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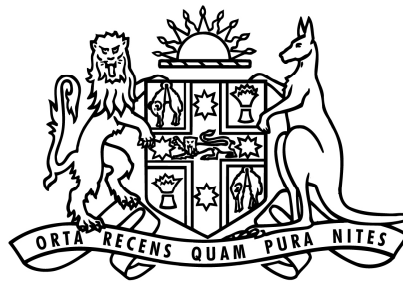
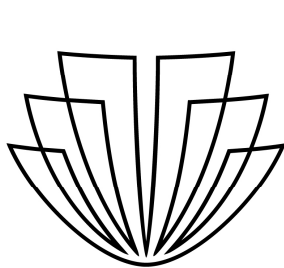
**PLEASE BE AWARE THAT
THIS PDF FILE
CANNOT BE PRINTED**

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

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

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

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



STATE PROPERTY AUTHORITY

Tender Document

for:

RFT No. 0800643

**NABERS Ratings and Energy
and Water Audits**

May 2008

Tender documents prepared by: State Property
Authority

.1

Submission details: due 9:30 AM Thursday 22nd May
2008.

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» Pricing Schedule	Attached
» »	»

Conditions of Tendering

These Conditions of Tendering do not form part of the Agreement.

2 Description of the Services

To provide NABERS (National Australian Built Environment Rating Scheme) Energy and Water ratings and walk-through energy and water efficiency auditing. These services are required for selected State Property Authority (SPA) premises, located throughout New South Wales.

3 Contact person

Refer requests for information about the Tender to:

Name: David Franco
Position: Senior Engineering Services Manager
Agency or firm: State Property Authority
Telephone number: 02 9338 7067
Facsimile number:
e-mail address: david.franco@spa.nsw.gov.au

4 NSW Government Code of Practice for Procurement

Tenderers must comply with the NSW Government *Code of Practice for Procurement*, which is available at: www.treasury.nsw.gov.au/procurement/cpfp_ig

Lodgement of a tender is evidence of the Tenderer's agreement to comply with the Code for the duration of any contract awarded as a result of the tender process. If a tenderer fails to comply with the Code, the Principal may take the failure into account when considering this or any subsequent tender from the tenderer, and may pass over such the tender.

5 Goods and Services Tax

Fees, rates and other amounts in this Tender must include GST if it is payable.

6 Submission of Tender

Documents to be submitted

The following documents need to be completed and submitted by the Tenderer:

- Tender Form
- Tender Schedules

Submit all information called for in the tender documents.

Submission procedure

Submit the Tender Form, Tender Schedules marked "Submit with the Tender Form" and other required documents or information by the date and time given in the advertisement or invitation, by any of the following methods:

- ETendering;
- ~~Tender Box;~~
- ~~Facsimile.~~

Submit when requested, by the date, time and method stipulated in the request, Tender Schedules marked "Submit when requested" and any other information required to allow further consideration of the Tender. Failure to meet this requirement may result in the Tender being rejected.

7 eTendering

The NSW Government electronic Tendering system has the capacity to allow viewing of documents, downloading or ordering of Requests for Tender (RFT) and submission of tenders.

Tenderers are encouraged to obtain RFT and submit tenders through the eTendering website at: <https://tenders.nsw.gov.au/nsw/index.shtml>.

Legal status

Tenders 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 submitted by other means.

Signatures are not required for a Tender submitted electronically. 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.

Tenderers, by electronically submitting a tender, are taken to have accepted any conditions shown on the NSW Government eTendering web site.

The Principal may decline to consider for acceptance, tenders that cannot be effectively evaluated because they are incomplete or corrupt.

Electronic format for submissions

Tenders submitted electronically must be in a file format that can be read, formatted, displayed and printed by Microsoft Word 2000, or any format required by the RFT.

File compression

Tenderers may compress electronic tenders in any format that can be decompressed by WinZip. Tenderers must not submit self-extracting (*.exe) zip files.

Change of Tender Form text

Tenderers must not change existing text in electronic tender forms other than to insert required information.

~~8 Tender Box~~

~~The Tender may be submitted in the Tender Box at:~~

- ~~• the McKell Building, 2-24 Rawson Place, Sydney~~

~~Submit the Tender in a sealed envelope addressed to the Secretary of the Tender Opening Committee and marked with "RFT 0702293, Essential Services Auditing" and the closing date and time.~~

~~9 Facsimile~~

~~The Tender may be submitted to the following facsimile number:~~

~~02 9372 8974~~

~~Address the Tender to the Secretary of the Tender Opening Committee and mark the first page of the facsimile with "RFT 0702293, Essential Services Auditing", and the closing date and time.~~

10 Late Tenders

In accordance with the NSW Government *Code of Practice for Procurement*, late tenders will not be accepted, except where the integrity and competitiveness of the tendering process will not be compromised.

Late tenders will generally not be considered for acceptance if they are:

- hand delivered, including courier deliveries; or
- received by an electronic communication despatched after close of tenders.

