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

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

Request for Tender 0701696

**Supply, Installation and Maintenance of a
Masonry Cutting and Profiling Device for NSW
Department of Commerce Heritage and
Building Services.**

Tender Issue Date: 7 November 2007

Closing Date: 4 December 2007

Closing Time: 9:30 am Sydney Time

Non-Refundable Hard Copy Document Fee \$110 (includes GST): Note: There is no charge for downloading an electronic copy from <https://tenders.nsw.gov.au/commerce>.

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

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

Other matters should be directed to:

Group General Manager
NSW Procurement – Contracting Services
NSW Department of Commerce
McKell Building
2-24 Rawson Place
Sydney NSW 2000
Tel: (02) 9372 7511
Fax: (02) 9372 7599

**Supply, Installation and Maintenance of a Masonry Cutting and Profiling Device for
NSW Department of Commerce Heritage and Building Services.**

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PART A THE REQUIREMENT AND TENDER INFORMATION

1. OUTLINE DESCRIPTION OF THE REQUIREMENT

1.1 Introduction

This Request For Tender ("RFT") is made by the State Contracts Control Board ("the Board") for the supply of the Deliverables defined in this RFT and detailed in the Specification.

The Board is responsible for the conduct of the tender process, assisted by NSW Procurement – Contracting Services.

1.2 Outline of the Requirement

This RFT covers Supply, Installation and Maintenance of a Masonry Cutting and Profiling Device (saw) for NSW Department of Commerce Heritage and Building Services and for maintenance of the Device for a period of two years with two 12 month optional extension periods.

1.3 Procurement Objective

The objective of this RFT is to provide the best value for money option for supply and installation of the Device and ongoing maintenance of the saw by requesting tenders from suitable organisations who can respond to the requirement described in the specification.

2. SUMMARY INFORMATION FOR TENDERERS

2.1 Interpretation

2.1.1 Definitions of terms used in Parts A-C are contained in cl.6 of Part B

2.2 Structure of Request for Tender

2.2.1 This RFT is made up of Parts A to D. If submitting a Tender, retain Parts A, B and D. The completed Part C forms the Tender.

2.2.2 Submit Part C in accordance with instructions in Part B. Part C contains the following:

- Part C1 – Information supplied in response to Part B
- Part C2 – Specification and Statement of Compliance
- Part C3 – Price Schedule
- Part C4 – Preventative Maintenance Schedule
- Part C5 – Acknowledgment and confirmation of Tender
- Part C6 – Additional Information Provided as Attachments
- Part C7 – Project Plan

2.3 Contact Officer

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

Name: Roland Sinn
 Phone: 02 9372 8419
 Fax: 02 9372 7799
 E-mail: roland.sinn@commerce.nsw.gov.au

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

2.4 Nature of agreement

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

2.4.2 The agreement encompasses the installation and commissioning of the device described in the specification, training of HABS personnel

2.4.3 The agreement also encompasses training services described in the specification.

2.5 Non-exclusive One-Off agreement – NOT USED

2.6 Eligibility to tender

2.6.1 Tenders must be submitted by a legal entity or, if a joint Tender, by legal entities, with the capacity to contract. The Principal will only contract with the relevant legal entity or entities.

2.6.2 The Principal will not enter an agreement with a legal entity in its capacity as trustee.

2.6.3 The Board may ask a tenderer to provide evidence of its legal status or capacity to contract. If Tenders from trustees are permitted this may include a copy of the relevant trust deed. Any evidence requested is to be provided within 3 working days of the request.

2.6.4 The Board may submit any financial information provided by the Tenderer for independent financial assessment of the Tenderer's business.

2.6.5 The Board reserves the right to reject any Tender if it judges the tenderer not to have appropriate financial assets.

2.6.6 If the Board judges the tenderer's financial position to be marginal, it reserves the right to make acceptance of any Tender conditional upon the tenderer entering into a bank or parent company guarantee, or an unconditional performance bond.

2.6.7 Tenderers must read, understand and comply with the requirements of the Commerce Business Ethics Statement, which is available at the link below. Tenderers must disclose any potential conflict of interests (including any relevant relationships) in the Tender Response.

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

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

2.7 Other Eligibility Requirements

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

3. WHERE TO OBTAIN THIS RFT

3.1 RFT copies

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

3.2 Hard copy

- 3.2.1 A hard copy of this RFT may be:
- (a) Viewed and purchased between 8.30 am and 4.30 pm, Mondays to Fridays (except public holidays) by prior arrangement at:

Tenders Office
Mckell Building
NSW Department of Commerce
Level 10
McKell Building
2-24 Rawson Place
Sydney, NSW 2000
 - (b) purchased by telephoning (02) 9372 8900. An additional fee is charged for delivery by express post or by courier, as required.
 - (c) viewed and purchased through the NSW Department of Commerce *eTendering* website at <https://tenders.nsw.gov.au/commerce>. Hard copy orders placed and paid for through the website will be filled by postal delivery.
- 3.2.2 A copy of the Price Schedule in CD-ROM form or on a floppy disk may in some cases be provided with the hard copy.

3.3 Electronic copy

- 3.3.1 An electronic copy of the RFT and any Addenda that may be issued up to the Closing Date and Time, may be viewed and downloaded from the internet at the NSW Department of Commerce *eTendering* website at <https://tenders.nsw.gov.au/commerce>
- 3.3.2 A tenderer is encouraged, although not required, to obtain the RFT and to lodge a Tender electronically through the NSW Department of Commerce *eTendering* website.
- 3.3.3 In order to download an electronic copy of the RFT, a tenderer must first register as a site user.
- 3.3.4 A tenderer should follow the instructions on the site to view an RFT. To locate and view an RFT and its RFT Summary, follow the instructions on the NSW Department of Commerce *eTendering* website:
- (a) First locate the RFT using the RFT Search, or by looking at the Current RFT listings screen where the additional search function may also be used.
 - (b) You may see some details of the RFT by accessing them through the blue "Viewable Copy" button. This function is provided to assist in making a decision to obtain a "Responsible Copy" of the RFT.
 - (c) Download the "Responsible Copy" files from the website by selecting the blue "Responsible Copy" button (if one appears for that RFT) and then follow the steps and the instructions on the NSW Department of Commerce *eTendering* website.

3.4 RFT Purchase price

- 3.4.1 The non-refundable purchase price for a hard copy of this RFT is \$110.00 Inclusive of GST.
- 3.4.2 Payment may be made:
- (a) if purchasing from the Tenders Office, McKell Building, by cheque drawn in favour of the NSW Department of Commerce, or by credit card (MasterCard or Visa). Cash will not be accepted; or
 - (b) if ordering a hard copy through the NSW Department of Commerce *eTendering* website, by credit card (Mastercard or Visa).

PART B THE TENDER PROCESS

4. DEFINITIONS OF TERMS USED IN PARTS A-C

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

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

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

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

- Inviting and accepting tenders;
- Determining the conditions under which tenders are invited or accepted;
- Entering into contracts on behalf of Departments and other public sector agencies; and
- On-going contract administration and management,

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

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

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

http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0015/1356/code_of_prac-curr.pdf

“Compliance with the Outworkers Code” and **“Comply with the Outworkers Code”**, where used in clauses dealing with the Outworkers Code, mean that:

- (a) where Deliverables applicable to the Outworkers Code have been produced or are to be produced in New South Wales, the tenderer has acted in accordance with all of the requirements of the Outworkers Code.
- (b) where Deliverables applicable to the Outworkers Code have been produced or are about to be produced outside New South Wales, the tenderer has acted and will continue to act in accordance with all the requirements of the equivalent to the Outworkers Code in the place of manufacture. Where no equivalent to the Outworkers Code exists in that place of manufacture the tenderer has complied and will continue to comply with the Outworkers Code to the extent possible under the laws of that place.

“Conforming Tender” means a Tender that:

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

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

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

“Government Businesses” means in general, entities which: a) have some form of public sector ownership; b) are engaged in trading goods and/or services; c) have a large measure of self sufficiency; and d) are subject to Executive control. In this context, the term Government business includes Public Trading Enterprises, State Owned Corporations and General Government Businesses.

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

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

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

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

“Non-Conforming Tender” means a Tender that:

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

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

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

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

“Outworkers Code” means the NSW Government Code of Practice on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers 1998.

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

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

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

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

“RFT” means the Request for Tender.

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

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

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

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

5. PREPARATION OF TENDER - GENERAL

5.1 Conformity of Tenders

- 5.1.1 The Board seeks Conforming Tenders.
- 5.1.2 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, may be excluded from the tender process without further consideration, at the Board’s discretion.
- 5.1.3 Tenderers may, if they choose, submit an Alternative Tender but only in conjunction with a Conforming Tender. Tenderers are encouraged to offer options or solutions that contribute to the Principal’s ability to carry out its business in a more cost-effective manner.
- 5.1.4 The Board may assess an Alternative Tender against the selection criteria where submitted with a Conforming Tender.
- 5.1.5 An Alternative Tender must be clearly marked “Alternative Tender”.
- 5.1.6 The Board expressly reserves the right to accept, in its discretion, either or both of the following:
 - (a) Any Alternative Tender or part of an Alternative Tender, where submitted with a Conforming Tender; and
 - (b) Any other Non-Conforming Tender or part of a Non-Conforming Tender that, in the Board’s opinion, is substantially a Conforming Tender.

5.2 Prescribed form of Tender

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

5.3 General instructions for completion of Tenders

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

- 5.3.4 Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.

5.4 Addenda to this RFT before close of Tenders

- 5.4.1 The Board, during the tender period may issue Addenda altering the RFT. In such cases, it is the obligation of the tenderer to verify if any addenda were issued prior to closing date, even if a tender has already been submitted. They must obtain a copy of all addenda as given in clause 5.4.2 or 5.4.3 as applicable.
- 5.4.2 Where a RFT has been acquired in a hard copy form, tenderers must contact the Contact Officer named under clause 2.3 of Part A or the Tenders Office (Level 10 McKell Building 2-24 Rawson Place Sydney, contact number: 9372-8900, e-mail: Tenders@commerce.nsw.gov.au).
- 5.4.3 Where a RFT has been acquired in an electronic form, tenderers must check the web site address, <https://tenders.nsw.gov.au/commerce> and download the Addendum.
- 5.4.4 It is mandatory for tender response 9.1 in Part C to be completed. Failure to complete tender response 9.1 in Part C will result in your tender not being considered.

5.5 Pre-Tender briefing and site visit

- 5.5.1 A pre-Tender briefing will be held on the date, and at the time and place, nominated in the advertisement or listed below. The Procurement Specialist of NSW Procurement – Contracting Services and Project Officers from HABS will be available at that time to answer any queries regarding this RFT and the tender process generally.

DATE:	Wednesday 14 November 2007
TIME:	9.30am – 11.30am
LOCATION	NSW Department of Commerce Heritage and Building Services 92 Burrows Road Alexandria 2015

- 5.5.2 The Pre-Tender Briefing will provide tenderers with the opportunity to conduct a Site Inspection of the device installation site. HABS have determined that all tenderers must view the device installation site.

- 5.5.3 If tenderers are unable to attend the briefing shown at the date and time above, tenderers will be able to view the device installation site by contacting HABS to arrange a suitable alternate time to view the site.**

5.6 Tenderers to inform themselves

- 5.6.1 Before submitting its Tender, a tenderer must:
- (a) Examine all information relevant to the risks and contingencies and other circumstances having an effect on its Tender; and
 - (b) Satisfy itself:

1. that the Tender, including the Tender Price is correct; and
2. that it is financially and practically viable for it to enter into and perform the proposed agreement.

5.6.2 The following must be considered:

- (a) The eTendering system is at peak use on the morning prior to Tenders closing.
 - 1) Due to communication traffic via this means of communication it may take longer to lodge a Tender near Closing Date and Closing Time than at other times.
 - 2) When lodging through the NSW Department of Commerce *eTendering* website, it is recommended that a Tender be lodged well in advance of the Closing Date and Closing Time.
- (b) The NSW Department of Commerce *eTendering* website may experience difficulties in accepting a large Tender. A tender lodged via the NSW Department of Commerce *eTendering* website should ideally be below 7 megabytes (MB) in total file size. Responses totalling more than 7MB may experience difficulties in lodgement. In this case Tenderers may break down the lodgement into smaller packages if clearly identified eg. package 1 of 3; 2 of 3; 3 of 3. If a tenderer compresses files, it must be possible to decompress them using WinZip. A tenderer must not submit self-extracting (*.exe) zip files.

If submitting an electronic tender with supporting items:

- 1) The complete Tender, including the required supporting items unless otherwise directed, must be submitted by Closing Date and Closing Time, and
- 2) Supporting items should be clearly designated as "Supporting Items to..." the RFT to which they relate.
- 3) Supporting items not required to be lodged as part of the initial Tender by the RFT should not be lodged in the tender box, and arrangements should be made with the Contact Officer.

5.6.3 A tenderer is not required to provide multiple copies of a Tender. Any "Alternative Tender" under clause 7.1 must be attached to the Conforming Tender at Part C of this RFT.

5.6.4 If a tenderer provides multiple lodgements, the latest tender received in a NSW Department of Commerce Tender Box will be the tender evaluated.

6. PREPARATION OF TENDER – POLICY REQUIREMENTS

6.1 Procurement Policy – Introduction

6.1.1 Tenderers should read the main policy document/s listed below. Other relevant policies and particular policy objectives to be implemented through this procurement are drawn to tenderers' attention in this cl.6. Their requirements are reflected in the selection criteria listed in cl.9.2 and in the responses required from tenderers in Part C.

