7.1.1 The Contractor must meet with the Principal from time to time, as reasonably directed by the Principal, to evaluate and monitor performance of this Agreement (including Customer Contracts) by the Contractor on the basis of the criteria listed below or otherwise as agreed by the Parties:
- (a) Quality of good/service delivered
 - (b) Sales Performance
 - (c) Management Fee management and reporting compliance
 - (d) Management and suitability of personnel
 - (e) Contract administration and management
 - (f) Management of employees and industrial relations
 - (g) OHS&R Management
- 7.1.2 State Procurement will make available to the Contractor copies of any performance reports prepared with regard to the Contractor, and will give the Contractor the opportunity to seek a review of each such report by a senior officer of State Procurement if required.
- 7.1.3 The Principal may terminate this Agreement in accordance with clause 10.1 if the Contractor is not performing the Agreement to the reasonable satisfaction of the Principal including where the:
- (a) sales of the Contractor are minimal, or

(b) total sales returns of the Contractor are relatively minimal under the Agreement.

7.1.4 The Contractor will be required to provide to State Procurement, on a quarterly basis, electronic returns (in Microsoft Excel) showing the total units of products sold. Nil sales must also be reported. This information is in addition to the quarterly Management Fee return and should be forwarded separately.

7.2 Exchange of information between government agencies

7.2.1 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 Agreement, or the Contractor's financial position.

7.2.2 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.

7.2.3 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).

7.2.4 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.

7.3 The Contractor's personnel

7.3.1 The Contractor warrants that all personnel engaged in the provision of the Deliverables are appropriately qualified, competent and experienced.

7.3.2 The Contractor must employ only such persons:

- (a) who are skilled and experienced in the provision of the Deliverables;
- (b) who hold all necessary licences, permits and authorities; and
- (c) whose standards of workmanship are entirely suitable for the supply of the Deliverables and the requirement of this Agreement.

7.4 Contractor to establish necessary facilities

7.4.1 The Contractor must maintain all facilities necessary for the proper and effective conduct and management of all its obligations under this Agreement.

7.5 Access to the Contractor's premises

7.5.1 The Contractor must at all reasonable times permit officers authorised by the Principal to have access to the premises of the Contractor and where necessary and where requested by the Principal arrange for access to premises of any sub contractors engaged by the Contractor.

8 Confidentiality

8.1 General Requirements

- 8.1.1 Subject to clause 8.1.2, the Contractor must not disclose any Confidential Information in connection with this Agreement to any person other than the Principal without first obtaining the written consent of the Principal.
- 8.1.2 The Contractor may disclose the Confidential Information to its officers, employees and agents where the disclosure is essential to carrying out their duties for the purposes of this Agreement.
- 8.1.3 This clause does not affect the Contractor's obligation to disclose any Confidential Information that is required to be disclosed by law.

9 Copyright and Intellectual Property

9.1 Indemnity

- 9.1.1 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 Deliverables or otherwise.
- 9.1.2 The Contractor agrees to indemnify and keep indemnified the Principal (which term includes in this clause, any Customer, 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.
- 9.1.3 The Principal may take legal proceedings including injunctive proceedings against the Contractor if there is any actual, threatened or suspected breach of clause 9.1.1 despite the provisions of clause 11.
- 9.1.4 The Contractor acknowledges that, in the event of a breach of clause 9.1.1, the Principal may terminate this Agreement in accordance with clause 10.1 without prejudice to any accrued rights or remedies of the Principal.
- 9.1.5 In the event of any claim being made or brought against the Principal in respect of any breach or alleged breach by the Contractor of any Intellectual Property rights, the Principal will notify the Contractor. The Contractor will, with the reasonable assistance, if required, of the Principal, but at the Contractor's sole expense, conduct all negotiations for the settlement of such claims or any litigation that may arise in connection with the claim. If the Contractor fails to conduct such negotiations or settlement the Principal may direct Customers to suspend payment of any money due to the Contractor under the Agreement until such claim has been satisfied, settled, or withdrawn.

10 Termination

10.1 Termination for cause

- 10.1.1 Without prejudice to its rights at common law, the Principal may immediately terminate this Agreement, in whole or in part, by written notice to the Contractor ("Notice of Termination for Cause"):
 - (a) where the Contractor makes any statement, fact, information, representation or provides material in the Tender which is false, untrue, or incorrect in a way which materially affects the Agreement;

- (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 Agreement that is not capable of remedy;
- (d) where the Contractor commits a Substantial Breach of the Agreement in a manner that is capable of remedy and does not remedy the breach within 14 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 Agreement or subcontracts the Customer Contract except in accordance with this Agreement;
- (f) in the case of the Contractor's Insolvency;
- (g) where the Contractor has not for three consecutive Payment Periods issued any invoice to a Customer or received any Order; or
- (h) If in the Principal's view a conflict of interest exists for the Contractor which prevents the proper performance of the Agreement.

10.1.2 If the Principal terminates this Agreement for cause the Principal may:

- (a) contract with any other person to complete the provision of the Deliverables including but not limited to any Order remaining to be filled;
- (b) deduct loss or damages arising from or in connection with the termination, including any loss or damages incurred by a Customer under any Customer 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 Agreement or any Customer Contract); and
- (c) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to the Principal.