11 Assessment and Acceptance of Tenders

The criteria for assessment of Tenders are:

- Price (weighting 60%)
- Non-price (weighting 40%)

Assessment of criteria will be based on information provided in the Tender Schedules.

Tenders considered unsatisfactory for any of the criteria may not be considered further.

Any Tender may be rejected if it does not comply with any requirement of the Tender Document, or if it contains provisions not required or allowed by the Tender Document.

Tenderers must not consider that their Tender has been accepted unless and until they receive written notice of acceptance, either delivered or transmitted by fax to the Tenderer's fax number.

12 Acceptable Legal Entities

The Principal contracts only with recognised and acceptable legal entities with appropriate financial assets and current professional indemnity insurance cover. Tenders will not be considered from entities such as business names.

Tenderers may be required to provide evidence of their legal entity, by submitting a copy of an official document such as:

- Company registration and names of office bearers issued by the Australian Securities and Investments Commission, or
- A statement confirming the legal entity signed by a practicing solicitor.

If requested to do this, submit the information within three working days of receiving the request.

13 Financial Capacity

Tenderers must have sufficient financial capacity to perform the services required under the Agreement. Tenderers do not need to provide financial statements.

If requested to do so, Tenderers must provide a statement from a qualified accountant certifying that the Tenderer has met:

- all of its statutory obligations including payment of pay as you go taxation instalments, PAYG withholding tax, GST Business Activity Statements, Superannuation Guarantee payments and payment of payroll tax, if applicable; and
- other obligations including payment of rentals and interest, as well as payment of sub-contractors, subconsultants and suppliers within acceptable business credit periods.

14 Sub-Consultants

For each sub-consultant service, nominate in the Outline Services Delivery Plan the sub-consultant you propose to do the work.

15 Disclosure of Contract Information

Details of this tender and the contract awarded as a result of this tender process must be disclosed in accordance with the *Freedom of Information Act 1989* (NSW), Premier's Memorandum 2007-01 and the NSW Government *Tendering Guidelines*, available at:

www.managingprocurement.commerce.nsw.gov.au/system/index_procurement_guideline_documents.doc

16 Consultant Performance

During the consultancy Agreement, the Consultant's performance is monitored in accordance with the *Performance management system guidelines*. Unsatisfactory performance is taken into account when considering future opportunities for consultant Agreements for NSW Government Agencies.

Tender Schedules

The following Tender Schedules must be completed and submitted as part of the tender:

- Tender Form
- Schedule of Prices - Lump Sum
- Agreement Information items
- Outline Service Delivery Plan

Note the this response is due 9:30 AM Thursday 22nd May 2008

Tender Form

Tenderer's details

Name:
(in block letters)

ABN

Address:
.....

Telephone number:

Facsimile number:

e-mail address:

hereby tender(s) to perform the services for

Tender details

Agreement name: **NABERS Ratings and Energy and Water Audits**

Contract number: 0800643

in accordance with the following documents:

Tender Document 0800643 - NABERS Ratings and Energy and
Water Audits and the attached Pricing Schedule

For the Fee, being the lump sum of:

.....
.....

(\$.....) including GST.

Agreement Information items

(SUBMIT WITH TENDER FORM)

2 The Consultant

The Consultant is:

.....

ABN

7 Consultant's Representative

The Consultant's Representative is:

.....

17 Notices

Notices to the Consultant

For notices to the Consultant the intended recipient is the Consultant's Representative:

Office address:

(for delivery by hand)

.....

.....

.....

Postal address:

(for delivery by post)

.....

.....

.....

Facsimile number

.....

E-mail address

.....

Addendum Acknowledgement:

We acknowledge receipt of the following addendums (if applicable):

Addendum 1 Signature _____

Addendum 2: Signature _____

Outline Services Delivery Plan

(SUBMIT WITH TENDER FORM) (note that there is no limit to the length of your response in answering these questions. Supporting material may be attached to the response).

1. **Key personnel proposed to perform the Services (including sub-consultants), including:**
 - a. **name and title**
 - b. **role in performing the Services**
 - c. **qualifications and recent relevant experience; and**
2. **Identify areas where you can (value add) offer services beyond what is requested of the contract or provide innovation to the proposal.**
3. **Demonstrate your company's geographical coverage**
4. **Demonstrate your company's experience in servicing similar buildings to SPA and similar customers to SPA**
5. **Advise the amount (\$) of Public Liability Insurance carried by your company:**
6. **Advise the amount (\$) of Professional Indemnity Insurance carried by your company:**

Conditions of Agreement

Operative Clauses

1 Definitions

Agreement

The contract between the Consultant and the Principal constituted by the Agreement Documents, which supersedes all understandings, representations and communications between the parties related to the subject matter of the Agreement made before the Date of Agreement

Agreement Documents

Agreement Documents include:

- Conditions of Agreement;
- Agreement Information;
- The Services;
- Appendices;
- Drawings and documents;
- Letter of Award and any other documents listed therein.

Business Day

Any day other than a Saturday, Sunday, public holiday or 27, 28, 29, 30 or 31 December.

