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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 No 0700138

Supply of One (1) Articulated Motor Grader
with Options for Supply of Accompanying
Maintenance Package and Spare Parts
Support for the Department of Environment
and Conservation

Tender Issue Date: 19 February 2007

Closing Date: 14 March 2007

Closing Time: 9:30 am Sydney Time

Non-Refundable Hard Copy Document Fee \$110.00 (includes GST): Note: There is no charge for downloading an electronic copy from <https://tenders.nsw.gov.au/commerce>.

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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

Articulated Motor Grader with Options for Supply of Maintenance Package and Spare Parts Support for the Department of Environment and Conservation

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PART A THE REQUIREMENT AND TENDER INFORMATION

1. OUTLINE DESCRIPTION OF THE REQUIREMENT

- 1.1 This Request for Tender ("RFT") covers the supply of one Articulated Motor Grader, with options for supply of accompanying maintenance package and spare parts support to the Department of Environment and Conservation.
- 1.2 The Board is responsible for the conduct of the tender process, assisted by NSW Procurement – Contracting Services.

2. SUMMARY INFORMATION FOR TENDERERS

2.1 Interpretation

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

2.2 Structure of Request for Tender

- 2.2.1 This RFT is made up of Parts A to 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 – Acknowledgment and confirmation of Tender.

2.3 Contact Officer

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

Name: Salma Cook
 Phone: (02) 9372 7541
 Fax: (02) 9372 7644
 Email: salma.cook@commerce.nsw.gov.au

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

2.4 Nature of agreement

- 2.4.1 The Requirement is to be met by an agreement between the Principal and the successful tenderer on the terms of Part D.
- 2.4.2 If this RFT seeks Tenders to supply more than one Principal then, unless the context otherwise requires, a reference in Parts A-C to "Principal" shall be read as a reference to each "Principal" and a reference to "agreement" shall be read as a reference, as between the Contractor and each Principal, to an agreement between the Contractor and that Principal.

2.5 Eligibility to tender

- 2.5.1 Tenders must be submitted by a legal entity or, if a joint Tender, by legal entities, with the capacity to contract. The Principal will only contract with the relevant legal entity or entities.
- 2.5.2 The Principal will not enter an agreement with a legal entity in its capacity as trustee.
- 2.5.3 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.
- 2.5.4 The Board may submit any financial information provided by the Tenderer for independent financial assessment of the Tenderer's business.
- 2.5.5 The Board reserves the right to reject any Tender if it judges the tenderer not to have appropriate financial assets.
- 2.5.6 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.
- 2.5.7 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>

2.6 Other Eligibility Requirements

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

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 by prior appointment between 8.30 am and 4.30 pm, Mondays to Fridays (except public holidays) at:

Tenders Office, McKell Building – 02 9372 8900
NSW Department of Commerce
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, Visa and Bankcard). Cash will not be accepted; or
- (b) if ordering a hard copy through the NSW Department of Commerce *eTendering* website, by credit card (Mastercard, Visa and Bankcard).

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/procurement/pdf/code_of_prac-curr.pdf

“Conforming Tender” means a Tender that:

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

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

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

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

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

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

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

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

“Non-Conforming Tender” means a Tender that:

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

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

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

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

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

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

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

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

“RFT” means the Request for Tender.

“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, or, in the case of electronic tenders, which cannot be effectively evaluated because the file has become corrupt, may be excluded from the tender process without further consideration at the Board’s discretion.

- 5.1.3 Tenderers may, if they choose, submit an Alternative Tender but only in conjunction with a Conforming Tender. Tenderers are encouraged to offer options or solutions that contribute to the Principal's ability to carry out its business in a more cost-effective manner.
- 5.1.4 The Board may assess an Alternative Tender against the selection criteria where submitted with a Conforming Tender.
- 5.1.5 An Alternative Tender must be clearly marked "Alternative Tender".
- 5.1.6 The Board expressly reserves the right to accept, in its discretion, either or both of the following:
 - (a) Any Alternative Tender or part of an Alternative Tender, where submitted with a Conforming Tender; and
 - (b) Any other Non-Conforming Tender or part of a Non-Conforming Tender that, in the Board's opinion, is substantially a Conforming Tender.

5.2 Prescribed form of Tender

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

5.3 General instructions for completion of Tenders

- 5.3.1 Prices, responses and other information provided in the Tender are to be in writing and in English.
- 5.3.2 Tenderers must initial and date any alterations to, and deletions from, a hard copy Tender.
- 5.3.3 Tenderers must complete ALL of Part C of this RFT, as directed.
- 5.3.4 Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.

5.4 Addenda to 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 8 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

Not applicable.

5.6 Tenderers to inform themselves

- 5.6.1 Before submitting its Tender, a tenderer must:

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

6. PREPARATION OF TENDER – POLICY REQUIREMENTS

6.1 Procurement Policy – Introduction

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

NSW Government Procurement Policy:
<http://www.treasury.nsw.gov.au/pubs/tpp2004/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/procurement/pdf/code_of_prac-curr.pdf

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

6.3 Occupational Health Safety & Rehabilitation

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

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

6.3.2 Tenderers must ensure that the Tenderer's Sub-Contractors will comply with the OHS&R requirements listed in 6.3.1 in the performance of any agreement awarded.

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

6.4 Environmental Management

6.4.1 Not applicable.

6.5 Employment and Outwork Obligations for textile, clothing and footwear suppliers

6.5.1 Not applicable.

6.6 Economic Development through Government procurement

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

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

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

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

ICN (NSW) Ltd
Suite 313 Henry Lawson Business Centre
Birkenhead Point
Drummoyne NSW 2047
Phone: 02 9819 7200
Fax: 02 9181 3321
Email: enquiry@icnsw.org.au

Website address: www.icnns.org.au

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

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

6.8.1 Not applicable.

6.9 Development of long-term, strategic alliances

6.9.1 Not applicable.

6.10 Export potential and/or import replacement

6.10.1 Not applicable.

6.11 Value-added activity

6.11.1 The NSW Government recognises the benefits to be gained from the growth of domestic, value-adding activities. Tenderers are required to indicate in Part C the level of value-added activity proposed to be undertaken in the event of award of any

agreement. The evaluation will favour proposals with the highest level of local value-added activity.

6.12 Small to Medium Enterprise (SME) involvement

- 6.12.1 It is NSW Government policy to encourage the development of local industry and to support SMEs. Tenderers are required to state in Part C how they will provide opportunities for SMEs and, if the Tender involves the formation of a relationship with one or more SMEs, tenderers are asked to provide specified information regarding such relationship(s). The evaluation will favour tenderers that are prepared to contractually commit to supply chain management and using SMEs identified within their Tenders and the value of work that will flow through to SMEs.

6.13 Regional Development

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

6.14 Existing industry development and proposed new investment activities

- 6.14.1 Investment and new investment in improved industrial and commercial plant and equipment, where cost justified, has a positive influence on the State's capacity to improve its standard of living. Some industry sectors have a strategic significance for the growth and development of NSW. If industry development will result from the agreement, tenderers are asked in Part C to provide certain details regarding proposed investment, flow on benefits and impact of the industry sector. The evaluation will favour tenderers that are committed to industry development activities and investment.

6.15 Innovation, research and development

- 6.15.1 Not applicable.

6.16 Workforce development

- 6.16.1 Not applicable.