10.1.3 The Principal's termination under this clause will not affect any Customer Contract unless the context requires it.

10.2 Termination for the Principal's convenience

10.2.1 The Principal may terminate this Agreement 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.

10.2.2 The Principal's termination under this clause will not affect any Customer Contract unless the context requires it.

10.2.3 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 Agreement and its termination.

- 10.2.4 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 Agreement by the Principal.
- 10.2.5 The Contractor must, wherever possible, include in all sub-contracts and supply agreements an equivalent provision to this clause 10.2.

11 Issue Resolution

11.1 General

- 11.1.1 In order to resolve any conflicts or issues between the Parties promptly and to the satisfaction of the Parties, the issue resolution process stated below will be followed in this order until an issue is resolved:
- (a) Amicable Resolution (clause 11.2);
 - (b) Expert Determination (clause 11.3)

11.2 Amicable Resolution

- 11.2.1 Either Party may give notice to the other Party of an issue, including a dispute or difference, ("the Issue Notice") about the meaning or effect of the Agreement or about any matter arising under or out of the Agreement. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.
- 11.2.2 If the Party giving the Issue Notice is the Contractor, and this issue has arisen under the Agreement, it must give the Issue Notice to the Principal.
- 11.2.3 If the Party giving the Issue Notice is the Principal, it must give the Issue Notice to the Contractor.
- 11.2.4 The Parties must follow the issue resolution process in this clause before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.
- 11.2.5 If a Party gives an Issue Notice under this clause, each Party will nominate in writing a senior executive who will promptly confer to resolve the issue.
- 11.2.6 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice.
- 11.2.7 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided ("the Referral Notice").
- 11.2.8 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Principal.
- 11.2.9 If the Party giving the Referral Notice is the Principal, it must give the Referral Notice to the Contractor.
- 11.2.10 If a Referral Notice has not been given within 28 days of becoming entitled under clause 11.2.6 then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

11.3 Expert Determination

- 11.3.1 If a Referral Notice is given under clause 11.2, the expert is to be agreed between the Principal and the Contractor. If they cannot agree within 28 days of the Referral Notice, the

expert is to be nominated by the Chief Executive Officer, Australian Commercial Disputes Centre, Sydney.

11.3.2 The expert nominated must be a lawyer unless otherwise agreed. The expert must not be:

- (a) an employee of the Parties;
- (b) a person who has been connected with the Agreement or the Customer Contract as the case may be; or
- (c) a person who the Parties have not been able to agree on.

11.3.3 When the person to be the expert has been agreed or nominated, the Principal, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:

- (a) the issue referred to the expert for determination
- (b) the expert's fees
- (c) the procedure for the determination set out in Schedule 4.
- (d) any other matter which is relevant to the engagement.

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

11.3.5 The procedure for expert determination is set out in Schedule 4.

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

11.3.7 If the expert determines that one Party must pay the other an amount exceeding the amount shown in Item 8 of Schedule 1 (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.

11.3.8 Unless a Party has a right to commence litigation under clause 11.3.7

- (a) the Parties must treat each determination of the expert as final and binding and give effect to it; and
- (b) if the expert determines that one Party owes the other money, that Party must pay the money within 28 days.

11.4 Performance of Agreement during Issue Resolution

11.4.1 The Parties agree to continue performing their obligations under this Agreement while the issue is being dealt with in accordance with this clause 11.

12 Miscellaneous

12.1 Variations to the Agreement

12.1.1 This Agreement may not be varied except in writing signed by both the Principal and the Contractor.

12.2 Assignment or novation

- 12.2.1 The Contractor must not assign or novate this Agreement without first obtaining the prior written consent of the Principal.
- 12.2.2 The Contractor acknowledges that the Principal may make financial checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment or novation.

12.3 Waiver

- 12.3.1 A waiver in respect of a breach of a term of this Agreement 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 Agreement will not be interpreted as a waiver of that term.

12.4 Severability

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

12.5 Notices

- 12.5.1 Notices must be sent to the other Party at the address shown in item 10 of Schedule 1, or the address last notified to the other Party in writing, or in the case of the Contractor, at the Contractor's registered office.
- 12.5.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.
- 12.5.3 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.

12.6 Counterparts

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

12.7 Applicable Law

- 12.7.1 This Agreement 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.

12.8 Rights Cumulative

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

12.9 No agency/no employment/no partnership

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

PART D3 - Standard Provisions of Contract between a Customer and Contractor

13 Provisions of Agreement to apply to the Customer Contract

13.1.1 The following provisions of Part D2 of this Agreement apply to the Customer Contract as if they were repeated in this Part:

- (a) Best Price (clause 3.6);
- (b) General Indemnity (clause 6.6);
- (c) Compliance with laws and standards (clause 6.7);
- (d) Monitoring of Performance (clause 7.1);
- (e) Confidentiality (clause 8); and
- (f) Miscellaneous (clause 12)

provided that in respect of the Customer Contract, "Agreement" and "Principal" wherever appearing in the clauses described above shall be read as "Customer Contract" and "Customer" respectively.