Consultant

The entity named in Item 2 of the Agreement Information, otherwise known as the Project Assurance Advisor.

Contract Material

All material brought or required to be brought into existence as part of, or for the purpose of, performing the Services, including but not limited to documents, equipment, information and data stored by any means.

Date of Agreement

The date of the Letter of Award.

Fee

The fee described in Clause 5.

Intellectual Property

All rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, and all other rights of intellectual property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

Letter of Award

A letter from the Principal to the Consultant awarding the contract to the Consultant.

Principal

The entity named in Item 1 of the Agreement Information.

Services

The services described in The Services.

2 Engagement

- .1 The Principal engages the Consultant in the capacity set out in Item 3 of the Agreement Information to perform the Services, and the Consultant accepts the engagement and undertakes to perform the Services, on the terms set out in this Agreement.

3 Consultant's obligations

Professional Standard of Care

- .1 The Consultant must perform the Services to that standard of care and skill to be expected of a consultant who regularly acts in the capacity in which the Consultant is engaged and who possesses the knowledge, skill and experience of a consultant qualified to act in that capacity.

Knowledge of Requirements of the Principal

- .2 The Consultant must use all reasonable efforts to inform itself of the requirements of the Principal and must regularly consult with the Principal during the performance of the Services.

Personnel

- .3 The Consultant must:
 - .1 ensure that all personnel engaged by it in connection with the Services are appropriately qualified, competent and experienced in the provision of the type of services required by the Principal;
 - .2 engage persons named by the Consultant and agreed by the Principal to carry out the services nominated.
- .4 The Consultant's responsibility for the performance of the Services and for the work and performance of its personnel is not altered in any way by Clause 3.3 or by anything done in accordance with Clause 3.3.

Discrepancies In Information

- .5 If the Consultant considers that information, documents and other particulars made available to it are inadequate or contain errors or ambiguities, the Consultant must give written notice as soon as practicable to the Principal detailing the errors or ambiguities.

Program or Plan

- .6 The Consultant must, by the time specified in Item 4 of the Agreement Information, submit to the Principal a program or plan for the performance and completion of the Services within the time specified in Item 5 of the Agreement Information.

Timely Provision of Services

- .7 The Consultant must perform the Services expeditiously and in accordance with the program.

Change of Scope or Timing

- .8 As soon as practicable after becoming aware of any matter which is likely to change or which has changed the scope or timing of the Services, the Consultant must give written notice to the Principal detailing the circumstances and extent or likely extent of the change or delay and whether the Consultant will be proposing a Variation in accordance with Clause 6.

Alterations to Approved Documents

- .9 The Consultant must not make any substantial alteration to, addition to or omission from the plans, drawings, layouts, designs, specifications or other material previously approved, without the prior written approval of the Principal.

Principal's Materials

- .10 The Consultant must protect and keep safe and secure all materials and documentation provided by the Principal to the Consultant.
- .11 Upon discharge of this Agreement by performance or termination, the Consultant must promptly return to the Principal those materials and documentation.

Co-operation by the Consultant

- .12 The Consultant must liaise, co-operate and confer with others as directed by the Principal.

Obtain All Necessary Approvals

- .13 The Consultant must obtain all approvals, authorities, licences and permits which are required from governmental, municipal or other responsible authorities for the lawful implementation and completion of the Services, except where obtained by the Principal as set out in Item 6 of the Agreement Information.

Consultant's Relationship with the Principal

- .14 The Consultant must not act outside the scope of the authority conferred on it by this Agreement and must not bind the Principal in any way or hold itself out as having any authority to do so, except where authorised by this Agreement.

Confidentiality

- .15 The Consultant and its employees or agents must not without the prior written consent of the Principal disclose any information in connection with the Services or this Agreement to any person not a party to this Agreement other than:
 - .1 as necessary to perform the Services; or
 - .2 with respect to any matter already within public knowledge.

Consultant's Representative

- .16 The person named in Item 7 of the Agreement Information will be responsible on behalf of the Consultant for all aspects of the Services and has the legal power to bind the Consultant in respect of any matters arising in connection with the Services. Any substituted representative must be notified promptly in writing to the Principal.

Additional Services

- .17 The Consultant may, at its own cost, obtain advice, services or assistance from others in connection with the Services, but will not be reimbursed those costs unless those costs are listed in the Agreement Information and the Consultant has obtained the prior written consent of the Principal to incur them.

Subcontracting and Assignment

- .18 The Consultant must not assign or subcontract any part of the Services without the prior written approval of the Principal.
- .19 An approval given by the Principal permitting the Consultant to subcontract any portion of the Services does not relieve the Consultant from its obligations and liabilities pursuant to this Agreement.

Statutory Requirements

- .20 The Consultant must ensure that all work done in connection with the Services complies with the requirements of all applicable legislation, codes and Authorities' requirements and all relevant Australian standards applicable to the Services.

Conflict of Interest

- .21 The Consultant warrants that it has no conflict of interest at the date of this Agreement.