- a) NSW Government Procurement Policy:

http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0004/3955/tpp04-1.pdf

6.2 NSW Government Code of Practice for Procurement

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

http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0015/1356/code_of_prac-curr.pdf

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

6.3 Occupational Health Safety & Rehabilitation

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

- (a) The *Occupational Health and Safety Act 2000* (NSW) and any regulation made under this Act, including the OHS Regulation 2001;
- (b) Codes of Practice, approved and issued pursuant to the above Act and or regulations made under the Act

- 6.3.2 Tenderers must ensure that the Tenderer's Sub-Contractors will comply with the OHS&R requirements listed in 6.3.1 in the performance of any agreement awarded.
- 6.3.3 Tenderers must indicate compliance with OHS&R obligations in Part C.
- 6.3.4 The NSW Government Procurement Guidelines to Occupational Health and Safety can be viewed at:

<http://www.dpws.nsw.gov.au/nr/rdonlyres/efxtycbtexzihzty3nnlyxzob2ktnrpdloi q6gsaft4hybie4s2tzvlqcvvaneaugupzschzvlkslbkx5fqpr4nqoka/ohs%2006.pdf>

6.4 Environmental Management

- 6.4.1 The NSW Government seeks to promote ecologically sustainable development through procurement. The Tenderer is required in Part C to highlight how the provision of the device would promote this object if its Tender is accepted.
- 6.4.2 Tenderers are to detail in the project plan how they will address any specific environmental issues related to the installation of the device at the nominated site.

6.5 Employment and Outwork Obligations for textile, clothing and footwear suppliers – NOT USED

6.6 Economic Development through Government procurement – NOT USED

6.7 NSW Government Purchasing Preference Scheme

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

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

Preference – Australian and New Zealand Content

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

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

6.7.4 No preference margin is applied when assessing Tenders for the provision of services alone.

6.7.5 Tenderers are required to provide details of the imported (non-Australian and New Zealand) content in the Price Schedule and to make available records (as and when required) to substantiate imported or local content claims. Tenderers must also include detailed statements from their sub-contractors on the imported content of the goods and related services they are offering.

6.7.6 The imported content of goods and related services is the estimated duty paid value, inclusive of the value of any services, for example overseas freight and insurance, consultancy or engineering effort, or any charges of overseas origin, together with customs clearing charges.

NSW Country Industries Preference Scheme

6.7.7 A further preference loading of up to 5% is applied if the tenderer is not based in a NSW country area in accordance with the Country Industries Preference Scheme (CIPS). The preference loading is not applied against New Zealand or other overseas Tenders or Tenders from other states or territories.

6.7.8 For preference to be applied to a Tender under the CIPS:

- (a) the tenderer must be registered with the Department of State and Regional Development as a country manufacturer under the Country Industry Preference Scheme (Tel 02 9338 6717) before the Closing Date and Time for Tenders;

- (b) The tenderer must quote its Preference Registration Number allocated by the Department of State and Regional Development and the applicable preference margin in the space provided in Part C of this RFT;
- (c) The goods being sought are those for which the tenderer is registered; and
- (d) The tenderer is tendering as the prime contractor.

6.7.9 The Country Industries Preference Scheme is intended primarily to benefit manufacturers located outside the metropolitan areas of the State which, in comparison with their city-based competitors, suffer definable economic disadvantages which can be directly attributed to their country location. The preference applies on the following basis to approved manufacturing industries located outside the county of Cumberland, the Cities of Newcastle, Wollongong, Penrith and Liverpool and the Municipality of Camden:

- (a) In the Cities of Maitland, Greater Cessnock and Blue Mountains, the Municipalities of Kiama and Shell harbour and the Shires of Port Stephens, Lake Macquarie, Gosford, Wyong, Wollondilly, Wingecaribee and that part of the Shire of Hornsby which was previously part of the Shire of Colo: maximum preference of 2.5%.
- (b) Elsewhere in New South Wales: maximum preference of 5%.

6.7.10 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
 Website address: <http://www.business.nsw.gov.au/index.asp>

- 6.8 Sustainable long-term industry development – NOT USED**
- 6.9 Development of long-term, strategic alliances – NOT USED**
- 6.10 Export potential and/or import replacement – NOT USED**
- 6.11 Value-added activity – NOT USED**
- 6.12 Small to Medium Enterprise (SME) involvement – NOT USED**
- 6.13 Regional Development – NOT USED**
- 6.14 Existing industry development and proposed new investment activities – NOT USED**
- 6.15 Innovation, research and development – NOT USED**
- 6.16 Workforce development – NOT USED**
- 6.17 Industry Impact Assessment and Local Industry Participation Plan – NOT USED**
- 6.18 Competitive Neutrality – NOT USED**
- 6.19 E-Commerce – NOT USED**
- 6.20 Other relevant policies – NOT USED**
- 6.21 Compliance with relevant legislation and standards**

6.21.1 Certificate of compliance with relevant Standards

- 1) Tenderers are required to provide evidence of compliance with Standards requirements as laid down by State or Federal Authorities, where relevant.
- 2) In all cases where Australian Standards exist, tendered products should conform to such Standards. Tenderers are at liberty to offer items that comply with other recognised international Standards. However, where any inconsistencies exist between other Standards offered and the Australian Standards specified, full details of the inconsistencies are to be stated in the tender response.
- 3) Tenderers are required to in Part C that certification from an approved testing authority which confirms that the tendered items meet the relevant Australian or nominated overseas or International Standard is attached to Part C4.

6.22 Other requirements – NOT USED

7. PREPARATION OF TENDER - PRICE SCHEDULE AND PROJECT PLAN

7.1 Price Schedule

7.1.1 Complete the Price Schedule at Part C3.

7.2 Calculating the Tender Price

7.2.1 General

7.2.1.1 The Tender Price must:

- (a) be in Australian dollars;
- (b) cover all costs of performing the agreement, including full installation and commissioning of the device, training of HABS personnel, warranty and preventative maintenance provisions.
- (c) include Goods and Services Tax if it is payable and all other applicable taxes, duties and charges at the rates applicable at the Closing Date and Time for Tenders;
- (d) include all costs associated with the preparation and submission of the Tender;

7.3 Price Variation – NOT USED

7.4 GST Free or Input Taxed Supplies

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

7.5 Project Plan

7.5.1 Tenderers are to provide a project plan, to be attached to their Tender, detailing how and when the Device would be supplied under the agreement. If advance or progress payments are required, tenderers are to include details of these in the project plan, together with milestones against which such payments are to be made. Tenderers are to provide detailed answer answers to the questions at part C7.

7.6 Minimum Tender validity period

5.7.1 Tenders must remain open for acceptance for a period of at least **three (3)** months from the Closing Date and Time for Tenders. Tenderers must state in Part C if their Tenders will remain open for any longer period.

8. SUBMISSION OF TENDERS

8.1 General instructions for submission of Tenders

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

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

- (a) by delivery into the Tender Box:

- (1) It must be marked:

Tender Box
Tenders Office,
Level 3, McKell Building

2-24 Rawson Place
Sydney

- (2) If delivery personnel require a signature as evidence of delivery the Tender must be delivered between 8:30 am and 5:00 pm, Mondays to Fridays (except public holidays).

- (b) by post, addressed to

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

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

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

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

- (a) The facsimile machine and NSW Department of Commerce *eTendering* website are at peak use on the morning when Tenders close.

- 1) Due to the limitations of these means of communication it may take longer to lodge a Tender near Closing Date and Closing Time than at other times.
- 2) When lodging by facsimile or through the NSW Department of Commerce *eTendering* website, it is recommended that a Tender be lodged well in advance of the Closing Date and Closing Time.
- 3) A tenderer must determine whether lodgement of a Tender by facsimile or through the NSW Department of Commerce *eTendering* website is appropriate.

- (b) The facsimile machine and the NSW Department of Commerce *eTendering* website may experience difficulties in accepting a large Tender. A tender lodged via the NSW Department of Commerce *eTendering* website should ideally be below 7 megabytes (MB) in total file size. Responses totalling more than 7MB may experience difficulties in lodgement. A tenderer is referred to the clause governing electronic Tenders to the NSW Department of Commerce *eTendering* website for instructions as to compressing electronically submitted Tenders.

- 1) In order to comply with the above paragraph, an electronic Tender may be supported by documents in hard copy or on CD-ROM.
- 2) Supporting documents, to be submitted in hard copy or on CD-ROM, may be designated throughout the RFT. Supporting documents may include, but are not limited to, statutory declarations, certificates, and company brochures.
- 3) If submitting an electronic tender with supporting documents:
 - (a) The complete Tender, including the supporting documents, must be submitted by Closing Date and Closing Time, and

- (b) Supporting documents should be clearly designated as "Supporting Documents to RFT...(Note: insert RFT No.)."

8.1.4 A tenderer is not required to provide multiple copies of a Tender.

- (a) If a tenderer provides multiple submissions, the tenderer should clearly state on the front page of the Tender whether it is:
 - (1) A "Copy." A copy must be identical to an earlier or simultaneous submission in every respect.
 - (2) A "Variation." A variation of an earlier Tender will be deemed as superseding a prior submission.
 - (3) An "Alternative Tender".
- (b) In the event that a Tenderer fails to designate whether a submission is a Copy or a Variation, the latest Tender received in the NSW Department of Commerce Tender Box will be deemed as the definitive submission.

8.1.5 If required, a tenderer must provide a copy of the Price Schedule on a CD-ROM or an IBM compatible 1.44MB floppy disk in a file format that can be read, formatted, displayed, manipulated and printed by Microsoft Excel 97.

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

8.2.1 A tenderer is strongly encouraged, although not required, to lodge its Tender electronically through the NSW Department of Commerce *eTendering* website at <https://tenders.nsw.gov.au/commerce>. A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given no lesser level of confidentiality, probity and attention than Tenders lodged by other means.

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

8.2.3 A tenderer must follow the following directions:

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

8.2.4 A tenderer must observe the following format for submissions:

- (a) An electronically lodged Tender must be lodged in a file format which can be read, formatted, displayed and printed by Microsoft Word 97, or any format required by the RFT.
- (b) If a tenderer compresses files, it must be possible to decompress them using WinZip. A tenderer must not submit self-extracting (*.exe) zip files.

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

8.2.5 Signatures are not required for a Tender submitted to the NSW Department of Commerce *eTendering* website. A tenderer must ensure that a Tender is authorised by the person or persons who may do so on behalf of the Tenderer and appropriately identify the person and indicate the person's approval of the information communicated.

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

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

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

- (a) There are usually alternative Tender lodgement methods described in the RFT. It is always the tenderer's responsibility to lodge the Tender by Closing Date and Closing Time.
- (b) If there is a defect or failure of the NSW Department of Commerce *eTendering* website and the Board is advised, the Tender Closing Date and Closing Time may be extended provided that, in the view of the Board, the tender process will not be compromised by such an extension.

8.3 Custody of Tenders after receipt

8.3.1 All hard copy tenders submitted (and any accompanying CD-ROMS or floppy disks) are kept in the NSW Department of Commerce Tender Box, which is a locked tender box, until after Closing Date and Closing Time.

8.3.2 Tenders lodged electronically to the NSW Department of Commerce Tenders website will be treated in accordance with the *Electronic Transactions Act 2000* (NSW) and given no lesser level of confidentiality, probity and attention than Tenders lodged by other means.

- (a) On receipt of Tenders lodged electronically to the NSW Department of Commerce *eTendering website*, Tenders are encrypted and stored in a secure "electronic tender box."
- (b) For reasons of probity and security, NSW Department of Commerce is prevented from interrogating the electronic tender box to ascertain whether tenders have been received or for any reason, until after the Closing Date and Closing Time.
- (c) The e-mail receipt that is sent to the Tenderer after successfully up-loading the Tender is the only evidence of Tender lodgement provided.

8.4 Late Tenders

8.4.1 In accordance with the requirements of the NSW Government Code of Tendering, Late Tenders will not be considered except when the Board is satisfied that the integrity and competitiveness of the tendering process will not be comprised.

8.4.2 Normally, Late Tenders will not be considered for acceptance if they are:

- (a) hand delivered, including hand delivered by courier; or
- (b) received through Australia Post unless the envelope is clearly postmarked before the Closing Date and Time; or
- (c) received through Australia Post with only the tenderer's own franking machine on the envelope; or
- (d) received by electronic communication (facsimile or over the internet) and the despatch of the electronic communication of the Tender has occurred after the Closing Date and Time, including where delay may be due to the receiving facsimile or internet facility being engaged, faulty or otherwise inoperative.

8.5 Extension of the Closing Date and Time

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

9. EVALUATION OF TENDERS

9.1 General

9.1.1 Tenders will be assessed against the selection criteria listed below, which are not necessarily exhaustive, in order of significance or to be given equal weight.

9.1.2 The selection criteria for this Request for Tender that do not relate to price will account for 50% of the total evaluation score. The selection criteria for this Request for Tender that relate to price will account for 50% of the total evaluation score.

9.1.3 Information supplied by the tenderer in Part C will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the selection criteria listed in this RFT.