14 Time for delivery

14.1 Punctual Delivery

14.1.1 The Contractor must deliver the Deliverables within the relevant Guaranteed Delivery Time.

14.1.2 As soon as practicable after becoming aware of any matter which is likely to change or which has changed the time for delivery, the Contractor must notify the Customer of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay, and whether the Contractor will be requesting a reasonable extension of time in accordance with clause 14.2.

14.1.3 If the Contractor fails to deliver by the Guaranteed Delivery Time and has not been granted an extension of time for delivery under clause 14.2, the Customer may terminate the Customer Contract under clause 18.8.

14.2 Extension of Time

14.2.1 Where there is likely to be a significant delay in the Contractor discharging an obligation under this Agreement because of a Circumstance Beyond the Contractor's Control (other than a circumstance arising out of any act or omission on the part of the Contractor), the Contractor will:

- (a) within a reasonable time of becoming aware of the possibility of such a significant delay, notify the Customer, in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay and strategies proposed to manage the consequences of the delay; and
- (b) request a reasonable extension of time.

14.2.2 The Customer may consent to a request for extension of time under this clause 14.2 provided that:

- (a) the Contractor uses its best endeavours to minimise the delay and recover lost time; and
 - (b) where appropriate, the Contractor provides the Customer with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of the Circumstance Beyond its Control.
- 14.2.3 The Customer may terminate the Customer Contract in accordance with clause 18.8 if the delay continues beyond the time consented to in this clause 14.
- 14.2.4 The Contractor will not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.

15 Supply of Deliverables

15.1 Specified Models/Products

- 15.1.1 Where a particular model or product is specified in the Price Schedule, the Contractor must supply only that model or product unless otherwise approved in writing by the Principal.

15.2 Packaging

- 15.2.1 The Contractor must ensure that all Deliverables are properly, safely and securely packaged and labelled for identification.

15.3 Expenses of Delivery

- 15.3.1 The Contractor must pay all packaging, freight, insurance, and other charges, in connection with the delivery of Deliverables and the return of Deliverables wrongly supplied except where it is expressly provided in this Agreement.

15.4 Delivery and Acceptance of Deliverables

- 15.4.1 The Contractor must deliver the Deliverables to the place or places and within the Guaranteed Delivery Time and shall obtain a receipt of their delivery.
- 15.4.2 Title in the Deliverables shall pass to the Customer on satisfactory delivery of the Deliverables in accordance with the Customer Contract.
- 15.4.3 Delivery and receipt of the Deliverables shall not be taken to be an acceptance of the Deliverables by the Customer.
- 15.4.4 The Customer may reject Deliverables which are not in accordance with the Customer Contract.
- 15.4.5 Receipt of delivery, acceptance or payment shall not prejudice the right of the Customer to maintain an action for breach of condition or warranty should the Deliverables prove to be of inferior quality or contrary to the requirements of the Customer Contract.

15.5 Rejection of Deliverables

- 15.5.1 Upon rejection of any Deliverables the Customer shall notify the Contractor and may direct that the rejected Deliverables be removed and replaced or rectified at the Contractor's risk and expense within such reasonable time as the Customer may direct.
- 15.5.2 If the Contractor fails to remove or rectify the rejected Deliverables within the time directed, the Customer may have the rejected Deliverables re-delivered at the Contractor's risk and expense.

15.5.3 Where the Contractor fails to deliver the Deliverables by the Guaranteed Delivery Time, or where Deliverables are rejected and the Contractor fails to replace the rejected Deliverables or to deliver Deliverables conforming to the Agreement, the Customer:

- (a) may purchase from another supplier substitute Deliverables of the kind and quality ordered; or
- (b) where it is not possible or practicable to purchase from another supplier substitute Deliverables of the kind or quality ordered, purchase goods or services which in the opinion of the Customer are most suitable, even though such goods or services are of a superior kind and quality to the Deliverables.

15.5.4 In both cases listed in clause 15.5.3 any extra cost or expense incurred over and above the Contract Price, shall be a debt due from the Contractor to the Customer.

15.5.5 Contractors are not permitted to withdraw products from the Contract, for any reason, whilst that product is still available on the market. Tenderers should be aware of the options available to the Purchasing Authorities in the event of non-supply as detailed at Clause 15.5.3.

15.5.6 It is expected that an alternative generic equivalent be made available in the even of non-supply. Contractors are to source the alternative product and make arrangements for the supply of this item.

15.6 Access to and behaviour at Customer's site

15.6.1 The Customer will provide the Contractor sufficient access to the Customer's Site to allow the Contractor to perform its obligations under the Customer Contract..

15.6.2 The Contractor will comply with the following requirements and any additional requirements imposed by the Customer.

15.6.3 The Contractor must ensure that all persons working on the Customer's Site under the Customer Contract understand and comply with the requirements shown below.

15.6.4 The Contractor representatives:

- (a) must gain permission to enter the Customer's site.
- (b) should avoid talking with, touching or interacting with any residents or other users of the facility except in an emergency or safety situation.
- (c) must only use approved toilets and other facilities, unless the Customer gives authority to use alternative arrangements.
- (d) must wear clothing that is tidy and in good condition, including a shirt, shorts or trousers or skirts at all times.
- (e) must wear or carry an identity card at all times when on the Customer's site.