- .22 The Consultant must immediately inform the Principal in writing upon becoming aware of the existence, or possibility, of a conflict of interest.

Security of Premises

- .23 The Consultant must comply with all directions, procedures and policies relating to occupational health, safety and security pertaining to the Principal's premises and facilities, when using them.

Access to Consultant's Premises

- .24 The Consultant must, upon reasonable notice, permit the Principal access to the Consultant's premises in order for the Principal to inspect, discuss and assess anything in connection with the Services.

Insurances

- .25 The Consultant must provide the Principal with proof of all insurance required to be maintained by the Consultant under this Agreement.

4 Principal's obligations

Provide Information

- .1 The Principal will as soon as practicable, or as required by this Agreement, make available to the Consultant all relevant instructions, information, documentation or data or any other material required for the performance of the Services.

Appoint a Representative

- .2 The person named in Item 8 of the Agreement Information, or any other person the Principal nominates in writing, will act as the Principal's Representative and will have authority to act on behalf of the Principal for all purposes in connection with this Agreement.

5 Payment

Payment

- .1 .In consideration of the provision of the Services the Principal will pay the Consultant the Fee calculated in the manner provided in Item 9 of the Agreement Information, subject to the conditions of this Agreement.

Right of Set-Off

- .2 The Principal may deduct from amounts otherwise payable to the Consultant any amount due from the Consultant to the Principal in connection with the Services.

Effect of Payment of the Fee

- .3 Payment, in part or in total, of the Fee set out in Item 9 of the Agreement Information does not constitute an acceptance by the Principal of the Services and does not amount to a waiver of any right or action which the Principal may have at any time against the Consultant.

Reimbursable Expenses

- .4 The Principal will reimburse the Consultant the reasonable costs, expenses, fees or charges incurred by the Consultant limited to those items set out in Item 10 of the Agreement Information, provided that in all cases the Consultant has first obtained the Principal's prior written approval to incur or pay those costs, expenses, fees or charges.

Timing of Payment

- .5 At the times specified in Item 11 of the Agreement Information, and upon Termination pursuant to Clause 11, the Consultant must lodge with the Principal a payment claim for the Services performed (and for approved reimbursable expenses, if any, incurred) during that period.

- .6 Within 10 Business Days after receipt of the Consultant's payment claim, the Principal will provide to the Consultant a payment schedule identifying the payment claim to which it relates and stating the payment, if any, which the Principal will be making. Reasons will be given if the amount is less than that claimed.
- .7 The Principal will pay the Consultant the amount due within 20 Business Days after receiving the Consultant's payment claim.
- .8 Payment by the Principal will be made by Electronic Funds Transfer to a bank, building society or credit union account nominated by the Consultant. No payment will be due to the Consultant until details of the nominated account (name of financial institution, account name and account number) are notified in writing to the Principal. The Consultant shall promptly notify the Principal in writing of any change to the nominated account but the Principal will not be responsible for any payments made into a previously nominated account prior to notification of such change being received by the Principal.

Conditions Precedent

- .9 The Consultant will not be entitled to a payment in response to a payment claim for the Services performed under this Agreement until it has submitted:
 - .1 the program in accordance with Clause 3.6;
 - .2 proof of insurance in accordance with Clause 3.25; and
 - .3 a signed and completed 'Subcontractor's Statement regarding Workers Compensation, Pay-roll Tax and Remuneration' (Subcontractor's Statement). For the purposes of the Subcontractor's Statement the Consultant may be both a 'subcontractor' (to the Principal) and a 'principal contractor' (to the Consultant's subconsultants). The form may be downloaded from the Office of State Revenue website at:
http://www.osr.nsw.gov.au/pls/portal/docs/page/downloads/other/subcontractor_statement.doc; and
 - .4 a Workers Compensation Insurance Certificate of Currency.

Pay as You Go

- .10 If the Consultant does not quote its ABN in its Tender or on its claims or invoices, or otherwise advise the Principal of its ABN relating to the service, the Principal will withhold tax from payments in accordance with the *A New Tax System (Pay As You Go) Act 1999* (Cwlth).

6 Variations

Proposed Variation

- .1 The Principal may instruct variations in writing and the Consultant must comply with these instructions.
- .2 The Consultant must take all reasonable steps to minimise the effects of variation work on the time to complete the Services.
- .3 Unless the Principal instructs the Consultant to proceed, the Consultant must not begin to carry out a variation until the parties have resolved price and time implications (including delay costs) by agreement or determination under Clause 12.
- .4 When requested by the Principal, the Consultant must within the time specified in the request, advise the Principal of its price (including any delay costs) for a proposed variation and its effect on the time to complete the Services, or on any other matter specified in the request.
- .5 If the parties agree that a variation applies they must endeavour to agree in writing on its price and effect on the time to complete the Services. Failing agreement on price or time, or that a variation applies, the provisions of Clause 12 apply.
- .6 The Fee must be adjusted to account for the price of a variation.
- .7 If the Consultant considers that a variation applies but the Principal has not instructed a variation, the Consultant must make its claim for a variation within 5 Business Days

from the start of the event giving rise to the variation, or from the time when the event should have become known to the Consultant with reasonable diligence on its part.