6.17 Industry Impact Assessment and Local Industry Participation Plan

- 6.17.1 Not applicable

6.18 Competitive Neutrality

- 6.18.1 The objective of NSW Government Policy on the application of competitive neutrality is to ensure that Government Businesses, whether they are Commonwealth, State or Local, do not have any net advantage over their competitors as a result of their public sector ownership. It requires that comparisons between public and private sector bids be made on a similar basis. It means, amongst other things, that in-house bids should reflect adjustments that offset the effects of taxation exemptions, where it is feasible to do so, and be accurately costed.

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

6.19 E-Commerce

- 6.19.1 Not applicable.

6.20 Other relevant policies

- 6.20.1 Nil.

6.21 Compliance with relevant legislation and standards

- 6.21.1 Certificate of compliance with relevant Standards.

6.21.1.1 Tenderers are required to provide evidence of compliance with relevant legislative and Standards requirements as laid down by State or Federal Authorities, where relevant.

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

7.3 Price Variation

- 7.3.1 Not applicable being a one-off supply requirement.

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 Not applicable.

7.6 Minimum Tender validity period

- 7.6.1 Tenders must remain open for acceptance for a period of at least 2 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 Physical Tender Box:

It must be marked 'RFT 0700138':

Tender Box
Level 3 (ground floor west), McKell Building
2-24 Rawson Place
Sydney

- (b) By Facsimile Tender Box, to (02) 9372 8974.

- (d) By electronic Tenedr Box 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 NSW Department of Commerce *eTendering* website to the clause governing electronic tenders 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 the 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.

8.5 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:
 - (i) *Maintenance and support service levels including availability of spare parts*
 - (ii) *Suitability of sub-contractors*

- (iii) *Previous contract experience and standard of contract performance*
- (iv) *Warranty*
- (v) *Delivery*

- (b) Pricing.
- (c) Compliance with specification.
- (c) Compliance with Part D.
- (d) Compliance with legislation and standards.
- (e) Compliance with NSW Government procurement policy and other applicable NSW Government policies, including OH&S, and benefits offered under the proposal in relation to NSW Government policies.

9.3 Variation of Tenders

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

- (a) by providing the Board with further information by way of explanation or clarification ("provide an explanation");
- (b) by correcting a mistake or anomaly ("correct a mistake"); or
- (c) by documenting agreed changes to the tender negotiated under 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,
 - (i) 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
 - (ii) in the case of variation to document agreed changes, the Board has confirmed that the draft documented changes reflect what has been agreed.

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

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

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

9.4 Exchange of information between government agencies

- 9.4.1 Lodgement of a tender will itself be an authorisation by the tenderer to the Board to make available, on request, to any NSW government agency information, including but not limited to, information dealing with the tenderer's performance for any agreement that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of contract.
- 9.4.2 The provision of the information by the Board to any other NSW Government agency is agreed by the tenderer to be a communication falling within section 22(1) of the *Defamation Act 1974 (NSW)*, and the tenderer shall have no claim against the Board and the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the tenderer arising out of the communication.
- 9.4.3 In the evaluation of tenders, the Board may take into account any information about the tenderer that the Board receives from any source.
- 9.4.4 To avoid doubt, information which may be collected, exchanged and used in accordance with this provision includes "personal information" about the tenderer for the purposes of the *Privacy and Personal Information Protection Act 1998*. Lodgement of a tender will be an authorisation by the tenderer to the Board to collect such information from third parties, and to use and exchange such information in accordance with this clause.
- 9.4.5 The tenderer's attention is drawn to the *Freedom of Information Act 1989* which may confer rights, subject to the terms of that Act, to access, and to require the correction of, information held by certain agencies.
- 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

- 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 successful and unsuccessful Tenders

- 10.8.1 In accordance with NSW Government Policy to publicly disclose details of its contracts, the Board may publish the following information ("public information") about an agreement awarded under this RFT:

- (a) Details of the agreement (description of project to be completed or goods/services to be provided or property to be transferred; commencement date of the agreement; if applicable, the term of the agreement).
- (b) The full identity of the successful tenderer including details of cross ownership of relevant companies.
- (c) The price payable by the agency and the basis for future changes in this price.
- (d) The significant selection criteria used in Tender assessment and their weightings.
- (e) Provisions for re-negotiation (where applicable).

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

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

- 10.8.3 A tenderer may request that the Board not disclose particular information included in its tender but must give the reasons for requesting this. The Board will advise a tenderer in contention for an agreement what information it agrees not to disclose (unless legally required to do so). If the Board and a tenderer cannot agree about

what should be disclosed, the Board will seek the advice of the Chair of the Board. The Board's decision is however final and is at the Board's absolute discretion. Neither a decision by the Board, nor a recommendation by the Chair of the Board under this paragraph is a decision that falls within any dispute resolution procedures specified in Part D.

- 10.8.4 The Board may publish the identities of all tenderers, but will not disclose other information included in an unsuccessful tender unless the tenderer agrees, or release is determined under the *Freedom of Information Act 1989* or is otherwise legally required.
- 10.8.5 For agreements valued over \$100,000, the Board will normally publish the names of tenderers when tenders close, and the other public information about the agreement on the internet, within 90 days after award of the agreement. For other agreements the Board will disclose the public information on request.

10.9 Ownership of Tenders

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

ANNEXURE 1 TO PART B ADDITIONAL INFORMATION

Not used.



**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

**RFT No 0700138 Supply of One (1)
Articulated Motor Grader with Options for
Supply of Accompanying Maintenance
Package and Spare Parts Support for the
Department of Environment and Conservation**

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

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

Your Company's ABN: <Insert ABN>

Contact Name: <Insert name of Contract Administration
Officer>

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:

1) If a company, Company Name	
2) If a partnership, Partnership Name	
3) If an individual, individual's name	
4) Trading Name	
5) Australian Business Number (ABN)	
6) Australian Company Number (ACN)	
7) Registered Office (if a company)	
8) Site Address (principal place of business)	
9) Postal Address (principal place of business)	
10) Alternative Address	
11) Contract Administration Contact Name	
12) Contract Administration Contact Telephone No.	
13) Contract Administration Contact e-mail Address	
14) Contract Administration Contact Fax No.	
15) Chief Executive Officer's (CEO's) Name	

16) Switchboard Telephone No:	
17) Company email Address	
18) Website Address:	
19) 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

Question 2.3.1

Please confirm that you are not tendering in the capacity of an agent or trustee for some entity or entities:

Answer 2.3.1

<type or write your answer here>

3. CAPACITY TO PERFORM AGREEMENT

3.1 Sub-Contractors

Question 3.1.1

Is any part of the Deliverables 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.

Answer 3.1.1

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	
1) If a company, Company Name	
2) If a partnership, Partnership Name	
3) If an individual, individual's name	
4) Trading Name	
5) Australian Business Number (ABN)	
6) Australian Company Number (ACN)	
7) Registered Office (if a company)	
8) Site Address (principal place of business)	
9) Postal Address (principal place of business)	
10) Alternative Address	
11) Contract Administration Contact Name	
12) Contract Administration Contact Telephone No.	
13) Contract Administration Contact e-mail Address	
14) Contract Administration Contact Fax No.	
15) Sales Order Contact Name	
16) Sales Order Phone No.	
17) Sales Order e-mail Address	
18) Sales Order Fax No.	
19) Chief Executive Officer's (CEO's) name	
20) Switchboard Telephone No.	
21) Company e-mail Address	
22) Website address	
23) Items able to be supplied	

Question 3.1.2

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.