15.7 Protection of Children and Other Vulnerable People

15.7.1 The Contractor must not employ or permit to be employed on work under the Customer Contract at the Customer's Site:

- (a) a person, where the Customer advises the Contractor that in the opinion of the Customer, that person poses unacceptable risks to children or other vulnerable people cared for at the Customer's Site.

- (b) a person who has been convicted of a serious sex offence and is a prohibited person under the Child Protection (Prohibited Employment) Act 1998.

16 Contract Price

16.1 Calculating the Contract Price

16.1.1 Subject to clause 16.1.2, the Contract Price shall be calculated as follows:

- (a) If the Price of each Deliverable ordered is expressed as a lump sum then the Contract Price shall be the sum of the Price for each Deliverable less any Applicable Discount;
- (b) If the Price of each Deliverable ordered is expressed as a rate per unit of quantity the Contract Price shall be the sum of the products of the rates and the corresponding quantities set out in the Price Schedule, less any Applicable Discount;

16.1.2 Clause 16.1.1 shall not prevent the Contractor from offering, or the Contractor and Customer negotiating, to reduce the Price or increase the discount for a particular Deliverable in accordance with the Customer Contract.

17 Payment

17.1 Payment of Contract Price

17.1.1 In consideration for the Contractor providing the Deliverables, the Customer shall, subject to the terms and conditions of the Customer Contract, pay the Contractor the Contract Price in the amounts and at the times set out in the Customer Contract.

17.1.2 Failure by any Customer to pay the Contract Price at the due time will not be grounds to avoid this Customer Contract.

17.2 Invoices and Time for Payment

17.2.1 Subject to this clause 17.2, the Customer shall make payment within 30 days from the end of the month after receipt of a correct claim and documents necessary to evidence delivery to the Customer.

17.2.2 All claims made by the Contractor shall be in the form of a Tax Invoice. A claim for payment shall be substantiated by an itemised account and the Contractor shall provide any further details in regard to the account that are reasonably requested by the Customer.

17.2.3 The making of a payment is not an acknowledgment that the Deliverables have been supplied in accordance with the Customer Contract, but shall be taken to be payment on account only.

17.2.4 If the Customer disputes the invoice amount the Customer shall certify the amount it believes is due for payment and shall pay that amount and the liability for the balance of payment shall be determined in accordance with the Customer Contract.

17.3 Set-Off/Money Recoverable by Customer

17.3.1 The Customer may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Customer in connection with the supply of the Deliverables.

17.3.2 Without limiting clause 17.3.1, any damages, costs and expenses recoverable by the Customer from the Contractor in consequence of the Contractor's breach of the Customer Contract may be deducted from money then due to the Contractor under the Customer

Contract. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Customer and may be:

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

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

17.3.4 For the purposes of this clause, the Principal may act for and on behalf of any Customer for the purpose of assessing and certifying any damages, losses, costs and expenses sustained or incurred by the Customer as a result of the breach of the Customer Contract.

17.4 The Contractor's additional expenses

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

18 Contractor's Warranties

18.1 Contractor's warranties (Goods)

18.1.1 In relation to Deliverables that are goods, the Contractor warrants that:

- (a) at the time ownership of a Deliverable passes to the Customer, the Deliverable will be free from any charge or liability;
- (b) during the Warranty Period, each Deliverable:
 - (i) shall be new and shall conform with the Specification;
 - (ii) shall conform to the description, model number and the sample (if any) provided by the Contractor; and
 - (iii) shall be free from defects.

18.2 Contractor's warranties (Services)

18.2.1 In relation to Deliverables that are services, the Contractor warrants that:

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

18.3 Contractor's warranties (General)

18.3.1 The Contractor warrants that:

- (a) the Deliverables do not infringe the Intellectual Property rights of a third party; and
- (b) the Deliverables shall conform to any legally applicable standards.
- (c) it has established and will comply with and maintain during the Customer Contract, the quality assurance arrangements set out in the Tender.
- (d) It has capacity to enter into this Customer Contract and perform the obligations imposed on the Contractor and the Contractor has not entered into any arrangement, whether a trust arrangement or otherwise, that impedes or is likely to impede the performance of the Customer Contract by the Contractor.

18.4 Warranty Period

18.4.1 The Contractor shall remedy any error or defect in a warranted Deliverable that has been notified to it by a Customer during the Warranty Period at the Contractor's own cost and expense.

18.4.2 If the Contractor fails to remedy an error or defect in a warranted Deliverable within 30 days after notification by the Customer, the Customer may arrange for performance of the necessary remedial work by a third party at the Contractor's expense.

18.4.3 The rights and remedies provided in this clause 18 are in addition to, and do not limit, any other rights of the Customer under the Customer Contract or otherwise at law.

18.5 Third party warranties

18.5.1 Where the Contractor supplies Deliverables that have been procured from third parties, the Contractor assigns to the Customer, to the extent permitted by law, the benefits of any warranties given by the third parties.