- .8 Variations instructed by the Principal must be generally consistent with or of a similar nature to the type of work included in the Services.

Valuation

- .9 Unless otherwise agreed, the price of a variation will be determined using the hourly rates set out in Hourly Rates for Variations - Tender Schedules, where included. If Hourly Rates for Variations - Tender Schedules is not included or does not include hourly rates relevant to the variation, reasonable rates and prices apply.

7 Copyright and Intellectual Property

Vesting

- .1 Subject to Clause 7.2, title to and Intellectual Property in or in relation to Contract Material (other than the Contract Material listed in Item 13 of the Agreement Information) vests upon its creation in the Principal. The Consultant must, upon request by the Principal, do all things necessary to vest that title or that Intellectual Property in the Principal.
- .2 If title to Intellectual Property in or in relation to Contract Material is not capable of being vested in the Principal under Clause 7.1 because the Consultant itself does not own that Intellectual Property, the Consultant must ensure that the Principal is irrevocably licensed (whether by sub-licence from the Consultant or direct licence from the owner) to use that Contract Material or Intellectual Property.
- .3 The Principal indemnifies the Consultant against any costs, claims, actions or expenses incurred by the Consultant as a result of any reproduction, adaptation or commercialisation by the Principal of any Intellectual Property or Contract Material vested in the Principal under Clause 7.
- .4 The Consultant indemnifies the Principal against any claims, actions, and loss or damage arising out of any infringement of Intellectual Property rights by the Consultant, its officers, employees, agents or subcontractors in connection with the performance of the Services or the use by the Principal of the Contract Material for any purpose reasonably contemplated under the agreement.

Delivery

- .5 On, or as soon as practicable after, the expiration or earlier termination of this Agreement, the Consultant must deliver to the Principal all Contract Material.

Limitations

- .6 The Consultant must ensure the Contract Material is used, copied, supplied or reproduced only for the purposes of this Agreement unless it has obtained the prior written approval of the Principal to do otherwise. While the Principal will not unreasonably withhold approval, it may attach any terms and conditions it considers appropriate.

8 Indemnity – People and property

- .1 The Consultant indemnifies the Principal from and against all actions, claims, costs, expenses and damages (including the costs of defending or settling any action or claim) in respect of:
 - .1 loss of or damage to property of the Principal; or
 - .2 personal injury (including death) to any person or loss of or damage to any property,
 arising out of or by reason of anything done or omitted intentionally or negligently by the Consultant in respect of the Services.
- .2 The Consultant's liability to indemnify the Principal is reduced proportionally to the extent that an act or omission of the Principal or employees or agents (other than the Consultant) of the Principal may have contributed to the injury, damage or loss.

- .3 The liability of the Consultant under Clause 8 may be limited if the Consultant is a member of an occupational association with an approved Scheme under the *Professional Standards Act, 1994* (NSW).

9 Insurance

Professional Indemnity Insurance

- .1 The Consultant must have insurance covering liability for errors in provision of the Services. The insurance must be with an insurer approved by the Principal (which approval will not be unreasonably withheld) and provide coverage for an amount not less than the amount shown in Item 14 of the Agreement Information.

Workers' Compensation

- .2 The Consultant must ensure that an insurance policy is effected prior to commencing performance of the Services and remains current for the duration of this Agreement, covering liability for death of or injury to persons employed by the Consultant and related liability as required or under the *Workers' Compensation Act 1987* (NSW).

Public Liability

- .3 The Consultant must obtain and maintain a public liability policy of insurance to cover loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Services.
- .4 The policy must be:
 - .1 with an insurer and under conditions approved by the Principal (which approval will not be unreasonably withheld);
 - .2 obtained prior to commencing the carrying out of the Services;
 - .3 maintained for the duration of the Agreement; and
 - .4 for an amount not less than that stated in Item 15 of the Agreement Information in respect of any single occurrence.
- .5 The policy must cover the Consultant, the Principal, the Principal's Representative and all subconsultants employed from time to time for or in relation to the Agreement and the Services for their respective rights and interests and cover their liabilities to third parties.
- .6 The policy must also provide that:
 - .1 in so far as the policy covers more than one insured party, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured party;
 - .2 the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured party;
 - .3 failure by any insured party to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured parties;
 - .4 any non-disclosure by one insured party does not prejudice the right of any other insured party to claim on the policy; and
 - .5 a notice to the insurer by one insured party will be deemed to be notice by all insured parties.

10 Inspection of records

Records

- .1 The Consultant must keep proper accounts, records (including information stored by computer and other devices) and time sheets in accordance with accounting principles generally applied in commercial practice in respect of its time charge billing, its reimbursable expenditure and fees and reimbursements payable to others engaged pursuant to this Agreement.