Answer 3.1.2

<type or write your answer here>

Question 3.1.3

Sub-contractors are required to provide a letter of commitment to the Board that:

- (a) they are aware of the terms and conditions of the agreement between the Contractor and the Board; and
- (b) they will offer to supply under the terms and conditions of the agreement and otherwise on terms that enable the Contractor to comply with the agreement.

Do you agree to attach to the completed Part C (or, if tendering electronically, to submit as a pre-condition of acceptance of your tender) a letter of commitment from sub-contractors, and provide a letter of commitment from any sub-contractor approved during the term of the agreement?

Answer 3.1.3

<type or write your answer here>

3.2 Previous contract experience and standard of contract performance

3.2.1 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:

<type or write your answer below>

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

3.2.2 Question

Demonstrated expertise and experience in the successful provision of goods and/or services 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.

Answer 3.2.2

<type or write your answer here>

3.2.3 Question

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.

Answer 3.2.3

<type or write your answer here>

3.3 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:

3.4 Referees

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

3.5 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

As per clause 7.2 Part B.

4.3 Settlement discount

Not applicable.

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

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

Yes/No

If “**No**”, provide details below

7.3 Environmental Management

Not applicable.

7.4 Outworkers Code

Not applicable.

7.5 Purchasing Preference Scheme

NSW Country Industries Preference Scheme

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

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

Yes/No

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

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

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

Yes/No

If “**No**” explain below

7.6 Sustainable, long-term industry development

Not applicable.

7.7 Development of long-term, strategic alliances

Not applicable.

7.8 Export potential and/or import replacement

Not applicable.

7.9 Value-added activity

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

7.10 SME involvement

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

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

7.11 Regional Development

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

Indicate the measures to be taken if the agreement is awarded to enhance local industry participation, SME involvement, employment and workforce development:

7.12 Existing industry development activity and proposed new investment

If industry development will result from the agreement, indicate below:

- (a) the level and range of activities that will be affecting the industry sector;
- (b) any indirect benefits which may flow to other industries; and
- (c) the nature and scale of any proposed new investments that may arise as a result of an agreement being awarded.

7.13 Innovation, research and development

Not applicable.

7.14 Workforce Development

Not applicable.

7.15 Industry Impact Assessment and Local Industry Participation Plan

Not applicable.

7.16 Competitive Neutrality

As a public sector tenderer, do you comply with the policy that Government agencies should not have a net advantage over their competitors as a result of their public ownership?

Yes/No

If “No”, provide details

7.17 Electronic Commerce

Not applicable.

7.18 Other relevant policies

Not applicable.

8. COMPLIANCE WITH RELEVANT LEGISLATION AND STANDARDS

As per clause 6.21 Part B.

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

9.2 Further information

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

9.3 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.

9.4 Statutory Declarations

Not applicable.

9.5 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

9.6 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

SPECIFICATION

General.

Tenders are invited for the supply of one (1) articulated motor grader for use in maintenance of access roads and trails within the conservation reserves of the Northern Plains Region of the Department of Environment and Conservation (DEC).

DEC's minimum requirements as outlined herein, form the specifications for the supply of the grader. Any tender that does not conform to the minimum requirements will not be considered.

The Grader supplied shall be of standard production, incorporating the latest technology in engine, transmission and frame design. The grader will be the standard product of one manufacturer.

The tender shall detail all standard equipment included with the grader, and shall also provide training/instruction in the safe operation of the grader offered to DEC operators. All relevant safety features of the grader shall be included in the tender.

Compliance Plate.

The Grader's date of manufacture shall not have more than six (6) months variation from the date of delivery to the Baradine NPWS Workshop. The machine is to satisfy all current NSW Workcover/Roads and Traffic Authority requirements.

Engine.

The engine shall be a high speed diesel, of six (6) cylinders giving a minimum displacement of 5.8 litres. Suppliers should indicate if the machine supplied meets Tier Three (3) emission control standards. Flywheel power shall be a minimum of 110 kW (SAE J1349 test conditions) and Torque shall be a minimum of 550 Nm.

A collection pre-cleaner shall be fitted to the primary air intake, with a dust ejection or equivalent air cleaner body to house the elements. An air restriction indicator shall be fitted to the operator's console in the Cabin. Exhaust silencers, incorporating efficient spark arrestor/s, shall be fitted to convey exhaust gases clear of the operator and prevent rainwater entry.

Suppliers should also outline whether the machine is fitted with Tier 3 emission control system/s as a standard feature.

Fuel.

In-line fuel filtering shall incorporate both primary and secondary filtering with an approved water trap to be fitted.

Transmission.

Transmission shall incorporate either direct or torque converter drive, with full mobile power-shift capability. All transmissions offered must have inching capability, and incorporate no less than six (6) forward speeds and three (3) reverse. Transmission control shall be of the single lever type incorporating gear selection, directional control, and parking brake. A lock/unlock differential shall be fitted. Forward road speed shall be a minimum of 40 km/hr.

Drive System.

Suppliers shall provide tender prices on both conventional rear wheel tandem drive and selective front wheel drive systems where available. Drive to the rear wheels shall be via a fully integrated tandem arrangement providing power to each wheel via a chain drive system.

Brakes.

Service brakes shall be foot operated and incorporate actuation to the four (4) rear wheels, utilising a wet disc design. Service brakes shall be automatically self-adjusting, and shall operate using separate actuation circuits for each tandem.

A parking / emergency brake shall be fitted, and be able to hold the machine stationary on a slope of 1 in 4. The parking brake shall be spring applied and pressure released to provide braking if the machine loses pressure for any reason, and shall operate on the machine's transmission output shaft thus providing braking to all rear wheels.

Steering/Articulation.

Steering shall be full power hydrostatic with two steering cylinders and a minimum steering angle of 50°, and a turning circle no greater than 7.8m in radius. The steering system shall incorporate provision to steer the machine in the event of a total loss of hydraulic pressure.

The machine shall be articulated using two power cylinders, and shall have an articulation angle of no less than 20°. An indicator shall be mounted on the operator's console to reflect the articulation angle, and an articulation lock shall be provided.

The steering column is to have multi-position adjustment.

Hydraulic System.

All hydraulic hoses and pipes shall be located and protected so as to prevent physical damage under normal operating conditions. The hydraulic system shall be powered by a load sensing variable displacement piston pump, providing a minimum flow of 180 litres per minute, and minimum pressure of 17,000 kPa.

Frame.

The machines frame shall be of box section construction, and shall have a maximum modulus of no less than 3400cm³, and minimum weight of no less than 155kg/m.

Mouldboard.

Mouldboard to be a minimum of 3600mm in length and 610mm in height, and shall be constructed of material no less than 19mm in thickness, which has been through-hardened. The mouldboard is to incorporate heat-treated side shift rails with fully replaceable wear inserts. An additional set of wear inserts is to be provided with the supply of the grader.

Circle.

The machines circle is to be a minimum outside diameter of no less than 1500mm, and shall be constructed from high tensile steel. All drive teeth are to be flame hardened, and the circle shall be fitted with fully replaceable non-lubricated wear inserts. Circle rotation shall be a minimum of 360°, and a slip clutch shall be fitted to the circle drive.

Rear Rippers.

A hydraulically operated rear mounted parallel linkage ripper shall be fitted to the machine with provision to take nominally five (5) ripper tynes and nine (9) scarifier tynes, and shall come complete with all tynes installed. An additional set of cutting edges/boots for tynes shall be supplied with the machine.

A point shall be provided on the rear of the ripper frame for a towing hitch. This hitch shall have a 45mm diameter hole and pin to suit, and a 7-pin flat wiring connection mounted on the rear of the machine (not on the ripper frame).