18.5.2 Assignment of any third party warranties is in addition to the warranties offered directly by the Contractor under this Customer Contract and does not relieve the Contractor from the obligation to comply with the Contractor's own warranties.

18.6 No assignment or sub-contracting of Customer Contract

18.6.1 The Contractor must not assign or sub-contract a Customer Contract without first obtaining the written consent of the Customer and the Principal, which may be given subject to conditions.

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

18.6.3 Regardless of any consent given, the Contractor will be responsible for ensuring the suitability of any sub-contractor and that the sub-contractor meets the requirements of a Customer Contract.

18.6.4 The Parties agree that the Principal, without incurring any liability, may withdraw its consent to a sub-contractor if in its reasonable opinion the sub-contractor is not meeting the requirements of the Customer 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.

18.6.5 To the extent that loss is not attributable to withdrawal of the Principal's consent to the sub-contract:

- (a) 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
 - (b) The Contractor will indemnify and release the Customer from any liability or loss resulting from the acts or omissions of any sub-contractor.
- 18.6.6 The Parties agree that the Principal may also enforce, on behalf of the Customer, the indemnity given to the Customer under this clause.
- 18.6.7 This clause will not merge on the completion or earlier termination of the Customer Contract.
- 18.6.8 The Contractor will ensure that a sub-contractor is aware of and complies with all the terms and conditions of the Customer Contract and that the sub-contract is consistent with those terms and conditions.
- 18.6.9 This clause does not apply in the event that the Principal requests a particular sub-contractor to provide the Deliverables.

18.7 Variation of the Customer Contract

- 18.7.1 The standard provisions of the Customer Contract shall not be varied except by agreement in writing signed by the Parties and having first obtained the consent in writing of the Principal.
- 18.7.2 The Customer and the Contractor may agree in writing to such other terms and conditions (in the Customer Contract called the "Additional Conditions") as they think fit, which terms and conditions are to be set out in the Order. The Parties agree that the Additional Conditions shall not, without the consent of the Principal, either expressly or by implication, derogate from the terms and conditions set out in this Agreement and to the extent that those Additional Conditions do derogate from those terms and conditions, the Parties agree that those Additional Conditions shall be void and have no effect.

18.8 Termination by Customer

- 18.8.1 Without prejudice to its rights at common law, the Customer may immediately terminate the Customer Contract, by written notice to the Contractor ("Notice of Termination"):
 - (a) 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;
 - (b) where the Contractor commits a Substantial Breach of the Customer Contract that is not capable of remedy;
 - (c) where the Contractor commits a Substantial Breach of the Customer Contract in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Customer requiring it to do so ("Notice of Breach"), or such further time as the Customer may reasonably allow;
 - (d) where the Contractor assigns its rights and/or obligations, or subcontracts the Customer Contract otherwise than in accordance with the Customer Contract; or
 - (e) in the case of the Contractor's Insolvency.
- 18.8.2 In the event of termination, the Customer:
 - (a) may procure from any other source a reasonably similar alternative to the Deliverable suitable to the Customer and the Contractor shall be liable to the Customer for any reasonable extra expense incurred together with any loss sustained by the Customer;

- (b) may, by notice in writing to the Contractor, require the Contractor at its expense to remove the specified Deliverable not accepted by the Customer and to dismantle or remove specified work from the Customer's premises by a date specified in the notice;
- (c) shall be liable under the Customer Contract to pay only for the Deliverables delivered and accepted by the Customer or performed to the satisfaction of the Customer, in accordance with the Customer Contract; and
- (d) may recover from the Contractor the amount of any loss or damage suffered by the Customer as a result of the termination.

This clause will survive the termination of the Customer Contract.

18.8.3 If the Customer terminates this Customer Contract the Customer may:

- (a) deduct any loss or damages arising from or in connection with the termination, from any money due, or which may become due to the Contractor; and
- (b) 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 Customer.

18.8.4 The Customer's termination under this clause will not affect the Agreement, unless the context requires it.

18.8.5 Any termination by the Customer is without prejudice to any accrued rights or remedies of the Customer under the Customer Contract.

19 Issue Resolution

19.1 General

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

- (a) Amicable Resolution (clause 19.2);
- (b) Expert Determination (clause 19.3)

19.2 Amicable Resolution

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

19.2.2 If the Party giving the Issue Notice is the Contractor, and this issue has arisen under the Customer Contract, it must give the Issue Notice to the Customer and to the State Contracts Control Board.

19.2.3 If the Party giving the Issue Notice is the Customer, it must give the Issue Notice to the Contractor and to the State Contracts Control Board.

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

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

- 19.2.6 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice to the person or persons specified.
- 19.2.7 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided ("the Referral Notice") within 28 days of becoming entitled to under clause 19.2.6.
- 19.2.8 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Customer and the State Contracts Control Board.
- 19.2.9 If the Party giving the Referral Notice is the Customer, it must give the Referral Notice to the Contractor and the State Contracts Control Board.
- 19.2.10 If a Referral Notice has not been given to the person or persons specified within the time limited by clause 19.2.7 then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).
- 19.2.11 For the avoidance of doubt, failure to give an Issue Notice or a Referral Notice in accordance with the requirements of clause 19 and clause 19.4 will result in an invalid notice for the purposes of this clause.