Access

- .2 The Consultant must, within a reasonable time of any request, give the Principal access to, or verified copies of, any information which may be reasonably required to enable any claim to be substantiated and verified.

11 Termination

Termination by the Principal other than for Default by the Consultant

- .1 The Principal may terminate the whole or any part of the performance of the Services at any time, by written notice addressed to the Consultant.
- .2 The Consultant must, after receipt of a notice under this Clause:
 - .1 cease work on the terminated Services within the time specified in the notice; and
 - .2 comply with any reasonable directions given by the Principal in relation to performance of the Agreement.
- .3 As soon as practicable after ceasing work under Clause 11.2, the Consultant must lodge with the Principal a statement of the amount of the Fee (and any approved reimbursable expenses) claimed by the Consultant to be payable for Services performed to the earlier of:
 - .1 the date of cessation of the terminated Services; and
 - .2 the date by which the Consultant was required to cease work on those Services.

The statement must be accompanied by supporting information as reasonably required by the Principal.

Termination by the Principal for Default by the Consultant

- .4 If the Consultant:
 - .1 becomes bankrupt, or insolvent, or enters into a scheme or arrangement with its creditors;
 - .2 fails to carry out the Services with due diligence and competence;
 - .3 without reasonable cause suspends the carrying out of the Services; or
 - .4 commits a substantial breach of this Agreement,
 the Principal may:
 - .5 in the case of the default specified in Clause 11.4.1, forthwith terminate this Agreement by written notice addressed to the Consultant; and
 - .6 in the case of any other specified default, terminate this Agreement by written notice addressed to the Consultant if the Consultant fails to remedy the default within 14 days from the date of service of a notice by the Principal on the Consultant specifying the relevant default.

Termination by the Consultant

- .5 If the Principal fails to pay the Consultant any amount in accordance with this Agreement which is not in dispute, or commits a fundamental breach of the Agreement, the Consultant may give notice requiring the Principal to remedy the default within 10 Business Days after receiving the notice.
- .6 If the Principal fails to remedy the default, or fails to propose steps reasonably acceptable to the Consultant to do so, the Consultant may issue a notice terminating the Agreement.
- .7 The Principal must pay the amounts prescribed in the clause "Adjustment of the Fee on Termination".

Consultant's Continuing Liability

- .8 Termination by the Principal or Consultant or completion of the Services will not release the Consultant from liability in respect of any breach, or non-performance, of any obligation pursuant to this Agreement.

Effect of Termination

- .9 Termination of this Agreement by either party is without prejudice to any accrued rights or remedies of each party.

Adjustment of the Fee on Termination

- .10 If any of the Services are terminated pursuant to Clause 11.1, the Principal will pay the Consultant a reasonable amount for the Services performed by the Consultant to the date of termination and a further amount calculated in the manner set out in Item 16 of the Agreement Information, as adjusted by any additions or deductions in accordance with this Agreement in full and final satisfaction of any claim the Consultant has or may have.
- .11 If this Agreement is terminated pursuant to Clause 11.4, the Principal will pay the Consultant a reasonable amount for the Services performed by the Consultant to the date of termination, together with any adjustments and deductions for loss or damage suffered, or reasonably likely to be suffered by the Principal as a consequence of breach by the Consultant. The Principal may recover any short-fall from the Consultant as a debt due and payable.
- .12 If this Agreement is terminated pursuant to Clause 11.6, the Principal will pay the Consultant a reasonable amount for the Services performed by the Consultant to the date of termination together with the amount calculated in the manner set out in Item 16 of the Agreement Information in full and final satisfaction of any claim the Consultant has or may have.

12 Dispute resolution

Nomination

- .1 The Consultant and the Principal will endeavour to resolve any dispute speedily by negotiation. If a dispute between the Consultant and the Principal is not resolved by negotiation, then before either party has recourse to litigation, the party must submit the dispute to expert determination. If the Consultant and the Principal do not agree upon an independent expert ("Expert"), either may request the Chief Executive Officer of the Australian Commercial Disputes Centre to nominate an Expert.

Submissions

- .2 Within 14 days of acceptance by the Expert of the appointment, the claimant will submit in writing to the Expert the claim and all the evidence which the claimant wishes the Expert to take into account. Within 28 days thereafter the other party will submit in writing to the Expert that party's response to the claim, particulars of any counterclaim and all the evidence which that party wishes the Expert to take into account.

Procedure

- .3 Copies of documents sent to the Expert must be sent to the other party at the same time. The Expert may meet with the parties jointly but not separately and may ask questions of the parties which must be answered orally or in writing as requested by the Expert.

Determination

- .4 As soon as possible the Expert must give the parties the Expert's determination in writing as to:
- .1 the respective rights and entitlements of the parties, and
 - .2 the amount or service if any which the Expert considers is due from one party to the other.
- .5 The determination of the Expert shall be made as an Expert and not as an Arbitrator and shall be final and binding on the parties except where the Expert's determination relating to a dispute is that one party shall pay to the other an amount, or carry out work, in excess of \$100,000. Such determination shall not be final and binding, provided either party gives notice to the other party of its dissatisfaction within 28 days of the determination being given.