Front Mounted Blade.

The grader shall be supplied with a front mounted hydraulic blade of a width equal to the front wheel width. The blade shall be through-hardened and a minimum of 600mm in height and no less than 19mm thickness.

Tyres and Air.

Industrial Lug Traction tyres shall be fitted to the machine, and valve guarding shall be provided on all wheels. Tyres shall conform to standards of the Tyre & Rim Association of Australia and shall be a minimum of 12 ply rating.

Tools to remove wheels shall be provided with the grader.

The grader is to be supplied with an air chuck and ten (10) metres of air hose to enable grader tyres to be inflated and pneumatic tools to be utilised using the grader's air tank. A compatible quick release coupling is to be fitted to the air tank to facilitate these functions.

Spare Tyres.

The grader will be supplied with two spare tyres identical to those on the grader. One spare tyre shall be mounted on the rear of the grader (with a winch or other lowering mechanism) in an accessible location for ease of deployment. The second spare tyre will not be mounted, but shall be delivered with the machine.

Seating.

A full suspension seat, with multi-position adjustments shall be fitted to the machine, in suitable trim to match the colour of the cabin interior. A full sized seat protective cover shall be fitted.

Operator's Console and Instruments.

The following instruments shall be fitted so as to be not easily damaged and to be easily observed by the operator:

- | | |
|-------------------------|--------------|
| * Speedometer | * Fuel Gauge |
| * Hour meter | * Tachometer |
| * Ball Type Slope Meter | |

The hour metre shall measure real time engine hours, that is, time shall be kept while the engine is running, regardless of engine speed. This shall operate from the engine oil pressure sender.

The following instruments shall be both visible and audible:

- | | |
|--------------------------------|--------------------------------------|
| * Charging circuit | * Handbrake on / off indicator |
| * Engine oil pressure | * Back up warning beeper |
| * Coolant temperature | * Hydraulic Oil Temperature |
| * Transmission Oil Temperature | * Restriction indicator – Air Intake |

Diagnostic Equipment.

If an electronic engine/transmission management system is fitted, convenient diagnostic points shall be provided on the machine.

Detail pricing of all diagnostic equipment to be purchased by DEC shall be outlined in the tender pricing.

Electrical Systems and Lighting.

Three (3) full sets of keys shall be provided with the grader.

A reversing alarm shall be provided.

A 12 volt outlet shall be provided in the grader cabin.

Fully protected night operational lighting shall be fitted, with four (4) forward-facing and two (2) rear facing operation lights. Two of the forward facing lights shall be mounted under the eaves of the grader cabin, and two shall be positioned to illuminate the mouldboard area.

In addition, front combination halogen high/low beam, rear combination LED and LED traffic indicators shall be fitted, complying with RTA guidelines. These should be displayed on the Operator's console when in use. These shall be protected from damage.

A battery-isolating switch shall be fitted on the earthing lead, in an easily accessible location.

One (1) revolving amber hazard light shall be mounted externally above the operator's cabin. The light shall be affixed to a suitable bracket so as to enable only the lens to protrude above the roofline of the operator's cabin, and a protective cage shall be provided around the lens. The light shall operate whenever the machine's engine is operating.

Toolbox.

A lockable robustly constructed 16 gauge galvanised sheet metal weather-proof and lock up type toolbox, nominal sizes 600mm long x 200mm wide x 200mm high, suitable for housing grease gun and tools, shall be provided, mounted externally in an easily accessible location.

Vandal Proofing.

Locks shall be fitted to afford protection to the engine, cabin, instruments, reservoir and tank caps, battery and all controls.

Noise Control.

The machine shall be silenced such that the sound level emitted from the machine under full operational conditions when measured at the operator's ear shall not exceed 85 dB. Proof of compliance shall be provided from a recognised noise testing authority and submitted with the tender documents.

ROP and FOP structures.

The machine's Roll Over Protection Structure (R.O.P.S.) and Falling Object Protection Structure (F.O.P.S.) must comply with the *Occupational Health and Safety Regulation 2001 – Updated 1 September 2003, Clause 141*.

Suppliers must include certified proof of Australian compliance for the R.O.P.S. and F.O.P.S. (AS 2294), the fitting of manufacturer's label, safety labels, and appropriate operator's seat restraint/s.

Cabin and Controls.

The cab shall be of a low profile design where available, fitted with two (2) access doors and shall be fully air conditioned with a heater-demister fitted. All glass in the cabin shall have a film type window tint applied to a medium degree of darkness. An AM/FM radio and cassette player (minimum) with a removable face for security reasons, shall be installed with two (2) audio speakers. A three (3) kilogram Dry Chemical fire extinguisher shall be fitted to a convenient location inside the cabin with provision for quick release in the event of a fire.

All controls shall be conveniently placed, precise, of low effort design with maximum working area visibility. Each hydraulic control lever automatically shall return to its neutral position when not held (unless designed to return automatically to the neutral position after the machine has performed a specific function) and the neutral position is effectively sealed so that leakage will not occur at the valve due to vibration under mobile conditions. Each control lever shall be durably and effectively designated as to its purpose or a notice plate showing a diagram of the control movements for the respective motions is provided.

Maintenance and Spare Parts.

Firms tendering are to include details of any maintenance packages available for the machine purchased under this tender. This is to incorporate full machine maintenance, under a contractual arrangement whereby the tendering firm is responsible for those maintenance tasks listed below:

- 250hr Service to manufacturer's specifications (including the supply of all required materials, fluids and spare parts)
- 500hr Service to manufacturer's specifications (including the supply of all required materials, fluids and spare parts)
- 1000hr Service to manufacturer's specifications (including the supply of all required materials, fluids and spare parts)
- 2000hr Service to manufacturer's specifications (including the supply of all required materials, fluids and spare parts)
- Carry out conditional monitoring tasks including Scheduled Oil Sampling, Destructive Oil Filter Testing, etc at the scheduled regular service intervals
- Correction of all mechanical malfunctions with the exception of those caused by unfair wear and tear on the machine

Suppliers will provide a breakdown service to the grader within 4 hours of notification of a fault. The machine will be operating within a 120km radius of the towns of Moree, Narrabri, Baradine and Coonabarabran.

The tender shall satisfy DEC that a store or branch is maintained with a representative supply of spare parts and qualified/skilled service personnel available, together with a system for securing parts within a reasonable length of time. Details shall be included in the tender.

Warranty.

Tenders shall specify details, conditions and costs of any standard and extended Warranty provisions available.

Delivery.

The grader shall be delivered to the NPWS Depot at 12 Wellington St, Baradine within 6 (six) weeks of tender acceptance. It will be road registered, with details of the registration to be supplied by DEC on tender acceptance.

STATEMENT OF COMPLIANCE

Tenderers must state hereunder whether the Deliverables offered conform to the Specification.

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

COMPLIES means:

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

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

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

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

ALTERNATIVE means that the tenderer's system or process either does not require the feature due to inherent design or capability in the operation of the system or the tenderer's system or process fully complies in a manner different to that described. In both cases a description must be provided.

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

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

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

When completing the Statement of Compliance, where explanation or further detail is needed with regard to compliance, part-compliance, non-compliance, etc., tenderers should provide an attachment at the end of the Statement of Compliance quoting clause no. and giving detailed explanation. Note: For any offerings additional to the primary offer (whether variations to the primary offer or alternate offers) only note the clauses of the specification with which you cannot comply or with which you can only partially comply).