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

9.2 Selection criteria

- (a) Capacity to perform the agreement including: *[delete/amend any of the following, as applicable]*
 - (i) *Production/technical capacity*
 - (ii) *Human resource capacity, qualifications, skills and experience*
 - (iii) *Financial capacity and stability (including years in business and security considerations)*
 - (iv) *Maintenance and support service levels including availability of Help Desk for repair and help calls*
 - (v) *Quality assurance systems*
 - (vi) *Suitability of sub-contractors*

- (vii) *Current commitments*
- (viii) *Previous contract experience and standard of contract performance*
- (ix) *Record of ethical behaviour in service delivery*
- (x) *Referee reports*
- (xi) *Project plan*

- (b) Pricing
- (c) Compliance with specification.
- (d) *Compliance with Part D.*
- (g)) *Compliance with applicable policies.*
- (h) *Compliance with legislation and standards.*

9.3 Variation of Tenders

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

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

9.3.2 Such a variation may be made either:

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

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

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

- (a) it would substantially alter the original Tender; or

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

9.4 Exchange of information between government agencies

- 9.4.1 Lodgement of a Tender will itself be an authorisation by the tenderer to the Board to make available, on request, to any NSW government agency information, including but not limited to, information dealing with the tenderer's performance for any agreement that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of contract.
- 9.4.2 The provision of the information by the Board to any other NSW Government agency is agreed by the tenderer to be a communication falling within section 22(1) of the *Defamation Act 2005* (NSW), and the tenderer shall have no claim against the Board and the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the tenderer arising out of the communication.
- 9.4.3 In the evaluation of Tenders, the Board may take into account any information about the tenderer that the Board receives from any source.
- 9.4.4 To avoid doubt, information which may be collected, exchanged and used in accordance with this provision includes "personal information" about the tenderer for the purposes of the *Privacy and Personal Information Protection Act 1998*. Lodgement of a Tender will be an authorisation by the tenderer to the Board to collect such information from third parties, and to use and exchange such information in accordance with this clause.
- 9.4.5 The tenderer's attention is drawn to the *Freedom of Information Act 1989* which may confer rights, subject to the terms of that Act, to access, and to require the correction of, information held by certain agencies.
- 9.4.6 The successful tenderer's performance of the agreement may be monitored and assessed. Performance assessment reports, including substantiated reports of unsatisfactory performance, can be taken into account by NSW government agencies and may result in future opportunities for NSW government work being restricted or lost.

9.5 Corrupt or unethical conduct

- 9.5.1 If a tenderer, or any of its officers, employees, agents or sub-contractors is found to have:
- (a) offered any inducement or reward to any public servant or employee, agent or subcontractor of the Board, the Client Agency, or the NSW Government in connection with this RFT or the submitted Tender;
 - (b) engaged in corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988*, or
 - (c) a record or alleged record of unethical behaviour,
 - (d) not complied with the requirements of Commerce Business Ethics Statement found in the link below:

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

this may result in the Tender not receiving further consideration.

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

10. OUTCOMES

10.1 Negotiations before determination of outcome

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

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

10.2 Acceptance or rejection of Tenders (Core)

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

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

- 10.2.3 If the Board rejects all the Tenders received it may:

- a) invite fresh Tenders based on the same or different criteria (specifications and details contained in Alternative Tenders will not be used as the basis for the calling of new Tenders), or
- b) conduct post tender negotiations in accordance with this Part B.

10.3 Discontinuance of the Tender process

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

- 10.3.2 The Board will not be liable for any losses suffered by a tenderer as a result of discontinuance of the tender process, including costs of tendering.

10.4 Notification of outcome

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

10.5 Entry into agreement

- 10.5.1 The Board may enter into an agreement with a successful tenderer either by letter of acceptance or by execution of a formal agreement in terms of Part D. If the Board chooses to proceed by way of formal agreement it will indicate in any notification of acceptance that such acceptance will be formalised by execution of a formal agreement.

10.6 Post Tender negotiations in the event all Tenders are rejected

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

10.7 Complaints

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

State Contracts Control Board
Level 23, McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

10.8 Disclosure of information concerning tenderers and outcome of the tender process

- 10.8.1 Details of tenderers and the outcome of the tender process (including any contract entered into) will be disclosed in accordance with the NSW Government Tendering Guidelines, available at:

<http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>

An outline of these requirements can be found in Annexure 2 to Part B of this RFT.

10.9 Ownership of Tenders

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

10.10 Monitoring of Contractor Performance

- 10.10.1 During the course of the agreement the Contractor's performance will be monitored and assessed. For details refer to the NSW Government Procurement Guidelines on service provider performance management which is available on request from the Contact Officer or the internet at:

www.dpws.nsw.gov.au/NR/rdonlyres/ebwssn7k5yfsxvbbwly7mhpwmgec6elk2wb3hbuptrlypeir7otlr7ud7noad4jv6m5fdai5wy2566kasjlyfmwnoab/Service+Provider+Performance+Management.pdf

- 10.10.2 The terms and conditions of the proposed agreement, set out in Part D, detail the performance criteria to be applied in the monitoring of Contractor performance.

ANNEXURE 1 TO PART B ADDITIONAL INFORMATION

ANNEXURE 2 TO PART B - DISCLOSURE OF INFORMATION CONCERNING TENDERERS AND OUTCOME OF THE TENDER PROCESS

1, In accordance with the NSW Government Tendering Guidelines referred to in clause 10.8.1 and found at <http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>, the following **tender information** is required to be disclosed -

Tender Type	Level of disclosure	Basis of disclosure
For all public calls for tender, expressions of interest or other such public calls which may result in a contract with the private sector.	As a minimum: a concise description of the proposed works, goods or services the subject of the tender call; the date responses to the tender call close and where responses are lodged; and location of the tender call documents. The names and addresses of all entities which submit responses.	Routine public disclosure at the time tender calls are advertised. Routine public disclosure within 7 days of the date tender calls closed.
In a multi-stage tender process.	The names and addresses of the shortlisted entities, except where such disclosure is likely to compromise the competitiveness of the subsequent tender process.	Routine public disclosure within 7 days of these entities being advised of their shortlisting.

2. In accordance with the NSW Government Tendering Guidelines referred to in clause 10.8.1 above, the following **contract** information is required to be disclosed -

Contract size and type	Level of disclosure	Basis of disclosure
Class 1 contracts All government contracts with estimated value \$150,000 or above).	(a) The name and business address of the contractor; (b) Particulars of any related body corporate (within the meaning of the Corporations Act 2001 of the Commonwealth) in respect of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in carrying out any of the contractor's obligations under the contract or will receive a benefit under the contract; (c) The date on which the contract became effective and the duration of the contract; (d) Particulars of the project to be undertaken, the goods or services to be provided or the real property to be leased or transferred under the contract; (e) The estimated amount payable to the contractor under the contract; (f) A description of any provisions under which the amount payable to the contractor may be varied; (g) A description of any provisions with respect to the renegotiation of the contract; (h) In the case of a contract arising from a	Routine public disclosure within 60 days after the contract becomes effective.

	tendering process, the method of tendering and a summary of the criteria against which the various tenders were assessed; and (i) A description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services.	
Class 2 contracts Class 1 contracts (i.e government contracts with estimated value \$150,000 or above) which also: <ul style="list-style-type: none"> - result from a direct negotiation where there has not been a tender process; or - have been the subject of a tender process and where the final contract terms and conditions are substantially negotiated with the successful tenderer (this includes alliance type contracts); or - involve operation or maintenance obligations for 10 years or longer; or - involve a privately financed project as defined by relevant Treasury guidelines; or - involve a transfer of land or other asset to a party in exchange for the transfer of land or other asset to an agency. 	The information required for class 1 contracts and <ul style="list-style-type: none"> (a) Particulars of future transfers of significant assets to the State at zero, or nominal, cost to the State, including the date of their proposed transfer; (b) Particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer; (c) The results of any cost-benefit analysis of the contract conducted by the agency; (d) The components and quantum of the public sector comparator if used; (e) Where relevant, a summary of information used in the contractor's full base case financial model (for example, the pricing formula for tolls or usage charges); (f) Where relevant, particulars of how risk, during the construction and operational phases of a contract to undertake a specific project (such as construction, infrastructure or property development), is to be apportioned between the parties, quantified (where practicable) in net present-value terms and specifying the major assumptions involved; (g) Particulars as to any significant guarantees or undertakings between the parties, including any guarantees or undertakings with respect to loan agreements entered into or proposed to be entered into; and (h) Particulars of any other key elements of the contract. 	Routine public disclosure within 60 days after the contract becomes effective.
Class 3 contracts Class 2 contracts where the estimated value of the government contract is \$5 million or more.	The information for class 1 and 2 contracts and the complete contract, less confidential information. Note: if some or all of a class 3 contract is not disclosed for reasons of confidentiality, the agency is to disclose: <ul style="list-style-type: none"> the reasons for not publishing the contract or provisions; a statement as to whether the contract or provisions will be published and, if so, when; and where some but not all of the provisions of the contract have been disclosed, a general description of the types of provisions that have not been published. 	Routine public disclosure within 60 days after the contract becomes effective.

3. Requests for disclosure of additional contract information

Tenderers must acknowledge that any person may make a specific request to the State Contracts Control Board for any item of contract information contained in schedules 1 or 2, or for a copy of a contract, which is not required to be routinely disclosed under section 15A of the FOI Act. The State Contracts Control Board must provide the requested contract information or the requested copy of the contract to the requesting person (less any confidential information) within 60 days of receiving the request.

Where a copy of a contract has been requested and some or all of the contract is not provided for reasons of confidentiality, the State Contracts Control Board will disclose:

- the reasons for not providing;
- a statement as to whether the contract or provisions will be provided and, if so, when; and
- where some but not all of the provisions of the contract have been provided, a general description of the types of provisions that have not been provided.

4. Disclosure of amendments or variations to contract information under the FOI Act

The FOI Act requires that, if there is an amendment to the contract terms or a material variation made under the contract that changes information already routinely disclosed under the FOI Act, the State Contracts Control Board must ensure that the information concerning the change is routinely disclosed within 60 days after such amendment or variation becomes effective, less any confidential information. In the case of class 3 contracts, the full amendment or material variation, less any confidential information, must be disclosed within the 60 day timeframe.

5. Confidential information

None of the disclosure obligations contained in the FOI Act, or the requirements for disclosing tender information or a copy of a contract or information in relation to a contract under these guidelines, require the disclosure of:

- the commercial-in-confidence provisions of a contract (as defined in section 15A(14) of the Freedom of Information Act) (the contractor's financing arrangements; the contractor's cost structure or profit margins; the contractor's full base case financial model; any intellectual property in which the contractor has an interest; or any matter whose disclosure would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future.);
- details of any unsuccessful tender;
- any matter that could reasonably be expected to affect public safety or security; or
- information which would be exempt from disclosure if it were the subject of an application under the Freedom of Information Act.

Where such confidential information is withheld, the State Contracts Control Board must inform the requesting person that access to that information may be sought in accordance with the Freedom of Information Act. This will enable a person seeking the information to have the appeal rights available under the Freedom of Information Act.

6. Tenderers are invited to nominate items they consider are confidential and why.



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

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

TENDER RESPONSE

Contract 0701696

**Supply, Installation and Maintenance of a Masonry
Cutting and Profiling Device for NSW Department of
Commerce Heritage and Building Services.**

RFT Number 0701696

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

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

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

Contact Name: <Insert name of Contract Administration
Officer>

Contact Phone: <insert telephone no>

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

- Are you providing supporting documents in hard copy or on CD-ROM?
Yes/No
- Did you clearly mark the supporting documents as "Supporting Documents to RFT No (Guide Note: please fill in the RFT No)?"
Yes/No

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PART C1 TENDER RESPONSE TO PART B

1. INTRODUCTION

The information provided in this Part will be used in the assessment of Tenders. Questions have been framed to ensure responses that are relevant to the selection criteria. Please provide attachments where necessary, clearly labelled and cross-referenced.

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

2. DETAILS OF TENDERER IDENTITY AND STATUS

2.1 Details of identity

Type or write your identification details as required below.

If a company, Company Name	
If a partnership, Partnership Name	
If an individual, individual's name	
Trading Name	
Australian Business Number (ABN)	
Australian Company Number (ACN)	
Registered Office (if a company)	
Site Address (principal place of business)	
Postal Address (principal place of business)	
Alternative Address	
Contract Administration Contact Name	
Contract Administration Contact Telephone No.	
Contract Administration Contact E-mail Address	
Contract Administration Contact Fax No.	
Chief Executive Officer's Name (CEO)	
Switchboard Telephone No:	
Company email address	

Website address:	
Tenderer's Reference No:	

2.2 Details of ownership

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

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

2.3 Contracting as agent/trustee

2.3.1

If awarded an agreement, do you intend to enter the agreement in your own right or as agent for some other entity or entities?

If an agent, identify your principal who will be bound by the agreement and any authority given by that principal to you to execute any such agreement as its agent. I

2.3.2

If awarded the agreement, do you intend to enter the agreement in your own right or as a trustee for some entity or entities? If a trustee, provide a copy of the trust deed, set out the names of the trustees, and provide full details below of your capacity to enter any agreement as a result of this RFT.

3. CAPACITY TO PERFORM AGREEMENT

3.1 Production/technical capacity – NOT USED

3.2 Human Resource Capacity

Provide details of qualifications and experience of key personnel to be involved in the operation of the proposed agreement. Further questions about personnel and qualifications appear in Part C, section 9 of this document.

3.3 Financial capacity and stability

3.3.1

During the course of the tender process, it may be required that you submit a copy of your last three annual financial reports. Indicate below whether you will provide these reports if required.