19.3 Expert Determination

- 19.3.1 Clause 11.3 Expert Determination of Part D2 of the Agreement applies to the Customer Contract as if it was repeated in this Part D3. Reference to "the Principal" in clause 11.3.3 shall be read as a reference to the State Contracts Control Board.
- 19.3.2 The Parties agree that the State Contracts Control Board will represent the Customer in the expert determination process.

19.4 Notices

- 19.4.1 A notice which may be given to or served on a Party (including the Board) under a Customer Contract must be in writing addressed to the other Party and:-
- (a) in the case of the Contractor, at the registered office or principal place of business of the Contractor or the address set out in the Order or such other address as is notified in writing to the Customer from time to time;
 - (b) in the case of the Customer, at the address set out in the Order or such other address as is notified in writing to the Contractor from time to time;
 - (c) in the case of the Board, at the registered office of the Board.
- 19.4.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.
- 19.4.3 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.

Schedule 1 Agreement Details

Item 1	Contractor (clause 2.1) [.....]
Item 2	Agreement Term: (clause 2.3.1) Commencement Date: Expiry Date: Period of extended term
Item 3	Insurance Policy Amount (clause 6.5) (a) Public Liability Insurance Limit of Indemnity: A\$5 million (b) Product Liability Insurance Limit of Indemnity: A\$5 million
Item 4	Codes (clause 6.7.1(b)) (a) The Code of Practice for NSW Government Procurement. (b) Implementation Guidelines for NSW Government Procurement.
Item 5	Management Fee Rate (clause 6.11) 1%
Item 6	Payment Period of Management Fee (clause 6.11) The Payment Period for the Management Fee is Quarterly.
Item 7	Sales Information (clause 6.11.6) The names of the ten largest Customers listed by dollar value invoiced by the Contractor in the relevant Payment Period.
Item 8	Expert Determination Amount (clause 11.3.7): \$A100,000
Item 9	List of approved dealers and distributors (Clause 5.2) List of approved sub-contractors (Clause 5.3)
Item 10	Notices: (clause 12.5) The Contractor's contact name and address: Name: Address: Position: Telephone: Facsimile: The Principal's contact name and address: Name: Chairman, SCCB Address: McKell Building, 2-24 Rawson Place, SYDNEY, NSW 2000 Telephone: 9372 8818 Facsimile: 9372 8803

Schedule 2 Specification

Schedule 3 Documents notifying the Principal's acceptance

Schedule 4 Expert Determination Procedure

1. Questions to be determined by the Expert

1.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):

1.1.1 Is there an event, act or omission which gives the claimant a right to compensation under the Agreement

(a) for damages for breach of the Agreement, or

(b) otherwise in law?

1.1.2 If so, what is the event, act or omission?

(a) on what date did the event, act or omission occur?

(b) what is the legal right which gives rise to the liability to compensation?

(c) is that right extinguished, barred or reduced by any provision of the Agreement, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?

1.1.3 In the light of the answers to clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:

(a) What compensation, if any, is due from one party to the other and when did it fall due?

(b) What interest, if any, is due when the expert determines that compensation?

1.2 The expert must determine for each issue any other questions required by the parties, having regard to the nature of the issue.

2. Submissions

2.1 The procedure for submissions to the expert is as follows:

2.2 The Party to the 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 clause 11.3.2 of 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 clauses 2.2 to 2.5 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.

2.7 The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the response to the other Party, and give the other Party a reasonable opportunity to comment on the response.

- 2.8 All submissions, responses, replies, requests and comments must be in writing. If a Party to the 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 an 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 clause 11.3.3 of the Agreement.
- 4.1.4 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate.

<p>END PART D</p>

PART E

SPECIFICATION of REQUIREMENTS

for

CONTRACT 217

MEDICAL FURNITURE

(General Ward Beds)

PART E - Specification of Requirements

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1. Objective and Scope

1.1 Introduction

NSW Health intends to establish Standing Offer Agreements (Contracts) with suppliers for the supply of a core range of medical bed-types to NSW Health Customers.

This Request For Tender (RFT) initially aims to establish Contracts with **one or more suppliers** for the supply of **General Ward Beds only (excluding mattresses)**.

Further RFT are proposed to be issued at a later time to establish contracted supply arrangements for other commonly required bed types that provide functional requirements that are more specific than General Ward Beds. These bed types will include Low-Rise beds, Home-Care/Residential beds and beds more specifically required for Paediatric, Bariatric and Mental Health care.

At this stage NSW Health does not intend to establish state-wide contracted supply arrangements for more specialised bed types, which include High Dependency beds and Delivery beds.

1.2 Objective

NSW Health seeks to improve value for money and realise cost savings through the purchase and rental of General Ward Beds and associated services.

The objective of this tender process is to select the minimum number of General Ward Beds capable of providing the specified functional requirements for the best overall value for money to NSW Health.

The outcome of the tender process may result in the selection of one or more beds. Multiple beds will be selected where necessary to obtain all of the functional requirements, or where better overall value for money would be achieved.