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

REQUIRED SPECIFICATION		TENDERED SPECIFICATION
1. GENERAL		
(a)	The supply of one (1) articulated motor grader of standard production, incorporating the latest technology in engine, transmission and frame design. The grader will be the standard product of one manufacturer.	
(b)	All standard equipment included with the grader detailed in the tender.	
(c)	Provide, to DEC operators, training/instruction in the safe operation of the grader.	
(d)	All relevant safety features of the grader included in the tender.	
2. COMPLIANCE PLATE		
(a)	The Grader's date of manufacture shall not have more than six (6) months variation from the date of delivery to the Baradine NPWS Workshop.	
(b)	The Grader is to satisfy all current NSW Workcover/Roads and Traffic Authority requirements.	
3. ENGINE		
(a)	High speed diesel of six (6) cylinders giving a minimum displacement of 5.8 litres.	
(b)	Flywheel power shall be a minimum of 110 kW (SAE J1349 test conditions) and Torque shall be a minimum of 550 Nm.	
(c)	A collection pre-cleaner fitted to the primary air intake with a dust ejection or equivalent air cleaner body to house the elements.	
(d)	An air restriction indicator fitted to the operator's console in the cabin.	
(e)	Exhaust silencers, incorporating efficient spark arrestor/s fitted to convey exhaust gases clear of the operator and prevent rainwater entry.	
(f)	Tender to indicate if grader is fitted with Tier 3 emission control system/s as a standard feature.	
4. FUEL		
(a)	In line fuel filtering incorporating both primary and secondary filtering with an approved water trap.	
5. TRANSMISSION		
(a)	Incorporate either direct or torque converter drive, with full mobile power-shift capability.	
(b)	Have inching capability, and incorporate no less than six (6) forward speeds and three (3) reverse.	
(c)	Transmission control of the single lever type incorporating gear selection, directional control and parking brake.	
(d)	A lock/unlock type fitted.	
(e)	A minimum of 40 km/hr forward road speed.	
6. DRIVE SYSTEM		
(a)	Tender prices on both conventional rear wheel tandem drive and selective front wheel drive systems provided.	

(b)	Drive to the rear wheels via a fully integrated tandem arrangement providing power to each wheel via a chain drive system.	
7. BRAKES		
(a)	Foot operated and incorporating actuation to the four (4) rear wheels utilising a wet disc design.	
(b)	Automatically self-adjusting using separate actuation circuits for each tandem.	
(c)	Parking / emergency brake able to hold the grader stationary on a slope of 1 in 4.	
(d)	Parking brake spring applied and pressure released to provide braking if the grader loses pressure for any reason;.	
(e)	Parking brake operates on the grader's transmission output shaft thus providing braking to all rear wheels.	
8. STEERING / ARTICULATION		
Steering		
(a)	Full power hydrostatic with two steering cylinders and a minimum steering angle of 50°, and a turning circle no greater than 7.8m in radius.	
(b)	Provision to steer the grader in the event of a total loss of hydraulic pressure.	
(c)	Multi-position adjustment steering column.	
Articulation		
(a)	Articulated using two power cylinders with an articulation angle of no less than 20°.	
(b)	Articulation indicator mounted on the operator's console to reflect the articulation angle.	
(c)	Articulation lock provided.	
9. HYDRAULIC SYSTEM		
(a)	Hoses and pipes located and protected so as to prevent physical damage under normal operating conditions.	
(b)	System powered by a load sensing variable displacement piston pump providing a minimum flow of 180 litres per minute and minimum pressure of 17,000 kPa.	
10. FRAME		
(a)	Box section construction with a maximum modulus of no less than 3400cm ³ and minimum weight of no less than 155kg/m.	
11. MOULDBOARD		
(a)	Minimum of 3600mm in length and 610mm in height, constructed of material no less than 19mm in thickness which has been through-hardened.	
(b)	Incorporate heat-treated side shift rails with fully replaceable wear inserts.	
(c)	Additional set of wear inserts provided.	
12. CIRCLE		
(a)	Grader's circle a minimum outside diameter of no less than 1500mm and constructed from high tensile steel.	

(b)	All drive teeth flame hardened and the circle fitted with fully replaceable non-lubricated wear inserts.	
(c)	Circle rotation a minimum of 360° and a slip clutch fitted to the circle drive.	
13. REAR RIPPERS		
(a)	Hydraulically operated rear mounted parallel linkage with provision to take nominally five (5) ripper tynes and nine (9) scarifier tynes, and supplied complete with all tynes installed.	
(b)	Additional set of cutting edges/boots for tynes supplied.	
(c)	Point provided on the rear of the ripper frame for a towing hitch. Hitch with a 45mm diameter hole and pin to suit; and a 7-pin flat wiring connection mounted on the rear of the grader (not on the ripper frame).	
14. FRONT MOUNTED BLADE		
(a)	Hydraulic blade of a width equal to the front wheel width, through-hardened and a minimum of 600mm in height and no less than 19mm thickness.	
15. TYRES & AIR		
(a)	Industrial Lug Traction tyres with valve guarding on all wheels. Tyres conforming to the Tyre & Rim Association of Australia standards and having a minimum 12 ply rating.	
(b)	Tools to remove wheels provided.	
(c)	Air chuck and ten (10) metres of air hose to enable grader tyres to be inflated and pneumatic tools to be utilised using the grader's air tank.	
(d)	Compatible quick release coupling fitted to the air tank to facilitate functions detailed in 15(c) above.	
16. SPARE TYRES		
(a)	Two spare tyres identical to those on the grader. One mounted on the rear of the grader (with a winch or other lowering mechanism) in an accessible location for ease of deployment; the other not mounted.	
17. SEATING		
(a)	A full suspension seat with multi-position adjustments in suitable trim to match the colour of the cabin interior.	
(b)	A full sized seat protective cover.	
18. OPERATOR'S CONSOLE & INSTRUMENTS		
(a)	The following instruments fitted so as to be not easily damaged and to be easily observed by the Operator: <ul style="list-style-type: none"> • Speedometer • Hour Meter • Ball Type Slope Meter • Fuel Gauge • Tachometer 	
(b)	The hour metre measures real time engine hours, that is, keeps time while the engine is running, regardless of engine speed; and operates from the engine oil pressure sender.	

(c) The following instruments fitted to be both visible and audible: <ul style="list-style-type: none"> • Charging circuit • Engine oil pressure • Coolant temperature • Transmission oil temperature • Handbrake on/off indicator • Back-up warning beeper • Hydraulic oil temperature • Restriction indicator – Air intake 	
19. DIAGNOSTIC EQUIPMENT	
(a) Tender to outline if an electronic engine/transmission management system is fitted with convenient diagnostic points provided.	
(b) Pricing of all diagnostic equipment outlined in the tender.	
20. ELECTRICAL SYSTEMS & LIGHTING	
(a) Three (3) full sets of keys.	
(b) A reversing alarm.	
(c) A 12 volt outlet in the grader cabin.	
(d) Fully protected night operational lighting with four (4) forward-facing and two (2) rear-facing operation lights. Two of the forward-facing lights mounted under the eaves of the grader cabin and two positioned to illuminate the mouldboard area.	
(e) Front combination halogen high/low beam, rear combination LED and LED traffic indicators fitted, complying with RTA guidelines and protected from damage. Indicators displayed on the Operator's console when in use.	
(f) A battery-isolating switch fitted on the earthing lead in an easily accessible location.	
(g) One (1) revolving amber hazard light mounted externally above the operator's cabin, affixed to a suitable bracket so as to enable only the lens to protrude above the roofline of the operator's cabin, and a protective cage provided around the lens. The light to operate whenever the grader's engine is operating.	
21. TOOLBOX	
(a) Lockable robustly constructed 16 gauge galvanised sheet metal, weather-proof and lock up type, suitable for housing grease gun and tools, nominal sizes 600mm long x 200mm wide x 200mm high, mounted externally in an easily accessible location.	
22. VANDAL PROOFING	
(a) Locks fitted to afford protection to the engine, cabin, instruments, reservoir and tank caps, battery and all controls.	
23. NOISE CONTROL	
(a) Sound level emitted from the grader under full operational conditions, when measured at the operator's ear, does not exceed 85 dB. Proof of compliance provided from a recognised noise testing authority and submitted with the tender.	