Yes/No

If "No", comment below:

3.3.2

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

3.4 Maintenance and support service levels and training

NOTE: For Preventative Maintenance, Tenderers are to refer to Preventative Maintenance Schedule at Part C4

3.4.1

If you have a toll-free help desk number specify the geographical area covered, the number(s) and help desk hours

3.4.2

Specify any non toll-free help desk number(s), corresponding toll charges, and help desk hours

3.4.3

Describe the in-service education and training that will be offered to the Principal, where appropriate, in support of Deliverables supplied under the agreement.

3.5 Quality assurance systems

3.5.1 Quality Certification

3.5.1

Indicate below whether you have attached at **Part C6** any certification from approved testing authorities that confirm that the tendered device and all associated parts of the tendered device meet the relevant Australian, overseas or International Standards.

Yes/No

If "No", comment below:

3.5.2 Quality Assurance

3.5.2

Indicate whether your company has attained certification for the tendered Device and all associated parts of the tendered device under the current relevant Australian Standard. Attach Certification at **Part C6**.

Yes/No

3.5.3 If certification is being sought

3.5.3

If you are in the process of attaining certification, provide evidence and a projected timetable and schedule for certification.

3.6 Sub-Contractors

3.6.1

Is any part of the Device or services associated with the device (ie preventative maintenance, education and training) to be offered through a sub-contractor? In this context, suppliers of raw materials and/or minor components to be incorporated into the Deliverables supplied by the Contractor are not regarded as sub-contractors for the purpose of this question.

Yes/No

If “Yes”, in respect of each nominated sub-contractor, please provide the following information, so far as applicable. Copy this table and insert details if there is more than one nominated sub-contractor.

Sub-contractor	
If a company, Company Name	
If a partnership, Partnership Name	
If an individual, individual's name	
Trading Name	
Australian Business Number (ABN)	
Australian Company Number (ACN)	
Registered Office (if a company)	
Site Address (principal place of business)	
Postal Address (principal place of business)	
Alternative Address	
Contract Administration Contact Name	
Contract Administration Contact Telephone No.	
Contract Administration Contact E-mail Address	
Contract Administration Contact Fax No.	
Sales Order Contact Name	
Sales Order Phone No.	
Sales Order E-mail Address	
Sales Order Fax No.	
Chief Executive Officer's (CEO) name	
Switchboard Telephone No.	
Company E-mail Address	
Website address	
Items/Services able to be supplied	

3.6.2

For each nominated sub-contractor, provide details of their legal status (company, partnership, individual etc) and experience and qualifications in the provision of similar Deliverables.

3.7 Previous contract experience and standard of contract performance

3.7.1

Provide details of any previous agreement(s) with the client agency and or the Board that you have been involved in during the past four years in the table below:

Contract No	Contract Name	Date commenced	Date finished (if applicable)

3.7.2

Demonstrated expertise and experience in the successful provision of a similar device on a similar scale to the Requirement (not for the provision of goods and/or services to the Board). State the number of years in business providing these goods and/or services.

3.7.3

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

3.8 Current Legal Proceedings

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

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

Yes/No

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

3.9 Referees

Please provide three (3) names and contact details of previous customers

3.10 Project Plan

Attach your suggested project plan for delivery of the Requirement to your Tender, identifying a start and finish date, milestones and any required advance payments or progress payments. If the latter, progress payments should be tied to completion of milestones. Detailed questions to be answered by tenderers are located at Part C7

3.11 Other comments on capacity or ability to perform the agreement

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

4. PRICING AND RELATED INFORMATION

4.1 Price Schedule

Complete the Price Schedule at Part C3, as directed in Part B.

4.2 Price Basis

All tenders must be submitted on the basis that the price of the device and all services associated with the device (ie preventative maintenance, education and training) will be firm.

4.3 Settlement discount – NOT USED

5. COMPLIANCE WITH SPECIFICATION

Complete the Statement of Compliance with Specification at Part C2.

6. COMPLIANCE WITH PART D

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.

Tenders may be considered non-conforming Tenders if they do not indicate significant compliance with Part D of this RFT.

7. COMPLIANCE WITH POLICY REQUIREMENTS

7.1 Code of Practice and Code of Tendering

Have you read the [NSW Government Code of Practice](#) and [Code of Tendering](#) and taken them into consideration in preparing and submitting your Tender?

Yes/No

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

Yes/No

Provide any other relevant information below

7.2 Occupational Health Safety & Rehabilitation

Does your enterprise have Safe Work Procedures or specific health and safety instructions in place relevant to its operations?

Yes/No

If “Yes”, provide below, or attach to the completed Part C, a summary listing of procedures or instructions.

Does your enterprise have any permit to work systems?

Yes/No

If **"Yes"**, provide below, or attach to the completed Part C, a summary listing of permits.

Are there documented accident, incident and hazard investigation reporting procedures in place?

Yes/No

If **"Yes"**, provide below, or attach to the completed Part C, an outline of these procedures.

Set out below, or attach to the completed Part C, the Safe Work Procedures that you have developed for the agreement, if awarded. These procedures should include, as a minimum, the matters outlined in Part B.

- 7.3 Environmental Management – INCLUDED IN PROJECT PLAN
- 7.4 Outworkers Code – NOT USED
- 7.5 Purchasing Preference Scheme – NOT USED
- 7.6 Sustainable, long-term industry development – NOT USED
- 7.7 Development of long-term, strategic alliances – NOT USED
- 7.8 Export potential and/or import replacement – NOT USED
- 7.9 Value-added activity – NOT USED
- 7.10 SME involvement – NOT USED
- 7.11 Regional Development – NOT USED
- 7.12 Existing industry development activity and proposed new investment – NOT USED
- 7.13 Innovation, research and development – NOT USED
- 7.14 Workforce Development – NOT USED
- 7.15 Industry Impact Assessment and Local Industry Participation Plan – NOT USED
- 7.16 Competitive Neutrality – NOT USED
- 7.17 Electronic Commerce – NOT USED
- 7.18 Other relevant policies – NOT USED
- 8. COMPLIANCE WITH RELEVANT LEGISLATION AND STANDARDS – NOT USED
- 9. OTHER INFORMATION REQUIRED
- 9.1 Addenda to this RFT after issue

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

YES/NO THERE HAVE BEEN NO ADDENDA BY THE BOARD

If “No”, provide reasons below

- 9.3 Tenderers are to provide full details of all software functions and interface capabilities. Refer to the specification for software functionality requirements

9.4 Tenderers are to provide full details of the ability of the tendered device to successfully complete the following tests:

- a) scanning of existing mould
- b) deep multi-element classic mould
- c) gothic moulding with undercutting
- d) baluster
- e) column and curved bullnosed kerbing with a tolerance of +0.5 to -0.5mm/metre.

9.5 Tenderers are to provide full details of the timelines associated with acceptance testing and commissioning of the device:

9.6 Tenderers are to provide details of qualifications of personnel who will be conducting training, acceptance testing and commissioning of the device as described in the specification at Part C2, and preventative maintenance and repairs as described at Part C4.

9.7 Tenderers are to provide details of the reliability of the tendered device. Device reliability (uptime) is to remain at 95% or better for each 24 hour period during the initial warranty period of two years. The reliability refers to the performance of equipment and excludes factors outside the control of the Contractor such as interruption to power supply.

- 9.8 WARRANTY.** HABS have indicated their preference for the tendered device to include a warranty of a least 2 years duration from the commissioning date which covers the entire device including all parts and all operational aspects of the device. HABS have indicated their preference for the warranty to cover all preventative maintenance and all associated costs for the entire period of the warranty. Please provide details of warranty coverage and length of warranty.

- 9.9 EXTENDED WARRANTY.** Tenderers are to provide details and pricing for extended warranty and indicate whether their extended warranty includes preventative maintenance.

9.10 Tender validity period

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

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

9.11 Statutory Declarations – NOT USED

9.12 Supply of Australian Business Number

Question 9.5.1

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

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

Answer 9.5.1

9.13 Conflict of Interests

Question 9.6.1

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

Answer 9.6.1

Yes/No

Question 9.6.2

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

PART C2 SPECIFICATION AND STATEMENT OF COMPLIANCE

STATEMENT OF COMPLIANCE

Do the tendered Deliverables fully comply with Specification? **Yes/No** If “No” a full statement of deviations must be given, specifying the relevant clause/s and the extent of non-compliance to each.

Required Technical Specification	Tenderer's Response
Lathe Function: To suit 100mm to 600mm diameter baluster/columns for total length 3000mm. Adjustable rotation speed 0-25 Rpm	
Blade cutting stroke (X axis) 3900mm	mm
Minimum blade travel vertical (Z axis) 750mm	mm
Maximum bridge travel (Y axis) 1800mm	mm
Minimum Tilting Head (R/A Axis) 90°	°
Table/Head Rotation (W/C axis) Continuous	
Blade diameter - Maximum Horizontal 600mm	mm
Blade diameter - Maximum Vertical 1000mm	mm
Cutting depth - Minimum Horizontal 135mm	mm
Cutting depth - Minimum Vertical 400mm	mm
Cutting tables, 2 required with “T” slots Minimum Width 1500mm	mm
Cutting tables, 2 required with “T” slots Minimum Length 3000mm	Mm
Blade Motor Not exceeding 50 Hp	Hp
Blade Motor Not exceeding 38 kW	kW
Variable blade speed range 600 – 5000rpm	rpm
Variable cutting & return speeds	m/min
Cooling water consumption @3 bar, 50litres per minute	Litres/minute
Total machine/bridge mass Not to exceed 8000kg	Kg

SPECIFICATION

SUPPLY AND INSTALLATION

OF

MASONRY CUTTING AND PROFILING

DEVICE

FOR

DEPARTMENT OF COMMERCE

HERITAGE SERVICES

92 BURROWS ROAD ALEXANDRIA

SPECIFICATION CONTENTS PAGE

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1 CLIENT

For the purposes of this tender, the client will be the NSW Department of Commerce Heritage & Building Services- PO Box 253, Alexandria NSW 2015.

The principal client representative will be Mr. James Gardner – Project Manager – 02 9565 9043 MB: 0418 250 934.

2 DESCRIPTION OF REQUIREMENT

The 5 axis masonry cutting and profiling device is to consist of an overhead traveling beam configuration capable of accessing dual cutting tables over a total runway length of 11.8m with a safe working load of 8000kg for each cutting tables.

Typical Work required is execution of classic geometric moulding straight and curved, gothic style including undercutting and turning facility for balusters/columns. Current thru put is approx 200m³/year. 95% sandstones, balance granite, marble and slate.

Allow for operating hours of 14 hours per day, 7 days per week 358 days a year.

The operation of the device is to be suitable in both the vertical and horizontal modes at variable speeds with accommodation of a wide variety of blades, profile wheels and drilling tools.

The device is to be installed on an existing concrete pad and integral concrete pedestal walls within the Production Building at the nominated location.

Where any adjustments to existing works are required, the tenderer is to clearly qualify their submission accordingly.

Specification of the existing concrete works have been defined in the documentation reference # F7045 drawings sheets S1 Revision A – S8 Revision B dated August 2007

Successful tenderer to demonstrate proposed cutting device's capabilities on a machine commissioned within the last 24 months.

3 SOFTWARE FUNCTIONALITY

The device is to be fully automated with all computer-aided controls and components and compatible "Miystation" 2D and 3D drawing software. Approx 15" touch screen programming in-built to control pendant.

Full serial cable USB/Wireless/LAN line connectivity is required.

4 OPERATING SPECIFICATION

All operating instructions, manuals and operations are to be in English.

All device activities are to be fully operator controlled for all axis positions and axis interpolation for a wide variety of cutting and profiling works in vertical and horizontal modes.

The device is required to contain two (2) tables for cutting, turning and profiling.

The cutting device will be required to cut and profile utilizing an automatic programmable tilting head with a range of at least 90°.

Variable speed for multiple tool operation is to be provided by in-built inverter and may also be achieved by separate blade and router motors. Datum control is to be provided by laser/lasers.

Cutting device to include in-built optical scanner device for copying templates and moulds. All Cutting device bearings are to be protected from dust and water penetration.

Device movements in all axes are to be multi-speed and precise incorporating brushless motors and digital encoders.

5 TECHNICAL DATA

Software Functions

Tenderers to provide full details of all software functions and interface capabilities at part C.

Lathe function

To suit 100mm to 600mm diameter baluster/columns for total length 3000mm. Adjustable rotation speed 0-25 Rpm

Guide adjustment

Flexibility required for unattended overnight works including shutdown of cutting device and feedback to water reticulation plant with full re-adjustment for day works. Emergency shutdown facility must be in-built.

The device is to be built to the following preferred technical data specifications.

Tenderers are to define where the variations from these specifications and are to ensure compatibility with existing works.

Blade cutting stroke (X axis)	3900mm
Minimum blade travel vertical (Z axis)	750mm
Maximum bridge travel (Y axis)	11800mm
Minimum tilting head (R/A axis)	90°
Table/head rotation (W/C axis)	Continuous
Blade diameter	
- Maximum Horizontal	600mm
- Minimum Vertical	1000mm
Cutting depth	
- Minimum Horizontal	135mm
- Minimum Vertical	400mm
Cutting tables, two (2) required with "T" slots	
- Minimum Width	1500mm
- Minimum Length	3000mm

Blade Motor

- Hp Not exceeding	50
- kW Not exceeding	38
Variable blade speed range	600/5000rpm
Cooling water consumption @3 bar	50 liters/min
Electrical Requirements	3 phase cabling from main power connection of the device to an IP66 rated lockable isolating switch to a point within 3000mm of the concrete pad.

Tenderers are to note that HABS are able to adjust to any Power Requirements specified by tenderers for their tendered device.