Liability

- .6 The Expert will not be liable to the parties for negligence in the conduct of the determination.

Costs

- .7 The Principal and the Consultant will be jointly and severally liable to the Expert for the fees of the Expert. As between themselves, the Principal and the Consultant will each bear half the Expert's fee and each will bear their own costs of the determination.

Continuing Performance

- .8 Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

13 Notices

- .1 Any notice given under this Agreement:
 - .1 must be in writing addressed to the intended recipient at the address shown in Item 17 of the Agreement Information or the address last notified by the intended recipient to the sender;
 - .2 must be signed by an authorised officer of the sender; and
 - .3 will be taken to have been given or made (in the case of delivery in person or by fax, cable or post) when delivered, received or left at the specified address.
- .2 If delivery or receipt of a notice occurs on a day on which business is not generally carried on in the place to which the communication is sent or later than 4.00 pm (local time), it will be taken to have occurred at the commencement of business on the next Business Day in that place.

14 Communication

- .1 The parties agree and consent that notices and communications may be by electronic communication in accordance with the *Electronic Transactions Act 2000* (NSW).
- .2
- .3 The Principal reserves the right to change the reporting format or introduce new systems as required

Agreement Information

Item

1 The Principal

The Principal is: *Mentioned in clause 1*
the State Property Authority (SPA)

2 The Consultant

The Consultant is: *Mentioned in clause 1*

3 Capacity in which the Consultant is engaged

The capacity in which the Consultant is engaged: *Mentioned in clause 2*
NABERS Assessor and Energy and Water Auditor

4 Time by which Consultant must provide program or plan

The time by which Consultant must provide program or plan Principal is: *Mentioned in clause 3.6*
Within fourteen days of contract commencement

5 Time to complete the Services

The time to complete the Services is: *Mentioned in clause 3.6*
(Refer to **The Services**) Within two months of the contract being awarded

6 Approvals obtained by Principal

Approvals obtained by Principal: *Mentioned in clause 3.13*
Nil

7 Consultant's Representative

The Consultant's Representative is: *Mentioned in clause 3.16*
As nominated in the Consultant's Tender and accepted by the Principal.

8 Principal's Representative

The Principal's Representative is: *Mentioned in clause 4.2*
David Franco

9 The Fee.

The Fee is: *Mentioned in clause 5.1*
The Fee shall be a lump sum as accepted by the Principal. The fee may be adjusted/reduced for deleted sites, based on the tendered fee schedule.

10 Reimbursable Expenses

Reimbursable Expenses: *Mentioned in clause 5.4*
Nil (note that travel, meals and accommodation are to be included within the fee)

Rating certification fees payable to the Department of Environment and Climate Change additional to the tendered fee and will be reimbursed to the consultant.

11 Claim timetable

Mentioned in clause 5.5

Claim timetable:

Upon completion of NABERS rating and walk-through audit, on a site by site basis.

12 Payment timetable

Mentioned in clauses 5.6, 5.7 and 5.8

Payment timetable:

Payment will be made within 20 Business Days subject to Clause 10.2.

13 Intellectual property

Mentioned in clause 7.1

Intellectual property not vesting in the Principal:

Nil

14 Professional indemnity insurance

Mentioned in clause 9.1

Quantum of professional indemnity insurance:

\$1,000,000

15 Public liability insurance

Mentioned in clause 9.5.4

Quantum of public liability insurance:

\$5,000,000

16 Percentage on termination

Mentioned in clauses 11.8 and 11.10

Percentage on termination

Nil

17 Notices

Mentioned in clause 13

Notices to the Principal

For notices to the Principal the intended recipient is the Principal's Representative:

Office address:

(for delivery by hand)

»
»
»
»

Postal address:

(for delivery by post)

»
»
»
»

Facsimile number

»

E-mail address

»

Notices to the Consultant

For notices to the Consultant the intended recipient is the Consultant's Representative:

Office address:

As nominated in the Consultant's Tender

(for delivery by hand)

and accepted by the Principal.

Postal address:
(for delivery by post)

As nominated in the Consultant's Tender
and accepted by the Principal.

Facsimile number

As nominated in the Consultant's Tender
and accepted by the Principal.

E-mail address

As nominated in the Consultant's Tender
and accepted by the Principal.

The Services

Agreement name: **NABERS Ratings and Energy and Water Audits**

1 Statement of purpose

To provide;

1. A NABERS Energy (ABGR) rating for the building
2. A NABERS Water rating for the building
3. A 'walk-through' audit of the building, with recommendations for energy and water efficiency improvement to be detailed in a written report
4. to undertake a trial of NABERS Waste and Indoor Air Quality in Bligh House

This statement of purpose is not intended to be an exhaustive list of the purposes required by this Agreement.

2 Relevant information

The State Property Authority (SPA) own and manage a number of government office buildings throughout NSW. As part the Authority's sustainability program, NABERS ratings and advice on improvements that could be make are required.