24. ROP & FOP STRUCTURES	
(a)	The grader's ROP Structure and FOP Structure complies with the <i>Occupational Health and Safety Regulation 2001 – Updated 1 September 2003, Clause 141</i> .
(b)	Certified proof of Australian compliance for the R.O.Ps and F.O.Ps (AS 2294), the fitting of manufacturer's label, safety labels and appropriate operator's seat restraint/s included with the tender.
25. CABIN CONTROLS	
Cabin	
(a)	Low profile design, fitted with two (2) access doors and fully air-conditioned with a heater-demister.
(b)	All glass has a film type window tint applied to a medium degree of darkness.
(c)	Cabin has an AM/FM radio and cassette player with a removable face (for security reasons) and two (2) audio speakers.
(d)	A three (3) kilogram Dry Chemical fire extinguisher is fitted to a convenient location inside the cabin with provision for quick release in the event of a fire.
Controls	
(a)	All controls conveniently placed, precise, of low effort design with maximum working area visibility.
(b)	Each hydraulic control lever automatically returns to its neutral position when not held (unless designed to return automatically to the neutral position after the machine has performed a specific function) and the neutral position is effectively sealed so that leakage will not occur at the valve due to vibration under mobile conditions.
(c)	Each control lever is durably and effectively designated as to its purpose or a notice plate, showing a diagram of the control movements for the respective motions, is provided.
26. MAINTENANCE & SPARE PARTS	
(a)	Tender includes details of any maintenance packages available for the grader.
(b)	Any maintenance packages incorporate full grader maintenance under a contractual arrangement whereby the tenderer is responsible for the maintenance tasks listed below: <ul style="list-style-type: none"> • 250 hours Service to manufacturer's specifications (including the supply of all required materials, fluids and spare parts) • 500 hours Service to manufacturer's specifications (including the supply of all required materials, fluids and spare parts) • 1000 hours Service to manufacturer's

	<p>specifications (including the supply of all required materials, fluids and spare parts)</p> <ul style="list-style-type: none"> • 2000 hours Service to manufacturer's specifications (including the supply of all required materials, fluids and spare parts) • Carry out conditional monitoring tasks including Scheduled Oil Sampling, Destructive Oil Filter Testing, etc at the scheduled regular service intervals • Correction of all mechanical malfunctions with the exception of those caused by unfair wear and tear 	
(c)	A breakdown service to the grader available within 4 hours of notification of a fault. Note: The grader will be operating within a 120km radius of the towns of Moree, Narrabri, Baradine and Coonabarabran.	
(d)	A store or branch maintained with a representative supply of spare parts and qualified/skilled service personnel, together with a system for securing parts within a reasonable length of time.	
(e)	Details regarding 26(d) are included in the tender.	
27. WARRANTY		
(a)	Details, conditions and costs of standard and extended Warranty provisions available included in the tender.	
28. DELIVERY		
(a)	The grader to be delivered to the NPWS Depot at 12 Wellington St, Baradine within 6 weeks of tender acceptance.	
(b)	The grader to be road registered, with details of the registration to be supplied by DEC on tender acceptance.	

PART C3 PRICE SCHEDULE**TENDERED PRICES**

Item No	Description	Price excluding GST	GST Component	Price including GST	Imported Content
1.	Supply and delivery of one (1) articulated road grader in accordance with specifications with:				
	(a) conventional rear wheel tandem drive:	\$ _____	\$ _____	\$ _____	_____ %
	(b) selective front wheel drive:	\$ _____	\$ _____	\$ _____	_____ %

Item No	Description	Details of Each Package Available (Please indicate below or supply an attachment suitably cross-referenced to this item)	Price	Inclusive of item 1 price? Yes / No (Please indicate below as appropriate)
2.	Maintenance Packages	(a)	\$ _____	
		(b)	\$ _____	
		(c)	\$ _____	

Item No	Description	Price excluding GST	GST Component	Price including GST
3.	Warranty:			
	(a) standard	\$ _____	\$ _____	\$ _____
	(b) extended	\$ _____	\$ _____	\$ _____

Item 4 – Diagnostic Equipment

Please list diagnostic equipment to be purchased	Price excluding GST	GST Component	Price including GST	Imported Content
(a)	\$ _____	\$ _____	\$ _____	_____ %
(b)	\$ _____	\$ _____	\$ _____	_____ %
(c)	\$ _____	\$ _____	\$ _____	_____ %
(d)	\$ _____	\$ _____	\$ _____	_____ %
(List additional items as necessary)				

PART C4 ACKNOWLEDGMENT AND CONFIRMATION OF TENDER

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

1. Lodgement of a tender will itself be an acknowledgment and representation by you that you are aware of the requirements of the 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

Dated: <Insert Date>

The Principal

and

AGREEMENT FOR

PART D – CONDITIONS OF AGREEMENT

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THIS AGREEMENT is made on the ____ day of _____ 2007

BETWEEN:

Department of Environment and Conservation of
[insert address], in the State of New South
 Wales ("the Principal")

AND [insert name of contractor] of
 [insert address] in the State of NSW ("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

"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
- (d) 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.

“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 gender.
- 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 an Agreement for the Term

3.1 Nature of the Agreement between the Principal and the Contractor

- 3.1.1 This Agreement is for the term specified in Schedule 1, or as otherwise agreed, unless terminated sooner in accordance with this Agreement.

4. Supply of Deliverables

4.1 Supply

- 4.1.1 The Contractor shall supply the Deliverables to the NSW National Parks and Wildlife Service Depot at 12 Wellington Street, Baradine, NSW within six (6) weeks of Tender acceptance.

4.2 Conforming Deliverables

- 4.2.1 All Deliverables shall conform to the Specification and the standards specified in this Agreement.

4.3 Delay in supply

- 4.3.1 The Contractor will give prompt, written notification to the Principal of any likely delay in the supply of any of the Deliverables beyond any agreed delivery date.
- 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 Acceptance – goods

- 4.4.1 A reference in this clause to Deliverables is to be read as a reference to Deliverables that are goods.
- 4.4.2 Delivery and receipt of the Deliverables by an agreed delivery date shall not be taken to be an acceptance of the Deliverables by the Principal.
- 4.4.3 The Principal, within 14 days of satisfactory delivery in accordance with this Agreement, may reject any Deliverables that do not conform to the requirements of this Agreement.
- 4.4.4 If the Contractor fails to remove or rectify the rejected Deliverables within the time directed, the Principal may have the rejected Deliverables re-delivered at the Contractor's risk and expense.
- 4.4.5 The Principal will be taken to have accepted the Deliverables within 14 days of satisfactory delivery in accordance with this Agreement if and to the extent that the Principal does not reject the Deliverables, or any of them.
- 4.4.6 Receipt of delivery, acceptance or payment does not prevent the Principal from bringing an action for breach of condition or warranty should the Deliverables prove to be of inferior quality or contrary to the requirements of this Agreement.