Only beds that meet the mandatory requirements will be considered for selection. Preference will be given to beds that are capable of providing the scope of mandatory and desirable functions, and which provide a high level of performance with regard to:

- a) minimising the risk to the health and safety of bed operators and patients (primarily considering the risks associated with the use, adjustment and manoeuvring of the bed; the cleaning, care and maintenance of the bed; the required manual handling of patients (e.g. repositioning and transferring patients); and infection control risks;
- b) contributing to the efficiency of bed operators in the workplace (primarily considering the use, adjustment and manoeuvring of the bed, and bed cleaning, care and maintenance); and
- c) maximising the comfort, mobility and independence of patients using the bed.

Bed selection will also take into account the associated support services offered and the overall cost.

Tenderers are required to clearly demonstrate how each bed offered provides the functional requirements for General Ward Beds (specified herein) and how well the bed achieves the overall performance requirements (specified above).

Tenderers will be responsible for clearly demonstrating their capability to provide the services offered and how well the proposed service delivery methods will meet the requirements of NSW Health.

2. Requirements - All products

2.1 Published Standards

All products supplied are to conform to relevant Australian Standards, or to recognised International Standards where Australian Standards do not exist.

Where there is any conflict between the requirements of the Standards and any provisions of this Specification, the provisions of this Specification will take precedence.

2.2 Compliance with Therapeutic Goods Act

All Therapeutic products are to be contained on the Australian Register of Therapeutic Goods (ARTG), unless exempted in accordance with the Therapeutic Goods Act 1989 (Cth).

2.3 Health and Safety

When properly used, all products are to be safe and without risks to the health of the operators, patients and the public.

Customers must be supplied with all information necessary to ensure that products can be safely used, including:

- a) the systems of work necessary for the Customer's safe use of the product (including installation, commissioning, operation, maintenance and repair, inspection, cleaning, storage and if the product is capable of being dismantled, dismantling of the product);
- b) the hazards that may be incorporated into the product that has the potential to harm the health or safety of any person during the use, repair, storage or disposal of the product; and
- c) the assessed risk of harm to the health or safety of any person arising from any hazard.

2.4 Warranty

The Contractor must supply beds (including accessories and components) with a Warranty conforming to the Contract terms and conditions and for a minimum Warranty Period of 3 years.

The Contractor must remedy any error or defect in a warranted bed within a reasonable time after being notified by the Customer at the Contractor's own cost and expense. The Contractor is to provide a readily available and responsive service that remedies bed defects with minimal disruption to the Customer's patient care.

3. Requirements - Product Support Services

3.1 Servicing, Maintenance, Repairs and Technical Support

In addition to the Contractors' warranty obligations, the Contractor also agrees to undertake any product servicing, maintenance and repair services and other technical support services required by a Customer for the beds supplied. The nature of required services will vary amongst NSW Health Customers. The final scope, detail and cost of the services required are to be agreed between each Customer and the Contractor.

Where a Customer elects to undertake their own “in-house” servicing, maintenance or repairs, the Contractor will provide the Customer with any information, training and certification reasonably required, and provide access to replacement parts, consumables and other technical resources.

3.2 Product Use Information and Training

The Contractor must provide the Customer with all product-use information and training necessary for the Customer to use a product to its optimum level of performance.

Where required by a Customer, the Contractor shall provide product-use demonstration or training to the Customer’s personnel.

4. Requirements - General Ward Beds

4.1 Interpretations on Mandatory and Desirable statements

Where the following specifications:

- a) state that the bed must be “supplied with”, or “fitted with”, or “equipped with” – this means that the minimum bed configuration must include these requirements;
- b) state that the bed must “provide an option to have the bed supplied with” – this means that the minimum bed configuration must also allow for these requirements to be chosen at the Customers discretion.

Where other specified requirements affecting the configuration of the bed are stated as “should” or “desirable” – this means that there is a preference for a bed configuration that may also meet these requirements.

4.2 Bed Adjustment Functions

The General Ward Bed must be supplied to Customers with the following adjustment functions:

- a) **Variable bed-height adjustment** - the top of the mattress support frame in its flat position must have a range of adjustment that allows positioning between 450mm and 800mm (measured from the floor). Preference will be given to a height adjustment function that allows positioning lower than 450mm providing it does not compromise any other mandatory bed requirement.
- b) **Variable back-rest height adjustment** – which must have a clearly identifiable CPR/Emergency release mechanism that allows for safe and rapid lowering of the backrest in the event of emergency.
- c) **Tilt Mechanism (Trendelenburg)** – with an operating mechanism that is easily understood and which preferably indicates the direction of travel on release.

In addition to the above adjustment functions required to be supplied with the bed, the General Ward Bed must also provide Customers with an option to have the bed supplied with a **Knee Break** adjustment function.

In addition to the above adjustment function requirements, it is desirable that the General Ward Bed can also provide Customers with an option to have the bed supplied with a **Chair Position** adjustment function.

4.3 Electrically Operated Bed Functions

Beds with electrically operated functions are required to conform to Australian Standard AS/NZS 3200.2.38:1997 and International Standard IEC 60601-2-38.