Total machine/bridge mass Not to exceed	8000 kg
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6 LOCATION

The device is to be provided at the NSW Department of Commerce Heritage Works site at 92 Burrows Road Alexandria.

The device will be housed in the Production Building in the position nominated on drawing reference F7045 sheet S2-A.

7 CLIENT PROVISION

The client will provide delivery of the following elements and services as required for the full operation of the device. These will be provided separate to the tender for the device.

All services required to be provided by the client will be delivered to a maximum of 3000mm from the existing concrete pad.

Concrete Pad

A fully integrated pierced concrete pad and integral concrete pedestal walls will be provided in accordance with FES drawings reference F7045 sheets S1 – S8.

The tenderer is to verify the suitability of the nominated dimensional set-out for the equipment proposed

Water

The tenderer is to define the water demand required for the proposed device.

Unless otherwise specified, water supply will be in accordance with the technical specifications i.e. cooling water consumption @3 bar 50 litres/minute

Electrical

The tenderer is to define the electrical demand required for the proposed device.

Allow to provide 3 phase cabling from the main power connection of the device to an IP66 rated lockable isolating switch to a point within 3000mm of the concrete pad.

8 INSTALLATION

Tenderers are to attend the site (92 Burrows Road, Alexandria) to satisfy themselves regarding the availability of services, clearances and access to install and safely operate the device. A RFT briefing will be held at the site on the date and at the time specified in Part B of the RFT documentation. If tenderers are unable to attend the briefing, they should contact HABS to arrange an alternate date and time to attend the site.

Tenderers are to provide a detailed project plan for installation of the device. Specific questions to be addressed by tenderers are located at Part C7.

The tenderers are to allow for the full installation of all equipment and services (other than electrical) relating to the device and for an area within 1m of the existing concrete pad.

Installation must not impact on the existing HABS production schedules which will continue within the building where the device is to be installed, but away from the location of the concrete pad and designated installation area. Any Interruption to HABS ability to utilise the areas of the building outside the designated installation area must occur outside the hours of **07.00 till 17.30 (7am till 5.30pm) Mondays through to Saturdays.**

9 ACCEPTANCE TESTING PROCEDURES AND COMMISSIONING

Tenderers are to detail the ability of their deliverable to successfully complete each of the following tests:

- scanning of existing mould
- deep multi-element classic mould
- gothic moulding with undercutting
- baluster
- column and curved bullnosed kerbing with a tolerance of +0.5 to -0.5mm/metre.

The successful tenderer will be required to perform all of the tests listed above successfully and to the full satisfaction of HABS prior to commissioning. HABS will sign a schedule of acceptance checks following the successful tenderer's successful completion of all testing. After the signing of the schedule of acceptance checks by HABS, the device will be ready for commissioning by the successful tenderer.

10 TRAINING

The successful tenderer is to provide detailed and full training for Twenty (20) working days and Ninety (90) days support training in all aspects of the operation of the device. Training to cover all operational aspects of the device, software, software interface and preventative maintenance. Training is to be conducted on site at 92 Burrows Road Alexandria.

This training is to be undertaken by at least three (3) representatives of the client over a minimum three (3) month period.

The successful tenderer is to present a program for the full training of HABS nominated personnel for review, adjustment and acceptance by HABS prior to the commencement of installation.

On-going support to HABS nominated personnel is to be maintained by the successful tenderer for a minimum period of two years after the commissioning date. The successful tenderer will be required to provide training support on-site and respond to 'at call' requests for support within two hours during the period of two years after the commissioning date.

11. DEVICE RELIABILITY

Device reliability (uptime) is to remain at 95% or better for each 24 hour period during the initial warranty period of two years. The reliability refers to the performance of equipment and excludes factors outside the control of the Contractor such as interruption to power supply.

12 WARRANTY

HABS have indicated their preference for the tendered device to include a warranty of a least 2 years duration from the commissioning date which covers the entire device including all parts and all operational aspects of the device. HABS have indicated their preference for the warranty to cover all preventative maintenance and all associated costs for the entire period of the warranty. Please provide details of warranty coverage and length of warranty at Part C.

Tenderers are to provide details and pricing for extended warranty and indicate whether their extended warranty includes preventative maintenance at Part C.

13 PREVENTATIVE MAINTENANCE

Preventative maintenance during initial two years following device commissioning date:

Tenderers are to provide details of scheduled preventative maintenance to occur during the initial two years following the commissioning date of the device. Tenderers are to complete details in Part C4. The cost of this preventative maintenance is to be included within the warranty.

Preventative maintenance after the initial two years following device commissioning date:

Tenderers are to provide details of scheduled preventative maintenance to occur during the initial two years following the commissioning date of the device. Tenderers are to complete details in Part C4. Pricing for this preventative maintenance are to be completed in the Price Schedule at Part C4.

In instances of preventative maintenance performed by the Successful tenderer, maintenance must be completed in a timely manner. Once commissioned, the device must not be offline for more than a continuous period of 48 hours. Tenderers are to provide details of their ability to complete any preventative maintenance in a timely manner so that the device is not offline for a continuous period of more than 48 hours.

14 EQUIPMENT FAULTS AND CONTRACTOR RESPONSE TIMES

In the case of any equipment fault, the Successful tenderer must complete any repairs in a timely manner. Once commissioned, the device must not be offline for more than a continuous period of 48 hours. Tenderers are to provide details of their ability to complete any repairs to equipment faults in a timely manner so that the device is not offline for a continuous period of more than 48 hours.

The Successful tenderer must be on site and ready to conduct repairs to any equipment faults within two hours of HABS contacting the Successful tenderer and describing any equipment fault. Tenderers are to provide details of their ability to be on site and ready to

conduct repairs within two hours of HABS contacting the Successful tenderer and describing any equipment fault.

PART C3 PRICE SCHEDULE

Item No.	Description	Qty.	Tendered Price			Imported Content (%)
			Price excluding GST	GST component	Price including GST	
1.	Cost of Device including all associated parts and software.	for	\$_____ Total	\$_____ Total	\$_____ Total	_____ %
Item No.	Description	Qty.	Price excluding GST	GST component	Price including GST	Imported Content (%)
2.	Installation, Commissioning and Acceptance Testing of the Device as described in the Specification at Part C2.	for	\$_____ Total	\$_____ Total	\$_____ Total	_____ %
3.	Provision of Training Course as described in the Specification at Part C2	for	\$_____ Total	\$_____ Total	\$_____ Total	_____ %
4	Required Spare Parts for Levels 1 and 2 Preventative Maintenance (if any) as described at Part C4	1 Set	\$_____ Per Set	\$_____ Per Set	\$_____ Per Set	_____ %

PART C4 PREVENTATIVE MAINTENANCE SCHEDULE

Part C4 Preventative Maintenance Schedule, is a separate attachment to Part C. Tenderers are to complete Part C4 and submit it with Part C by the RFT close date and time shown on the cover page of Part A.

PART C5 ACKNOWLEDGMENT AND CONFIRMATION OF TENDER

Note to tenderers: If submitting a hard copy Tender, execute this page at clause 4. If submitting an electronic Tender, only respond to clauses 5 and 6.

1. Lodgement of a Tender will itself be an acknowledgment and representation by you that you are aware of the requirements of the Codes; that you will comply with the Codes; and that you agree to report to the Board any breaches of the Codes for the duration of the agreement.
2. I affirm that this is my Tender to supply the Deliverables sought in the RFT at the prices tendered, and in accordance with the conditions of the RFT except as expressly amended in my Tender, and that the information given in my Tender is correct.
3. I affirm that this is my Tender which will form part of my agreement if my Tender is successful:

Print Name and Title

Signature of tenderer (if an individual, as identified in Part C1 (details of tenderer identity))

OR

Signature of authorised officer of tenderer (as identified in Part C1 (details of tenderer identity))

OR

Signature of partner completing tender on behalf of partnership (as identified in Part C1 (details of tenderer identity))

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

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

Yes/No

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

Yes/No

Print Name and Title

PART C6 ADDITIONAL INFORMATION TO BE PROVIDED AS ATTACHMENTS**3.5.1 Tenderers to attach Quality Certification documentation**

Tenderers are to attach any certification from approved testing authorities that confirm that the tendered device and all associated parts of the tendered device meet the relevant Australian, overseas or International Standards.

3.5.2 Tenderers to attach Quality Assurance documentation

Tenderers are to attach certification for the tendered Device and all associated parts of the tendered device under the current relevant Australian Standard. Attach Certification at.

PART C7 PROJECT PLAN

Tenders are required to provide a detailed project plan which will include answers to the following questions.

1. Evidence of installation site attendance. Tenderers to state time and date of site attendance.

2. Evidence of trades licensing for all personnel associated with installation of the device.

3. Occupational Health and Safety management plan.

The following link goes to the NSW Procurement Guidelines for Occupational Health and Safety. Tendered Occupational Health and Safety management plan should be consistent with these guidelines.

<http://www.dpws.nsw.gov.au/nr/rdonlyres/efxtycbtexzihzty3nnlyxzob2ktnrpdlojq6gsaft4hybie4s2tzvlqcvvaneaugupzschzvlkslbkx5fqpr4nqoka/ohs%2006.pdf>

4. Proposal to isolate the work area with fencing that complies to the appropriate Australian Standard.

5. Details of any site/building modifications, necessary to ensure proper and satisfactory installation of the device and all costs associated with these modifications.

6. HABS have indicated that the successful tenderer must be able to commence installation within 90 days of the contract award date. Tenderers are to detail their ability to be able to commence installation within 90 days of this date.

7. Tenderers are to provide a detailed timeline for delivery, installation through to commissioning program for acceptance by HABS.

8. Environmental management at the installation site throughout the installation process, and clean up of any waste materials after installation of the device and prior to commissioning.

The following link goes to the NSW Procurement Guidelines for Environmental Management. Tendered environmental plan should be consistent with these guidelines.

<http://www.dpws.nsw.gov.au/nr/rdonlyres/eoxj5xdnqteblntdfffjpp35qvvtlztzqvgcux37iswzohj2gced5c3pvjzjbzgqgb3o6guqnutpqyuotpbznwn6whjh/guidelines%20environmental%20management%2006.pdf>

9. If advance or progress payments are required, tenderers are to include details below, together with milestones against which such payments are to be made.

10. Tenderers are to provide any further details related to their project plan that are not covered by the previous questions.

PART C4 Preventative Maintenance Schedule

PART C4 – 0701696 – PREVENTATIVE MAINTENANCE OF MASONRY CUTTING AND PROFILING DEVICE FOR NSW DEPARTMENT OF COMMERCE HERITAGE AND BUILDING SERVICES

INSTRUCTION TO TENDERERS:

Tenderers are required to answer all following questions and complete the Price Schedule of Charges table for preventative maintenance for the tendered device outside of the mandatory two year warranty period.

PREVENTATIVE MAINTENANCE AND REPAIRS

After the mandatory two year warranty period, it is envisaged that Preventative Maintenance and Repairs will be required to ensure optimum level of Functionality and Longevity of the device's life.

The inspection, minor preventative maintenance and repair, overhaul, breakdown, major repair, system upgrade, certification and calibration of plant and equipment is broken down within four (4) levels:

DEFINED MAINTENANCE LEVELS

Level 1 – Operator Level Cleaning and Inspection (expected to be conducted by HABS following training provided by Contractor)

May be carried out by a person having received basic instruction in the use, cleaning, inspection and replacement of consumable items (eg exchanging batteries) from a *Competent Person* – or carried out by a person utilising documentation provided by the contractor for the purpose and non-specialised tools.

Level 2 – Minor Preventative Maintenance, Repair and Testing (expected to be conducted by HABS following training provided by Contractor)

May be carried out by a person having received instruction in cleaning, minor preventative maintenance, repair and testing of the equipment from a *Competent Person* – or carried out by a person utilising documentation provided for the purpose using non-specialised tools. Level 2 repair is limited to the replacement or exchange of the end-user replaceable assemblies and specified components. Sign-off by a *Competent Person* of a valid test on completion may be required.

Level 3 – Minor Maintenance, Repair, Upgrade and Testing (to be conducted by qualified persons employed by Contractor)

Carried out only by a *Competent Person* with the requisite skills and having access to the appropriate documentation, specialised tools, jigs, test equipment (as required), resources and facilities. Level 3 Repairs extends to replacement of specified sub-assemblies and components relative to that item of equipment or plant. Sign-off by a *Competent Person* of a valid test on completion is required.

Level 4 – Major Overhaul, Repair and/or System Upgrade (to be conducted by qualified persons employed by Contractor)

Carried out only by a *Competent Person* having access to the appropriate specialised tools, jigs, test equipment, workshop facilities and resources. Level 4 servicing extends to sub-assemblies and components deemed suitable for the repair by NSWFB technical staff, original equipment manufacturers, suppliers and approved contractors as applicable to that item of equipment or plant. Sign-off by a *Competent Person* of a valid test on completion is required.

TENDERER'S RESPONSE TO THIS SECTION

Tenderers are to complete the details of their offer to provide Preventative Maintenance and Repair to support tendered equipment in the schedule of charges table.

It is expected that Levels 1 and 2 preventative maintenance can be conducted by HABS personnel appropriately trained by the Contractor. Tenderers are to confirm in their response if they will in fact permit HABS personnel maintenance Levels 1 and 2 upon the device following the conclusion of the 2 year warranty period. Where permission is granted to this respect, the Contractor is to provide details of the spare parts needed to perform the service. Tenderers are to note that appropriate levels of training for these maintenance levels must be included in the training provided by the Contractor after commissioning of the device.

PREVENTATIVE MAINTENANCE QUESTIONS

Tenderers are to detail below the technical capabilities and support that can be provided to HABS in the preventative maintenance and repair of the device and propose how they intend to provide the service. (examples of how the service could be provided are shown at PART A- Clause 2.1.8 of this tender document)

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Where tenderers do not have the required technical capabilities in house, they must state in their offer the nominated sub contractors who will be engaged to undertake these specialist tasks and requirements (respond to the question Sub Contractors in PART C).

Tenderers are to detail the technical expertise of service personnel that would be involved in the preventative maintenance and repair of the nominated equipment including capacity to provide expert technical support and professional services to assist HABS in developing technical documentation such as recommended practices and operational requirements.

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Tenderers are to provide below full details of the after hours facility (names, position titles and after hours contact telephone numbers) and the number and type of personnel and support infrastructure proposed for the preventative maintenance and repair of the device.

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Tenderers are to detail the manufacturers' requirements for the device for level 1 to level 4 services as they are defined within this tender under the heading *Defined Maintenance Levels*

Level 1 – Operator Cleaning and Inspection

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Level 2 – Minor Preventative Maintenance, Repair and Testing

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Level 3 – Minor Maintenance Repair Upgrade and Testing

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Level 4 – Major Overhaul, Repair and/or Systems Upgrade.

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Tenderers are to indicate below the hourly rate to undertake repairs for the nominated equipment.

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Tenderers are to provide a discount off list rates for spare parts to perform levels 1 and 2 servicing. Provide details of the spare parts (if any) required to performed these levels of maintenance. Pricing for these spare parts are to be detailed in the Price Schedule at Part C3.

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- NOTE: Tenderers are required to price Levels 1 and 2 preventative maintenance **only in the instance** where tenderers do not allow trained HABS personnel to perform these maintenance levels.
- NOTE: Tenderers should price preventative maintenance in the first 2 years **only in the instance** where tenderers do not include preventative maintenance in their initial warranty.
- NOTE: Tenderers should price preventative maintenance in years 3 onwards **only in the instance** where tenderers do not include preventative maintenance in their optional extended warranty.

PREVENTATIVE MAINTENANCE AND SERVICE OF TENDERED EQUIPMENT SCHEDULE OF CHARGES

**Tenderers
Name** _____

Level	\$\$1yr	\$\$2yr	\$\$3yr	\$\$4yr	\$\$5yr	\$\$6yr	\$\$7yr	\$\$8yr	\$\$9yr	\$\$10yr	Total \$ per Level
1											
2											
3											
4											
Total \$											

FREQUENCY OF PREVENTATIVE MAINTENANCE (TICK APPLICABLE BOX)

Level	Daily	Weekly	Monthly	Quarterly	Bi-Annual
1					
2					
3					
4					

Frequency of Preventative Maintenance **Additional Information**

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Dated: <Insert Date>

NSW STATE CONTRACTS CONTROL BOARD

and

AGREEMENT FOR

Supply, Installation and Maintenance of a
Masonry Cutting and Profiling Device for NSW
Department of Commerce Heritage and
Building Services.

PART D – CONDITIONS OF AGREEMENT

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THIS AGREEMENT is made on the ____ day of _____ 200..

BETWEEN:

NSW State Contracts Control Board of 2-24 Rawson Place, SYDNEY, in the State of New South Wales ("the Principal"), for and on behalf of NSW Department of Commerce, Heritage and Building Services (HABS)

AND **[insert name of contractor]** of **[insert 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 the Tender that was accepted by the Principal.
- C.** The Principal and the Contractor have agreed to enter a contract for the supply of Deliverables in the form of this Agreement.

1. Interpretation

1.1 Definitions

Guide Note: If accepting a tender by letter of acceptance, it is not necessary to fill out/attach documents to, the schedules to this agreement. The contents of the agreement, contained in the documents listed below, will be incorporated by reference. If executing a formal agreement, the relevant documents should be attached to the schedules indicated.

If for the particular RFT, any other documents will also comprise the agreement, they should be added to the list below.

"Agreement" means this agreement including:

- (a) the Schedules to this agreement;
- (b) the Tender and any documents evidencing agreed changes to the Tender; and
- (c) any documents notifying the Principal's acceptance.

"Conflict of interest" means 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 this Agreement.

"Circumstances Beyond the Control of the Contractor" include:

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

“Confidential Information” means, information including any documents or correspondence provided by the Principal to the Contractor that:

- (a) is by its nature confidential;
- (b) is designated by the Principal as confidential; or
- (c) the Contractor 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”).

“Contractor Information” means the information provided by the Contractor in Schedule 9.

“Contract Price” means in respect of each Deliverable, the price nominated in the Price Schedule and any subsequent variation agreed by the Parties.

“Contractor’s Delegate” means the individual or the position title nominated by the Contractor in its Tender.

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

- (a) The Contractor becomes insolvent;
- (b) The Contractor indicates that it does not have the resources to perform this Agreement;
- (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; notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (g) Any actions of a similar effect are taken.

“Deliverables” means the goods and/or services to be supplied by the Contractor in accordance with this Agreement.

“Delivery Date” means the date on which the Deliverables are supplied as directed by the Principal

“Imported Component” means a Component that is imported into Australia.

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

“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.

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

“Parties” means the Principal and the Contractor.

“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, the Principal’s Delegate, or the Crown to the Contractor .

“Principal’s Delegate” means the person or entity acting as contract administrator and is named in Schedule 1.

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

“Request for Tender” means the request for tender for the Deliverables issued by the Principal, including any addenda.

“Schedule” means a schedule to this Agreement;

“Security” means the security described in Schedule 1 or as otherwise agreed.

“Specification” means the detailed description of the Deliverables to be provided under the Agreement, contained in Part C2 to the Tender (Specification and Statement of Compliance) and any subsequent variation agreed by the Parties.

“State Contracts Control Board ” or “Board” mean 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 NSW Procurement – Contracting Services.

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

“NSW Procurement – Contracting Services” means a business unit of the NSW Department of Commerce, representing the Principal and authorised to arrange and, if applicable, 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.

“Tender” means the tender submitted by the Contractor in response to the Request for Tender, including any accepted variation to the tender.

“Term” means the term of this Agreement, if any, set out in Schedule 1 or otherwise agreed, and any extension of the Term in accordance with this Agreement.

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

1.2 Rules for interpreting this Agreement

- 1.2.1 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.
- 1.2.2 A reference to:
- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) a document or 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 incorporated;
 - (d) any thing (including a right, obligation or concept) includes each part of it, for example a reference to a part of this Agreement includes a reference to subordinate parts of that part.
- 1.2.3 A singular word includes the plural and vice versa.
- 1.2.4 A word that suggests one gender includes the other genders.
- 1.2.5 If a word is defined, another part of speech of that word has a corresponding meaning.
- 1.2.6 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.
- 1.2.7 A reference to the Principal includes, where the context so requires, its employees, agents, sub-contractors, officers and duly authorised delegates.
- 1.2.8 If the Contractor consists of more than one party, each obligation of the Contractor shall bind those parties jointly and severally and will be enforceable against them jointly and severally.
- 1.2.9 If there is an inconsistency between the terms of this Agreement then, for the purpose only of resolving the inconsistency, the documents that comprise this Agreement are to be construed in their date order, in descending order of priority from the latest date to the earliest date.

2. Principal's Delegate

- 2.1 The Principal's Delegate is responsible for administering this Agreement.
- 2.2 The Contractor must comply with any reasonable direction given by the Principal's Delegate in connection with the performance of work under this Agreement.
- 2.3 Unless this Agreement provides otherwise, and subject to the Principal's direction, the Principal's Delegate may exercise rights and discharge obligations conferred or imposed on the Principal under this Agreement.

- 2.4 The Principal's Delegate is not authorised to waive or vary any provision of this Agreement, release the Contractor from any obligation under this Agreement, or terminate this Agreement without the Principal's approval.

3. Supply under the Agreement

3.1 Nature of the Agreement between the Principal and the Contractor

- 3.1.1 This RFT covers Supply, Installation and Maintenance of a Masonry Cutting and Profiling Device for NSW Department of Commerce Heritage and Building Services. The preventative maintenance component of the requirement is to be effective for a period of at least two years.

4. Supply of the Device

4.1 Supply

- 4.1.1 The Contractor shall supply, install and commission the Device as directed by the Principal in accordance with this Agreement, and in accordance with the agreed project plan.
- 4.1.2 The Contractor will deliver the Device to the following delivery point:
- NSW Department of Commerce Heritage and Building Services
92a Burrows Road
Alexandria 2015
- 4.1.3 The Contractor shall supply any On Request Items (if any), such as spare parts, as and when requested by the Principal at any time during the Term of the warranty period and extended warranty period.

4.2 Conforming Deliverable

- 4.2.1 The Device shall conform to the Specification and the standards specified in this Agreement

4.3 Delay in Installation

- 4.3.1 The Contractor will give prompt, written notification to the Principal of any likely delay in the installation of the device beyond any agreed delivery dates in the agreed project plan.
- 4.3.2 Written notification of delay will not release the Contractor from its obligation to supply by the agreed delivery date unless the Principal agrees in writing to extend the date.
- 4.3.3 If in the Principal's opinion the delay has arisen from a cause beyond the reasonable control of the contractor, the Principal will not refuse a proposed extended delivery date without reasonable grounds for doing so.
- 4.3.4 The Contractor will not be entitled to any price increase or any costs or expenses in connection with the delay.

4.4 Actual Acceptance Date

- 4.4.1 Upon delivery, installation and acceptance of the Device in accordance with the contract conditions, HABS shall issue a signed and dated Certificate of Acceptance for the System. The Actual Acceptance Date in respect of the Device shall be the date shown on the Certificate of Acceptance.

4.5 Ownership and risk

- 4.5.1 Title in the Device shall pass to the Principal on acceptance of the Deliverables in accordance with this Agreement.

4.6 Installation and Commissioning

- 4.6.1 Installation of the device will be completed by the Contractor in accordance with the timeframes stated in the project plan.
- 4.6.2 The Contractor will successfully complete acceptance testing of the device prior to Commissioning. As described in the specification

4.7 Training

- 4.7.1 Training of HABS personnel is to be conducted by the Contractor in accordance with the requirement described in the specification.

5. Prices and Payment

5.1 Contract Price

- 5.1.1 The contract price shall include supply, installation and commissioning of the deliverable.
- 5.1.2 The Contract Price, except as specifically provided or agreed, is inclusive of all costs and expenses of supply, installation and commissioning.
- 5.1.3 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.

5.2 Payment

- 5.2.1 For the purposes of this clause, a Claim is a claim for payment:
- (a) in the form of a Tax Invoice;
 - (b) substantiated by an itemised account and any further details reasonably requested by the Principal;
 - (c) if made in respect of goods, accompanied by a receipt of delivery from the Principal;
 - (d) if made in respect of services, accompanied by any required certificate of acceptance from the Principal.
- 5.2.2 Subject to this clause, the Principal shall make payment within 30 days of receipt of a Claim for the Deliverables.

- 5.2.3 If the Principal is the Crown all payments shall be made by the Crown acting through the Principal's Delegate and not through the Board.
- 5.2.4 If progress payments are to be made in accordance with an agreed project plan, each progress payment will be made within 30 days of receipt of a Claim for the relevant progress payment.
- 5.2.5 If the Principal has requested further details regarding the invoice, the time for payment will be extended until 14 days after the date the information is supplied.
- 5.2.6 Unless a certificate of acceptance has been issued, a payment is not an acknowledgment that the Device have been supplied in accordance with this Agreement, but shall be taken to be payment on account only.
- 5.2.7 If the Principal disputes the invoice amount it shall certify the amount it believes is due for payment and shall pay that amount. The liability for the balance of payment shall be determined in accordance with this Agreement.
- 5.2.8 The Contractor will not be entitled to any credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment of money becoming due for the provision of Device.

5.3 Set-Off/Money Recoverable by Principal

- 5.3.1 The Principal may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Principal in connection with the supply of the Device.
- 5.3.2 Without limiting the above, any damages, costs and expenses recoverable by the Principal from the Contractor in consequence of the Contractor's breach of this Agreement may be deducted from money then due to the Contractor under this Agreement. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Principal and may be set off against any other money due to the Contractor by the Principal under this or any other agreement between the Principal and the Contractor.
- 5.3.3 Nothing in this clause will affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

5.4 Suspension of Payments

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

5.5 Additional expenses

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

- 5.5.2 If the Principal is the Crown, all reimbursement shall be made by the Crown acting through the Principal's Delegate, and not through the Board.

5.6 Price Variation – NOT USED

5.7 Best Price – NOT USED

5.8 Maximum ceiling price – NOT USED

5.9 Goods and Services Tax

- 5.9.1 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.

- 5.9.2 The Contractor must hold an Australian Business Number (ABN) and be registered for GST.

- 5.9.3 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.

- 5.9.4 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.

- 5.9.5 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 this clause.

- 5.9.6 The Parties agree that this clause will apply to the Management Fee payable by the Contractor to the Principal

5.10 The Contractor's on-costs

- 5.10.1 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.

5.11 Mistakes in information

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

5.12 Management Fee – NOT USED

6. Conduct of Agreement

6.1 The Contractor's personnel (Core with options)

- 6.1.1 The Contractor warrants that all personnel engaged in the installation and commissioning of the Device are appropriately qualified, competent and experienced. So too, the Contractor warrants that all personnel engaged in the training of HABS staff to operate the device to the device's full potential are appropriately qualified, competent and experienced.

- 6.1.2 The Contractor must employ only such persons:

- (a) as are careful, skilled and experienced in the provision and installation of the Deliverables or similar Deliverables;
- (b) who hold all necessary licences, permits, qualifications and authorities; and
- (c) whose standards of workmanship are entirely suitable for the supply, installation and commissioning of the Device and the training and preventative maintenance requirements of this Agreement.

6.2 Contractor to establish necessary facilities – NOT USED

6.3 Access to the Contractor's premises – NOT USED

6.4 Electronic Commerce – NOT USED

6.5 Sub-contractors

- 6.5.1 The Contractor may sub-contract part or all of the Agreement to a sub-contractor approved by the Principal from time to time and/or identified in the Schedule titled "approved sub-contractor" on the terms of this clause.
- 6.5.2 The Contractor must make the approved sub-contractor aware of the terms and conditions of the Agreement and this clause.
- 6.5.3 If the Principal requires it, the Contractor must arrange for the approved sub-contractor to execute the statutory declaration at Schedule 5.
- 6.5.4 The terms and conditions of the sub-contract must be consistent with the Agreement.

- 6.5.5 The Contractor will continue to be bound by, and responsible for performance of, the Agreement notwithstanding that part or all of it may have been sub-contracted.
- 6.5.6 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 the Agreement. The Principal will notify the Contractor in writing that its approval is withdrawn and the Contractor will immediately terminate its arrangement with the sub-contractor.
- 6.5.7 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 Principal from any liability or loss resulting from the acts or omissions of any sub-contractor.

6.6 Maintenance of Contractor's Information and Sub-Contractor's Information

- 6.6.1 The Contractor must notify the Principal of any change in the Contractor Information supplied in their Tender, if any.
- 6.6.2 The Contractor must notify the Principal of any change in the sub-contractor Information, if any.
- 6.6.3 The Contractor must provide this information in any manner and format requested by the Principal.

6.7 Security of sub-contract payments

- 6.7.1 "Paid when paid provision" means a term of a sub-contract under which:
 - (a) the Contractor's liability to pay for Deliverables is contingent on a payment being made by the Principal or
 - (b) the due date for payment for Deliverables is dependant on the date on which a payment is made by the Principal.
- 6.7.2 The terms of any sub-contract of this Agreement must not include a paid when paid provision.
- 6.7.3 The Principal is not liable for any failure by the Contractor to comply with this clause.

6.8 Contractor's warranties (goods)

- 6.8.1 In relation to the Device, the Contractor warrants that:
 - (a) the device will be new;
 - (b) will conform to the description, model number and the sample (if any) provided by the Contractor;

- (c) at the time ownership of a Deliverable passes to the Principal, the Deliverable will be free from any charge or liability;
- (d) during the Warranty Period, each Deliverable:
 - (i) will conform to the Specification; and
 - (ii) shall be free from defects.

6.9 Contractor's warranties (services)

6.9.1 In relation to the service component of the Contract, the Contractor warrants that:

- (a) it will provide the services (such as installation of the device, training of HABS personnel to operate the device, and preventative maintenance of the device), in accordance with the requirements of this Agreement, including any agreed project plan, 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 this Agreement in the manner and to a standard satisfactory to the Customer, without first obtaining the Customer's consent.

6.10 Contractor's warranties (general)

6.10.1 The Contractor warrants that:

- (a) the Deliverables (including the device and associated services), do not infringe the Intellectual Property rights of a third party; and
- (b) the Deliverables shall conform to any legally applicable standards
- (c) It will not allow or cause any action, or enter into any arrangements that impedes or is likely to impede the proper and effective conduct and management of all the contractor's obligations under this Agreement, and to a standard, that is satisfactory to the Principal without first obtaining the Principal's consent.
- (d) it has established and will comply with and maintain during this Agreement, the quality assurance arrangements set out in the Tender

6.11 Defective goods

- 6.11.1 The Contractor shall remedy any error or defect in a warranted Deliverable that has been notified to it by the Principal during the Warranty Period at the Contractor's own cost and expense.
- 6.11.2 If the Contractor fails to remedy an error or defect in a warranted Deliverable within 30 days after notification by the Principal, the Principal may:
- (a) arrange for performance of the necessary remedial work by a third party at the Contractor's expense; or
 - (b) arrange the return of the Deliverable to the Contractor at the Contractor's expense and immediately obtain a full refund of the price of that Deliverable from the Contractor.
- 6.11.3 The rights and remedies provided in this clause are in addition to, and do not limit, any other rights of the Principal under this Agreement or otherwise at law.

6.12 Defective services

- 6.12.1 If in the opinion of the Principal the Contractor has not supplied a Deliverable in accordance with this Agreement ("Defective Deliverable"), the Principal may require the Contractor to do all things reasonably necessary to remedy the situation.
- 6.12.2 In rectifying the Defective Deliverable the Contractor will, at its own expense, comply with all reasonable directions of the Principal consistent with the terms of this Agreement.
- 6.12.3 If the Contractor fails to comply with such a direction the Principal may arrange for an alternative contractor to supply the Defective Deliverable at the Contractor's expense.
- 6.12.4 Any direction given, or the arrangement of alternative supply of the Deliverable, will not amount to a waiver of the Principal's rights under this Agreement.

6.13 Third party warranties

- 6.13.1 Where the Contractor supplies Deliverables that have been procured from third parties, the Contractor assigns to the Principal to the extent permitted by law, the benefits of any warranties given by the third parties.
- 6.13.2 Assignment of any third party warranties is in addition to the warranties offered directly by the Contractor under this Agreement and does not relieve the Contractor from the obligation to comply with the Contractor's own warranties.

6.14 Performance guarantee (securities) – NOT USED

6.15 Performance monitoring

- 6.15.1 The Contractor must meet with the Principal from time to time and/or at nominated intervals, as reasonably directed by the Principal, to evaluate and monitor performance of this Agreement by the Contractor in regards to the installation and commissioning of the device, the training provided by the Contractor to HABS personnel and preventative maintenance conducted on the device by the Contractor.
- 6.15.2 If there is an agreed project plan for this Agreement, the Principal may choose to monitor performance in accordance with project milestones or stages as set out in that plan.
- 6.15.3 The Principal may also elect, in its discretion, to monitor performance of any sub-contracts under this Agreement.
- 6.15.4 If the Principal elects to monitor sub-contract performance the Contractor will do all things reasonably necessary to facilitate arrangements for such monitoring to take place.
- 6.15.5 As part of the monitoring of performance of this Agreement the Principal may ask the Contractor for it's assessment of the progress of the Agreement and it's assessment of the Principal's performance of its responsibilities under the Agreement including through the Principal's Delegate.
- 6.15.6 At the conclusion of this Agreement the Principal will complete a performance report and pass this report to Contracting Services.
- 6.15.7 Contracting Services will provide the Contractor with a copy of all performance reports prepared with regard to the Contractor (and will similarly provide any sub-contractor with performance reports regarding its sub-contract).
- 6.15.8 Contracting Services will give the Contractor (and any sub-contractor) the opportunity to seek an independent review of each such report by an officer of NSW Supply if required.
- 6.15.7 The Contractor, and any sub-contractor, must bear their own costs of complying with this clause. In particular, to avoid doubt, all meetings under this clause are at no additional costs to the Principal.

6.16 Keeping of records and access to records

- 6.16.1 The Contractor must keep proper accounts, records and time sheets in accordance with the accounting principles generally applied in commercial practice.
- 6.16.2 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.

6.17 Exchange of information between government agencies

- 6.17.1 The Contractor authorises the Principal, including the Principal's Delegate and their 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/or the Principal's Delegate and any Information

relating to the Contractor's performance under the Agreement, or the Contractor's financial position.

- 6.17.2 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.
- 6.17.3 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 2005* (NSW).
- 6.17.4 The Contractor releases and indemnifies the State of New South Wales (which term includes its officers, employees and agents) from any claim in respect of any matter arising out of the provision of Information. Without limiting the above, the Contractor releases 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.

6.18 Conflict of Interest

- 6.18.1 The Contractor undertakes 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 this Agreement.
- 6.18.2 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.
- 6.18.3 The Principal may terminate the Agreement in accordance with clause 16.1 if in its view a conflict of interest exists which prevents the proper performance of the Agreement.

6.19 National Product Catalogue Requirements – NOT USED

7. Confidentiality

- 7.1 Subject to this clause, the Contractor must not disclose any Confidential Information in connection with this Agreement to any person other than the Principal or the Principal's Delegate without first obtaining the written consent of the Principal .
- 7.2 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.
- 7.3 The Contractor must ensure that the Confidential Information is used solely in connection with, or for the purposes of, the provision of the Deliverables.
- 7.4 This clause does not affect the Contractor's obligation to disclose any Confidential Information that is required to be disclosed by law.
- 4.1 This clause will survive the termination of this Agreement.

8. Intellectual Property

8.1 Ownership

- 8.1.1 Subject to and in accordance with this clause, ownership of all New Contract Material, including all Intellectual Property rights which may arise in respect of New Contract Material, vests on its creation in the Principal.
- 8.1.2 The Contractor hereby assigns to the Principal copyright, including future copyright, in all New Contract Material, including each and every stage of design and construction of such material.
- 8.1.3 Title to, and Intellectual Property rights (other than copyright) in all New Contract Material, including each and every stage in the design and construction of such material, shall on its creation be transferred and assigned to the Principal without the need for further assurance.
- 8.1.4 This Agreement does not affect the Intellectual Property rights in Existing Contract Material but, unless otherwise agreed, the Contractor hereby grants and shall ensure that relevant third parties grant to Principal, a non-exclusive, non-transferable licence:
 - (a) to use, reproduce and adapt for its own use; and
 - (b) where specified in the Agreement, to perform any other act with respect to copyright and to manufacture, sell, hire or otherwise exploit a product or process, or to provide a service, or to license any third party to do any of those things in respect of;

all those Intellectual Property rights but only as part of the Contract Material (and of any future development of that material).
- 8.1.5 On the expiry or earlier termination of this Agreement, the Contractor shall deliver to the Principal all Contract Material together with all copies thereof except to the extent that the Principal agrees otherwise.

- 8.1.6 This clause does not prevent the contractor from keeping a copy of the Contract Material for their records.
- 8.1.7 The Contractor shall ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Agreement.
- 8.1.8 The Principal may terminate this Agreement for cause if the Contractor infringes any Intellectual Property Rights of the Principal or third parties in performing this Agreement.
- 8.1.9 This clause shall survive the termination of this Agreement.

8.2 Indemnity

- 8.2.1 The Contractor must not at any time infringe any Intellectual Property rights of any third party in the performance of this Agreement.
- 8.2.2 The Contractor agrees to indemnify and keep indemnified the Principal, (the Principal's 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.
- 8.2.3 The Principal may take legal proceedings including injunctive proceedings against the Contractor if there is any actual, threatened or suspected breach of this clause.
- 8.2.4 The Principal may terminate this Agreement for substantial breach if the Contractor infringes third party rights in breach of this clause.
- 8.2.5 In the event of any claim being made or brought against the Principal in respect of any breach or alleged breach by the Contractor of any Intellectual Property rights, the Principal will notify the Contractor. The Contractor will, with the reasonable assistance, if required, of the Principal, but at the Contractor's sole expense, conduct all negotiations for the settlement of such claims or any litigation that may arise in connection with the claim. If the Contractor fails to conduct such negotiations or settlement the Principal may suspend payment of any money due to the Contractor under this Agreement until such claim has been satisfied, settled, or withdrawn.

9. Principal's Material

- 9.1 The Contractor must keep secure any Principal's Material and any Contract Material that it holds or controls for the performance of this Agreement.
- 9.2 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 it has in its possession or under its control.
- 9.3 The Contractor agrees that it will not make any alteration to the Principal's Material without the prior written consent of the Principal.

10. General Indemnity

- 10.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Principal and the Principal's Delegate, including their 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 any confidentiality deeds required by this Agreement.
- 10.2 The Contractor's liability shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Principal or the Principal's Delegate or their officers, employees or agents caused or contributed to the loss.

11. Minimum Insurance Requirements

- 11.1 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 to the value of at least the amount specified in Schedule 1 in respect of each claim; and
 - (ii) products liability insurance to the value of at least the amount specified in 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; and
- 11.2 All policies of insurance must be effected with an insurer approved by the Principal (which approval will not be unreasonably withheld).
- 11.3 All policies, apart from workers compensation and professional indemnity insurance must:
- (a) note the interest of the Principal, the State and any subcontractor;
 - (b) contain a cross-liability clause in which the insurer agrees to waive any rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured or otherwise entitled to the benefit of the policy; and
 - (c) require the insurer to notify all named insured of any variation or cancellation of the policy, provided that a notice of claim given to the insurer by the Principal, the Contractor or the subcontractor will be accepted by the insurer as a notice of claim given by all of the insured.

- 11.4 The Contractor must, and must ensure that subcontractors, 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 must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.
- 11.5 During the Term, the Contractor must when requested in writing by the Principal:
- (a) supply proof that all insurance policies required by this Agreement are current; and
 - (b) if required, arrange for its insurer to complete and sign a "Confirmation of Insurances Obtained Form" substantially in the form of Schedule 12, and on-send this to the Principal within 30 days of the request. Equivalent evidence as to the currency of insurance policies required by this Agreement will be acceptable to the Principal.
- 11.6 If the Contractor fails to comply with clauses 11.1, 11.3, 11.4 and 11.5, the Principal
- (a) may affect and maintain that insurance and pay the necessary premiums; and
 - (b) may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance.
- 11.7 Where the Contractor is insured under a foreign company's or holding company's insurance policy, that insurance policy must clearly indicate that it applies to and extends coverage to the Contractor.
- 11.8 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

12. Compliance with Legal Requirements

12.1 Compliance with laws

- 12.1.1 The Contractor must, in carrying out this Agreement, comply with:
- (a) all applicable Statutory Requirements;
 - (b) the codes, policies, guidelines and Australian standards or any other codes, policies, guidelines and Australian standards applicable to the device and associated services; and
 - (c)
 - (i) The Contractor must operate for the duration of this Agreement a Quality System conforming to the appropriate Quality System standard and shall possess a current certificate issued by a Joint Accreditation System of Australia and New Zealand (JAS-ANZ) accredited certification body certifying the Contractor's compliance with that Quality System.
 - (ii) For the purpose of this clause , the appropriate Quality System standards shall be the Standards

Australia Quality System Standards (or if there are no such standards, equivalent Quality System standards) applicable to the Device for its design, manufacture, supply, delivery and maintenance as appropriate.

12.2 Compliance with Outworkers Code – NOT USED

12.3 Licences and Approvals

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

12.4 Payment of wages and allowances

- 12.4.1 The Contractor shall ensure that all persons employed by it in or in connection with supply of the Device and associated services (including any sub-contractors) are paid all wages and allowances required to be paid by or under any relevant award, determination or order of the State or Territory in which the Deliverables are being provided or by or under any industrial agreement that is in force in the State or Territory in which the Deliverables are being provided and that all such persons are employed under the conditions contained in any such award, judgment, order or industrial agreement.
- 12.4.2 If requested by the Principal, the Contractor will provide a statutory declaration that all persons employed by the Contractor in providing the Deliverables have been paid in compliance with the provisions of this clause and a statutory declaration from each sub-contractor to the same effect.

12.5 Child protection – NOT USED

13. Variations

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

14. No Assignment or Novation

- 14.1 The Contractor must not assign or novate this Agreement without first obtaining the written consent of the Principal.
- 14.2 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.

15 Completion of the Agreement by the Principal

- 15.1 If this Agreement is terminated, the Contractor must assist the Principal in transferring responsibility for the obligations under the Agreement either to an alternative supplier or to the Principal itself, and this will include:

- (a) upon request by the Principal, the Contractor must produce and make available all Contract Material relating to this Agreement;
- (b) assignment to the Principal, or such other person as the Principal nominates, of any agreement entered into by the Contractor for the supply of any Components or Materials; and(c) if requested, offer to sell, at fair market value, to the Principal, or such other person as the Principal nominates, any equipment used by the Contractor in conjunction with and dedicated solely to the delivery of the Agreement.

15.2 The Contractor must continue to carry out obligations under this Agreement in full until termination of the Agreement.

16. Termination

16.1 Termination for cause

16.1.1 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 this 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 7 days of receiving a notice from the Principal requiring it to do so ("Notice of Breach"), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as the Principal may reasonably allow;
- (e) where the Contractor assigns its rights and/or obligations, sub-contracts or novates this Agreement other than in accordance with this Agreement; or
- (f) in the case of the Contractor's Insolvency;
- (g) If in the Principal's view a conflict of interest exists for the Contractor, which prevents the proper performance of the Agreement.

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

- (a) at its option, for an appropriate part payment of the Contract Price (as agreed by the parties or failing

agreement as determined by an agreed expert), require the Contractor to deliver to the Principal any Deliverables (for example, Deliverables that are components of other Deliverables) in the possession or under the control of the Contractor as at the date of termination

- (b) contract with any other person to complete the provision of the Deliverables;
- (c) deduct loss or damages arising from or in connection with the termination (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 otherwise) and/or from the Security (if any); and
- (d) 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.

16.2 Termination for convenience

16.2.1 The Principal may terminate this Agreement in whole or in part 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.

16.2.2 Effect of Termination for convenience

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

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

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

16.2.2.3 If the Principal is the Crown, all reimbursement shall be made by the Crown acting through the Principal's Delegate and not through the Board.

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

16.2.2.5 The Principal may at its option, for an appropriate part payment of the Contract Price (as agreed by the parties or failing agreement as determined by an agreed expert), require the Contractor to deliver to the Principal any Deliverables (for example, Deliverables that are components of other Deliverables) in the possession or

under the control of the Contractor as at the date of termination

17. Issue Resolution

17.1 General

17.1.2 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;
- (b) Expert Determination.

17.2 Amicable Resolution

- 17.2.1 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 this Agreement. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.
- 17.2.2 If the Party giving the Issue Notice is the Contractor, and this issue has arisen under this Agreement, it must give the Issue Notice to the Principal.
- 17.2.3 If the Party giving the Issue Notice is the Principal, it must give the Issue Notice to the Contractor.
- 17.2.4 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.
- 17.2.5 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.
- 17.2.6 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice.
- 17.2.7 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided ("the Referral Notice").
- 17.2.8 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Principal.
- 17.2.9 If the Party giving the Referral Notice is the Principal, it must give the Referral Notice to the Contractor.
- 17.2.10 If a Referral Notice has not been given within 28 days of becoming entitled to do so then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

17.3 Expert Determination

- 17.3.1 If a Referral Notice is properly given to refer an issue for expert determination, 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.
- 17.3.2 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
 - (c) a person who the Parties have not been able to agree on.
- 17.3.3 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 attached as a Schedule to this Agreement
 - (d) any other matter which is relevant to the engagement.
- 17.3.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 17.3.5 The procedure for expert determination is attached as a Schedule to this Agreement
- 17.3.6 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off, or counter-claim.
- 17.3.7 If the expert determines that one Party must pay the other an amount exceeding the amount shown in 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.
- 17.3.8 Unless a Party has a right to commence litigation in accordance with this issue resolution procedure
- (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.

17.4 Performance of Agreement during issue resolution

The Parties agree to continue performing their obligations under this Agreement while the issue is being dealt with in accordance with the above issue resolution procedures.

18. General

18.1 Waiver

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.

18.2 Severability

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.

18.3 Notices

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

18.3.2 Service of any notice under or relating to this Agreement shall be sufficiently served:

(a) if delivered personally to the Party to be served;

(b) if left at or sent by pre-paid registered post to:

(i) the address of the Party to be served as set out in Schedule 1;

(ii) the last known place of abode or business of the Party to be served which is a company; or

(iii) the registered office of any Party to be served which is a Company;

and in the case of posting such notice shall be deemed to have been duly served on the second day after such notice has been posted; or

(c) if sent by facsimile transmission to the last known facsimile number of the party to be served and shall be deemed to have been duly served at the time such facsimile transmission is sent.

18.3.3 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.

18.4 Counterparts

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

18.5 Applicable Law

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.

18.6 Rights Cumulative

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.

18.7 No agency/no employment/no partnership

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.

18.8 Survival clause

Unless the context otherwise provides, the rights and obligations under this Agreement will survive the expiration or earlier termination of this Agreement.

18.9 Entire Agreement

This Agreement constitutes the entire agreement between the Parties. Any prior arrangements, agreements, representations or undertakings are superseded.

EXECUTED AS AN AGREEMENT THISDAY OF.....20..

EXECUTION BY GOVERNMENT PARTY:

)	
)	
Signed for and on behalf of)	
)	
.....)
[insert name of Principal])	(signature of Principal's representative)
)	
)	
by.....)	
[insert name of Principal's representative])	
)	
)	
In the presence of.....)
		(signature of witness)
.....		
[insert name of witness]		

EXECUTION BY CONTRACTOR

Execution where Contractor is a corporation:

THE COMMON SEAL of)	
)	
.....)	
[insert name of Contractor])	
)	
ABN:)	
[insert Contractor ABN])	(Corporate Seal)
)	
was duly affixed hereto at)
[insert name of City/Town/Territory])	(signature of Director)
)	
in the State of)	
[insert name of State or Territory])	
)	
In the presence of)
)	(signature of Secretary or other permanent officer)
.....)	
[insert name of Secretary or other permanent officer])	

Execution where Contractor is a natural person:

)	
Signed by)	
.....)	
[insert name of Contractor])	(signature of Contractor)
)	
at)	
[insert name of City/Town])	
)	
in the State of)	
[insert name of State Territory])	
)	
in the presence of)
)	(signature of witness)
.....)	
[insert name of witness not a party to the Agreement])	

Execution where Contractor is a partnership

SIGNED BY)	
)	
)	
.....)	
[insert name of partner authorised to sign on behalf)	
of partnership])	
)	
for and on behalf of the firm)	
)	
)	
.....)	
[insert registered business name and number of)	
partnership])	
)	
at.....)	
[insert name of City/Town])
)	(signature of Partner)
)	
in the State of)	
[insert name of State/Territory])	
)	
)	
in the presence of.....)	
)
)	(signature of witness)
.....)	
[insert name of witness not a party to the)	
Agreement])	

Schedule 1

Agreement Details

Item 1	Request for Tender No 0701696
Item 2	Contractor's Name
Item 3	Specified Personnel (if any):
Item 4	Supply, Installation and Maintenance of a Masonry Cutting and Profiling Device for NSW Department of Commerce Heritage and Building Services. Agreed Pricing for the Device and associated services is located at Schedule 5.
Item 6	<p>Insurance</p> <p>(a) Public liability insurance</p> <p>Amount: \$5M (Five Million Dollars)</p> <p>(b) Products liability insurance</p> <p>Amount: \$5M (Five Million Dollars)</p>
Item 7	<p>Codes</p> <ol style="list-style-type: none"> 1. The Code of Practice for NSW Government Procurement. 2. Implementation Guidelines for NSW Government Procurement. 3. Compliance of the Device and associated services with Relevant Standards/Certification.
Item 8	<p>Notices to:</p> <p>The Contractor's contact name and address:</p> <p>Name: Position: Address:</p> <p>Telephone: Facsimile:</p> <p>The Principal's contact name and address:</p> <p>Name: Position: Address:</p> <p>Telephone: Facsimile:</p>
Item 9	<p>Principal's Delegate</p> <p>NSW Department of Commerce Heritage and Building Services Address: 92 Burrows Road, Alexandria 2015 Telephone: 9565 9000</p>

Schedule 2

The Tender and documents evidencing agreed variations to the Tender

Schedule 3

Documents notifying the Principal's acceptance

Schedule 4

Expert Determination Procedure

4 Questions to be determined by the Expert

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

4.1.1 Is there an event, act or omission which gives the claimant:

- a. a right to compensation under this Agreement
- b. for damages for breach of this Agreement, or
- c. otherwise in law?

4.1.1 If so:

- a. what is the event, act or omission?
- b. on what date did the event, act or omission occur?
- c. what is the legal right which gives rise to the liability to compensation?
- d. 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?

4.1.1 In the light of the answers to the above clauses 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?

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

4 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 ("Referring Party") must make a submission in respect of the issue, within 15 business days after the date of the letter of engagement referred to in the issue resolution clause of the Agreement.

2.3 The other party ("Responding Party") must respond within 15 business days after receiving a copy of that submission. That response may include cross-claims.

2.4 The Referring Party 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 Responding 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 this clause 2 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.

- 2.7 The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the response to the other Party, and give the other Party a reasonable opportunity to comment on the response.
- 2.8 All submissions, responses, replies, requests and comments must be in writing. If a Party to the 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 that would give anything under this Expert Determination Procedure the character of an arbitration.

4. Role of Expert

- 4.1 The Expert:
 - 4.1.1 acts as an expert and not as an arbitrator
 - 4.1.1 must make its determination on the basis of the submissions of the parties, including documents and witness statements, and the Expert's own expertise; and
 - 4.1.1 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 above.
 - 4.1.1 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate.

Schedule 5

Contractor Information

Schedule 6

Confirmation of Insurances

Insurance Body:

Insured:

Re: Agreement for the Supply, Installation and Maintenance of a Masonry Cutting and Profiling Device for NSW Department of Commerce Heritage and Building Services, between the Insured and the Principal

It is confirmed that:

1. The Insured has obtained the following policies (the Insurance Policies)

- (a) Broad Form Liability Expiry ___/___/20___
- (b) The public liability component of the Broad Form Liability policy is to the value of \$AUD___(the Limit of Indemnity) in respect of each claim; and
- (c) The products liability component of the Broad Form Liability policy is to the value of \$AUD___for the total aggregate liability for all claims arising out of the Insured's products for the period of cover.
- (d) Other insurances, if required:

Type of insurance	Value
_____	_____
_____	_____

- 1. The interest of the Principal, the State, and any subcontractor is noted in the insurance policy/ies.
- 2. The Insurance Policies contain a cross-liability clause in which the insurer agrees to waive any rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured or otherwise entitled to the benefit of the policy.
- 3. The insurer will notify all named insured of any variation or cancellation of the policy and the insurer will accept that a notice of claim given to the insurer by the Principal, the Contractor or the sub-contractor will be accepted by the insurer as a notice of claim given by all of the insured.

Attach a Certificate of Currency for the policy/ies above.

Specify below any exclusions beyond the standard exclusions for the Insurance Policies.

Authorised Representative of Insurer
Position:
Dated:

Signed:

Schedule 7**List of Approved Sub-Contractors**

Item	A. List of approved sub-contractors (Clause)
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Schedule 8

Approved Sub-Contractors Information