4.5 Ownership and risk

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

4.6 Specified Models/Brands

- 4.6.1 The Contractor agrees that where a particular model, brand or product of Deliverables is specified in this Agreement, the Contractor must supply only that model, brand or product unless otherwise approved in writing by the Principal.

5. Prices and Payment

5.1 Contract Price

- 5.1.1 The Contractor must supply the Deliverables for the Contract Price.
- 5.1.2 The Contract Price, except as specifically provided or agreed, is inclusive of all costs and expenses of supply.

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 Deliverables 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 Deliverables.

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 Deliverables.
- 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

- 5.6.1 Prices are firm unless otherwise stated in this Agreement.

5.7 Best Price

Not applicable.

5.8 Maximum ceiling price

Not applicable.

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.

5.10 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 applicable.

6. Conduct of Agreement

6.1 The Contractor's personnel

- 6.1.1 The Contractor warrants that all personnel engaged in the provision of the Deliverables 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 of the Deliverables or similar Deliverables;
 - (b) (where applicable) who hold all necessary licences, permits and authorities; and
 - (c) whose standards of workmanship are entirely suitable for the supply of the Deliverables and the requirement of this Agreement.

6.2 Contractor to establish necessary facilities

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

6.3 Access to the Contractor's premises

Not applicable.

6.4 Electronic Commerce

- 6.4.1 If the Principal requires it, the Contractor must implement the electronic commerce proposals, applications or services submitted in the Tender (if any) for the purposes of this Agreement.

- 6.4.2 The Principal and the Contractor may agree to do business electronically as is necessary for the performance of the Agreement.

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 Schedule 13 ("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 Deliverables that are goods, the Contractor warrants that:

- (a) the Deliverables 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 Deliverables that are services, the Contractor warrants that:

- (a) it will provide the Deliverables 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 do not infringe the Intellectual Property rights of a third party;
- (b) the Deliverables shall conform to any legally applicable standards;

- (c) it will not allow or cause any action, or enter into any arrangement 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; and
- (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

Not applicable.

6.15 Performance monitoring

Not applicable.

6.16 Keeping of records and access to records

Not applicable.

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 1974* (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.

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.
- 7.5 This clause will survive the termination of this Agreement.

8. Intellectual Property

Not applicable.

9. Principal's Material

Not applicable.

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 the amount specified in Schedule 1 in respect of each claim; and
 - (ii) products liability insurance to the value of 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
 - (d) such other insurances as are specified in Schedule 1 of the Agreement Details.
- 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; and
 - (b) the codes, policies, guidelines and Australian standards listed in Schedule 1 or any other codes, policies, guidelines and Australian standards specified in writing by the Principal to the Contractor.

12.2 Compliance with Outworkers Code

Not applicable.

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, including any licences listed below or otherwise offered in the Tender:

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 Deliverables (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 applicable.

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; and
- 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; and
 - (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 OF2007

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: 0700138. date submitted.....
Item 2	Contractor's Name:
Item 3	Specified Personnel: Not applicable.
Item 4	Term: Not applicable.
Item 5	Supply of Deliverables: As per tender.
Item 6	Insurance: (a) Public liability insurance: Amount: \$10 Million or such amount as may be approved by the Principal (b) Products liability insurance: Amount: \$50 Million or such amount as may be approved by the Principal
Item 7	Codes: 1. NSW Government Code of Practice for Procurement. 2. Codes of Practice issued pursuant to the Occupational Health and Safety Act 2000 (NSW) and any Regulations issued under the Act. 3. Implementation Guidelines for NSW Government Procurement.
Item 8	Expert Determination Amount: \$100,000 .
Item 9	Security: Amount: \$ Form:

Item 10	<p>Notices to:</p> <p>The Contractor's contact name and address:</p> <p>Name:</p> <p>Address:</p> <p>Position:</p> <p>Telephone:</p> <p>Facsimile:</p> <p>The Principal's contact name and address:</p> <p>Name:</p> <p>Position:</p> <p>Address:</p> <p>Telephone:</p> <p>Facsimile:</p>
Item 11	<p>Principal's Delegate:</p> <p><i>Guide Note: If the Crown is the Principal, insert the name and contact details of the Client Agency and its contract administrator.</i></p> <p><i>If the client agency is the Principal, insert the name and contact details of the client agency contract administrator or, if SCCB is requested to perform this function, the SCCB and its nominated contract administrator.</i></p>

Schedule 2

The Tender and documents evidencing agreed variations to the Tender

Guide Note: Attach the Tender and any accepted variation to the Tender here before execution of a contract with the successful tenderer

Schedule 3

Documents notifying the Principal's acceptance

Guide Note: Attach any documentation notifying the Principal's acceptance here, before execution of a contract with the successful tenderer.

Schedule 4

Expert Determination Procedure

1. Questions to be determined by the Expert

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

1.2.1 Is there an event, act or omission which gives the claimant a right to compensation under this Agreement for damages for breach of this Agreement or otherwise in law?

1.2.2 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?

1.2.3 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?

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

2 Submissions

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

2.2 The Party to the Agreement which has referred the issue to Expert Determination ("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;
- 4.1.2 must make its determination on the basis of the submissions of the parties, including documents and witness statements, and the Expert's own expertise; and
- 4.1.3 must issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 12 weeks after the date of the letter of engagement referred to above.
- 4.1.4 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate.

Schedule 5

Statutory Declaration for Sub-Contractors

Oaths Act 1900 (NSW), Ninth Schedule

(1) _____

do solemnly and sincerely declare that to the best of my knowledge and belief:

1. *[Insert full sub-contractor company name and its ACN]* ("the sub-contractor") has been selected as a sub-contractor to *[Insert name of the Contractor]* ("the Contractor") for the performance of a contract with *[Insert name of the Principal]* ("Principal") for the supply of certain Deliverables ("the Agreement").
2. The sub-contractor is aware of the relevant contractual terms and conditions of the Agreement and will be entering into a sub-contract with the Contractor in the near future on terms that will not be inconsistent with the Agreement for *[Insert short description of the sub-contract]* ("the Sub-Contract").
3. There are no reasons of which I am aware that would prevent the Sub-Contract from being signed and performed in a manner that would allow the satisfactory and timely performance of the Agreement and the Sub-Contract.

And I make this solemn declaration, as to the matter aforesaid according to the law in this behalf made, and subject to the punishment by law provided for any wilfully false statement in any such declaration.

(2) _____

Declared at _____

the _____ day of _____ 2001 _____

Before me, (3) _____

(4) _____

- (1) Here insert name, address and occupation of person making the declaration and his or her position in the sub-contractor company.
- (2) Signature of person making declaration.
- (3) Signature of person before whom the declaration is made *
- (4) Here insert title of person before whom the declaration is made.

* The jurisdiction within which this declaration is made will depend on who may witness the declaration.

Schedule 6

Deed of Confidentiality

Deed of Confidentiality

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

BETWEEN[*Insert the name and address of the Principal.*

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

RECITALS:

- A. In the course of the Confidant supplying certain deliverables for the Principal (whether directly or indirectly) pursuant to the Agreement, the Confidant will have access to and may become aware of Confidential Information belonging to or in the possession of the Principal.
- B. Improper use or disclosure of the Confidential Information would severely damage the Principal's ability to perform its governmental/statutory functions and would severely damage the commercial interests of the NSW Government.
- C. The Principal requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Principal's Confidential Information is kept confidential and that the Confidant provides the deliverables faithfully and without any conflicting interest.
- D. This Deed sets out the terms on which the Confidant will have access to the Confidential Information.