Five D Holdings are contracted to provide the day-to-day property and facilities management of SPA's portfolio of office buildings.

Scope of Works

The contractor will undertake the following items as nominated in the pricing schedule;

1. A NABERS Energy (ABGR) rating for the building
2. A NABERS Water rating for the building
3. A 'walk-through' audit of the building, as per AS/NZS 3598:2000 Level 1 Energy audit is to be undertaken. Recommendations for energy and water efficiency improvement detailed in a written report to be provided, in a format to be nominated by SPA, containing at lease the following fields;
 - i. Building Name
 - ii. Location of recommendation (ie; plantroom, car park, etc)
 - iii. Description
 - iv. Commentary
 - v. Expected implementation costs
 - vi. Expected savings
 - vii. Simple payback

The walk-through audit should consider all aspects of the building's energy and water usage. Allow to review the building management system and lighting system general operation, including equipment start and stop times. The report should include photos where appropriate.

4. A NABERS Waste rating in Bligh House, and
5. A NABERS Indoor Air Quality rating in Bligh House.

Notes to the Scope

- All submissions to include the cost of travelling, accommodation and other disbursements for a minimum of one site visits per year.
- The cost of the Department of Environment and Climate Change certification fee will be paid in addition to the tendered fee.
- The consultant shall furnish a schedule of planned site visits to SPA.

3 Standards and guidelines

- The Consultant must be an accredited and current NABERS/ABGR auditor.
- AS/NZS 3598:2000 Energy audits

4 Document preparation

- The following documents/outputs are to be provided by the consultant for each site;
 - Calculation worksheets, detailing the numbers/units used to produce the NABERS rating calculation
 - Findings and recommendations from the 'walk-through' audit, in the specified format.
 - Any forms required by Department of Environment and Climate Change for the issuing of NABERS certification on SPA's behalf.

The issuing of the certificate, framing and delivery to site will be provided by the Department of Environment and Climate Change

5 Document format

Provide the following information both in electronic format. Where documents are provided in soft copy, the Principal may nominate the format (i.e. PDF, DOC, XLS, etc)

The walk through audit will be used by SPA to decide on and manage future efficiency upgrades. Recommendations from each site will be combined into a master list. SPA will advise the format of the list. The walk-through recommendations table will have the following fields;

- Building Name
- Location of recommendation (ie plantroom)
- Description
- Commentary
- Expected implementation costs
- Expected savings
- Simple payback

~~6 Services Delivery Plan~~

7 Occupational Health and Safety

Occupational Health and Safety management

The Consultant, the Services, and all related OHS management must address the requirement for:

- safety with the management, maintenance, use and operation of the completed assets designed to be considered and addressed in their design; and
- all design to minimise the risk to the health and welfare of construction, operation, maintenance and service workers, and all other users of the assets designed.

Periodically review and revise designs prepared to ensure that all reasonably foreseeable hazards and risks to health and safety, both in the execution of the design, and in the use, maintenance, repair, operation and demolition of the design product are identified, assessed and, where practicable, eliminated. Where it is not practicable to eliminate risks, to the extent practicable, effectively control the risks by design or, where this is not practicable, by operational requirements. Document and report on, as part of regular design reports, the review and the identification of hazards and controls, including any operational requirements.

Work site OHS

If the Consultant is required to visit, work, or control work on a work site, including a site controlled by others, the Consultant must:

- .1 make its own inspections of the site and identification of hazards arising from the work site;
- .2 assess the risk of harm to the health or safety of any person from any hazard identified under its control;
- .3 in assessing risks and hazards, take into account its own inspections and any hazard identification or risk assessment, elimination or control information provided to the Consultant;
- .4 review and comply with any risk assessment and any measures adopted to control risk advised to the Consultant by the Principal or others;
- .5 eliminate or control risks under its control to the health or safety of any person;
- .6 in any review, assessment and control of risks that it is required to make, take into account but not rely alone on any hazard identification or risk assessment, elimination or control information provided to the Consultant by the Principal or others;
- .7 not rely on the omission of any mention or detail of any hazard in the information provided by the Principal as evidence of the absence or limitation of any hazard;
- .8 comply with all authorised directions, procedures and policies pertaining to visiting, working or controlling work on the work site; and
- .9 document and implement a Safe Work Method Statement for the services in accordance with the “NSW Government OHS Management Systems Guidelines”.

If the Consultant and/or subconsultants carry out work on a work site the Consultant and subconsultants must document and implement Safe Work Method Statements in accordance with the NSW Government “OHS Management Systems: Guidelines”, except when the risks associated with the work are shown to the Principal to be low and covered by a Consultant Safe Work Method Statement, the subconsultants may implement the relative parts of that Statement.

The Consultant must submit the Consultant’s Safe Work Method Statements and any subconsultant Safe Work Method Statements to the Principal before one week prior to the relevant work being carried out on the work site. Submit revisions to the Safe Work Method Statements to the Principal, or as directed.

8 Site Visits

The consultant must coordinate site visits in conjunction with building management.