Electrically operated bed functions must be operable by both operators and patients and include a control lock-out system that prevents the patient’s use of the electronic functions. There must be an

alternate means of operating the electrical functions during the use of the control lock-out system and in the event of the failure of the primary control.

All bed functions must continue to be operable in the event of a failure/interruption to mains power.

4.4 Manually Operated Bed Functions

It is highly desirable that beds with manually operated functions offer a similar level of conformance as electric beds to the appropriate (non-electric) aspects of the above Standards.

The height adjustment mechanism must be foot/pedal operated from either side of the bed.**Mattress Support Platform**

It is desirable that the Mattress Support Platform is no greater than 1000mm wide.

Mesh platforms will not be accepted.

The mattress support platform shall have a label indicating the size of the mattress required so as to minimize the risk of patient entrapment. The label shall be readily visible by a person standing beside the bed.

4.6 Bed Extension

It is desirable that the General Ward Bed provides Customers with the option of having the bed supplied with a device that provides a temporary extension to the length of the bed's mattress support platform.

4.7 Weight Capacity

The bed must have a minimum Safe Working Load of 200 Kg. The Safe Working Load is considered to be the sum of the patient, mattress and all fitted accessories/components.

4.8 Head/Foot Panels

The bed must be supplied with detachable Head/Foot-Panels that are easily fitted and removed by one operator without the need for tools.

The Head/Foot-Panels must be "filled" with rounded corners and edges, and should be sufficiently stable and robust to permit their use by operators when pushing/manoeuvring the bed.

4.9 Castors, Braking and Steering

The bed must be supplied with Castors conforming to AS 1961 (2004) and provide for easy manoeuvring of the Bed by one operator over a variety of floor surfaces (timber, tiles, carpet, linoleum, concrete, bitumen etc).

Castors must be non-marking, no less than 150 mm in diameter, and incorporate a braking system that locks all castors to prevent movement of the bed on the floor surface.

The braking and steering system must include an indicator for the operator to readily sight the bed's braking and steering mode.

4.10 Side Rails

The General Ward Bed must be capable of providing Customers with the option of having the bed supplied with either detachable or permanently affixed Side Rails.

The Side Rails must be able to properly function with a range of different purpose mattresses and overlays of varying sizes and dimensions.

The Side Rails must comply with IEC 60101 – 1999 to ensure that entrapment and patient falls are minimised.

The Side Rails must be equipped with a means to lock or latch them into the raised and closed positions and be designed so that accidental unlocking or unlatching cannot occur.

4.11 Intravenous Pole Attachment Points

The bed must provide for the attachment of two IV Poles, one at each side of the head-end of the bed. It is desirable that the bed provides for the attachment of four IV Poles (one at each corner of the bed).

4.12 Protective Buffers

The bed must be fitted with a soft, non-marking protective buffering system that extends beyond any other protrusion from the bed to prevent collision damage to walls and the bed during transportation.

4.13 Marking/Labelling

The foot-end of the bed-frame must have a permanently affixed and clearly legible notice/label that specifies:

- a) the bed's Safe Working Load in kilogram units - displayed in lettering at least 1 cm in height (SWL is considered to be the sum of the patient, mattress and accessories); and
- b) the bed's (i) model number, (ii) serial number, (iii) year of manufacture and (iv) the manufacturer's and supplier's name and contact details.

5. Requirements - Optional Accessories (Mandatory)

The General Ward Bed must provide Customers with an option to have the bed supplied with each of the following accessories.

5.2 Intravenous Poles

Detachable IV Poles with twin hooks, telescopic with a mechanism to prevent the top section from being accidentally detached.

The Safe Working Load of the IV Pole must be clearly labelled in contrasting colours with lettering size of at least 1cm.

5.3 Over-Bed Cradles

A detachable cradle for keeping the weight of the bed clothes off the patient's legs and feet.

5.4 Under-Bed Storage Trays/Baskets

A detachable under-bed Tray/Basket for holding patients clothes etc.

5.5 Oxygen Bottle Holder

Detachable oxygen bottle holder/s capable of holding one "C" and one "D" size standard medical oxygen bottle.

5.6 Monitor/Equipment Table

A detachable monitor/equipment table for use during patient transport.

The Safe Working Load of the Monitor/Equipment Table must be clearly labelled in contrasting colours with lettering size of at least 1cm.

5.7 Patient Support/Self-Help Device

A detachable and height adjustable handgrip device suspended above the bed to assist with patient mobility.

The Safe Working Load of the Patient Support/Self-Help Device must be clearly labelled in contrasting colours with lettering size of at least 1cm.

6. Requirements - Optional Accessories (Desirable)

In addition to the above mandatory accessories, it is desirable that the General Ward Bed also provides Customers with an option to have the bed supplied with any of the following accessories.

6.2 Orthopaedic frame

A detachable orthopaedic frame designed for use with patients of at least 135Kg.

The Safe Working Load of the Orthopaedic frame must be clearly labelled in contrasting colours with lettering size of at least 1cm.

6.3 Traction Unit/frames

A detachable Traction Unit/frame

6.4 X-ray Capability

To allow patient X-rays without the need to lift the patient.