OPERATIVE PROVISIONS:

1. Recitals

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

2. Interpretation

2.1 Definitions

In the interpretation of this Deed unless a contrary intention appears requires the following expressions will have the following meanings:

“**Agreement**” means the Agreement between the Principal and the Contractor dated[*Insert date*] for the supply of the deliverables as defined in the Agreement.

“**Confidential Information**” means information that:

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

and includes but is in no way limited to:

- (d) the Contract Material;
- (e) The Principal's Material including the financial information, the corporate information and the commercial information of the Principal;
- (f) any material which relates to the affairs of a third party;
- (g) information relating to the policies, strategies, practices and procedures of the NSW Government and any information in the Contractor's possession relating to the NSW Public Service.

"Contractor" means the person named as Contractor under the Agreement.

"Contract Material" means:

- (a) any material created, written or otherwise brought into existence as part of, or for the purpose of performing the Agreement including but not in any way limited to all Records, working papers, programs, flow charts, reports, including documents, equipment and information and data stored by any means ("New Contract Material");
- (b) any material which is existing at the date of the Agreement and which is incorporated with the New Contract Material ("Existing Contract Material").

"Express Purpose" means the Confidant performing the obligations under the Agreement.

"Intellectual Property Rights" 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 the Agreement.

"Principal's Material" means any documentation, information or material supplied by or on behalf of the Principal, the Principal's Delegate or the Crown, to the Confidant.

"Notice" means notice in writing given in accordance with this Deed.

"Records" includes the Contract Material and any other information, documents or data brought into existence by any means and stored by any means in connection with the performance of the Agreement.

2.2 General

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

2.2.2 A reference to:

- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;

- (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity; and
 - (d) anything (including a right, obligation or concept) includes each part of it.
- 2.2.3 If this Deed expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.
 - 2.2.4 A singular word includes the plural, and vice versa.
 - 2.2.5 A word which suggests one gender includes the other genders.
 - 2.2.6 If a word is defined, another part of speech of that word has a corresponding meaning.

3. Non disclosure

- 3.1 The Confidant must not disclose the Confidential Information to any person without the prior written consent of the Principal.
- 3.2 The Principal may grant or withhold its consent in its discretion.
- 3.3 If the Principal grants its consent, it may impose conditions on that consent, including a condition that the Confidant procure the execution of a Deed in these terms by the person to whom the Confidant proposes to disclose the Confidential Information.
- 3.4 If the Principal grants consent subject to conditions, the Confidant must comply with those conditions.
- 3.5 Despite this clause, the Confidant may disclose the Confidential Information to its directors, officers, employees, and contractors ("permitted recipients") where such disclosure is essential to carrying out their duties owed to the Confidant or in accordance with this Deed.
- 3.6 Before disclosing the Confidential Information to a permitted recipient, the Confidant will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 3.7 The Confidential Information must not be copied or reproduced by the Confidant or the permitted recipients without the expressed prior written permission of the Principal, except as for such copies as may be reasonably required for the purposes of this Deed.
- 3.8 The Principal may at any time require the Confidant to promptly arrange for the permitted recipients to execute a Deed of Confidentiality substantially in the form of this Deed.
- 3.9 If any person being any director, officer, contractor or employee of the Confidant, who has had access to the Confidential Information in accordance with this clause leaves the service or employ of the Confidant then the Confidant will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Confidant, would be a breach of the obligations of the Confidant under this Deed.
- 3.10 The requirements of this Deed do not affect the obligation of the Confidant to disclose any Confidential Information where it is required to be disclosed at law.

4. Restriction on use

- 4.1 The Confidant must use the Confidential Information only for the Express Purpose and must not without the prior written consent of the Principal use the Confidential Information for any purpose other than the Express Purpose.
- 4.2 The Confidant must, unless otherwise authorised by the prior written consent of the Principal:
- (a) treat as confidential and secret all of the Confidential Information which the Confidant has already acquired or will acquire from the Principal;
 - (b) take proper and adequate precautions at all times and enforce such precautions to preserve the confidentiality of the Confidential Information and take all necessary action to prevent any person obtaining access to the Confidential Information other than in accordance with this Deed;
 - (c) not directly or indirectly use, disclose, publish or communicate or permit the use disclosure, publication or communication of the Confidential Information to any person other than in accordance with this Deed;
 - (d) not copy or disclose to any person in any manner any of the Confidential Information other than in accordance with this Deed; and
 - (e) ensure that the permitted recipients comply with the terms of this Deed and keep the Confidential Information confidential and not use or disclose the Confidential Information other than as permitted by this Deed.

5. Survival

This Deed will survive the termination or expiry of the Agreement.

6. Rights of the Principal

6.1 Production of Documents

- 6.1.1 The Principal may demand the delivery up to the Principal of all documents in the possession or control of the Confidant containing the Confidential Information.
- 6.1.2 The Confidant must immediately comply with a demand under this clause.
- 6.1.3 If the Principal makes a demand under this clause, and the Confidant has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose the Principal or control they lie.
- 6.1.4 In this clause, "documents" includes any form of storage of information, whether visible to the eye or not.

6.2 Legal Proceedings

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

7. Indemnity and release

7.1 The Confidant is liable for and agrees to indemnify and keep indemnified the Principal in respect of any claim, damage, loss, liability, cost, expense, or payment which the Principal suffers or incurs as a result of:

- (a) a breach of this Deed (including a breach of this Deed which results in the infringement of the rights of any third party); or
- (b) the disclosure or use of the Confidential Information by the Confidant or the permitted recipients other than in accordance with this Deed.

8. No exclusion of law or equity

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

9. Waiver

9.1 No waiver by the Principal of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of any other obligation or provision of this Deed.

9.2 None of the provisions of this Deed will be taken to have been varied waived discharged or released by the Principal unless by its express consent in writing.

10. Remedies Cumulative

10.1 Cumulative

The rights and remedies provided under this Deed are cumulative and not exclusive of any other rights or remedies.

10.2 Other Instruments

Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and do not derogate from any other right or obligation between the parties under any other Deed or agreement to which they are parties.

11. Variations and amendments

No term or provision of this Deed may be amended or varied unless reduced to writing and signed by the parties in the same manner as this instrument.

12. Applicable law

This Deed will be governed and construed in accordance with the law of New South Wales and the Commonwealth of Australia.

13. Notices

- 13.1 Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing, or in the case of the Confidant, at the Confidant's registered office.
- 13.2 All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post or facsimile transmission.
- 13.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

Schedule 7

Undertaking

Not used.

Schedule 8

Outworkers Code Declaration

Not applicable.

Schedule 9

Contractor Information

Not used.

Schedule 10

Management Fee Deed

Not used.

Schedule 11

Child Protection Code of Behaviour for the Protection of Children and Vulnerable People

Not applicable.

Schedule 12

Sample Confirmation of Insurances Obtained Form

Confirmation of Insurances

Insurance Body:

Insured:

Re: Agreement for the provision of <Contract Officer to insert Contract title> 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.

- 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 13**List of Approved Sub-Contractors**

Item	List of approved sub-contractors (Clause) <i><u>Guide note: List name and particulars of approved sub-contractors</u></i>
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Schedule 14

Approved Sub-Contractors Information

Approved Sub-Contractor Information: