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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
RFT Id: 0800362

**BUSINESS ADVISORY SERVICES FOR NSW
DEPARTMENT OF STATE AND REGIONAL
DEVELOPMENT**

**PERIOD: 1 October, 2009 to 30 June, 2012
Plus one year extension option**

RFT Issue Date: Tuesday 9 June, 2009

Closing Date: Thursday 9 July, 2009

Closing Time: by 9:30 am Sydney Time

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

Other matters should be directed to:

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NSW Procurement – Contracting Services
NSW Department of Commerce
McKell Building
2-24 Rawson Place
Sydney NSW 2000
Tel: (02) 9372 8840
Fax: (02) 9372 7533

Request for Tender

RFT Id: 0800362

BUSINESS ADVISORY SERVICES FOR NSW DEPARTMENT OF STATE AND REGIONAL DEVELOPMENT

PERIOD: 1 October, 2009 to 30 June, 2012

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REQUEST FOR TENDER - PART A – OVERVIEW

1 Outcome

This Request for Tender (“RFT”) is made by the State Contracts Control Board (the “Board”) for the provision of Business Advisory Services to NSW Department of State and Regional Development (DSRD) under the proposed Agreement of the Services defined in the Service Specification at Annexure 1 to Part D of this RFT.

The Board is responsible for the delivery of the tender process, assisted by NSW Procurement – Contracting Services, whilst the proposed Agreement will be executed between NSW Department of State and Regional Development and the successful tenderer/s.

The key outcome of this RFT is to provide a solution (through the proposed Agreement) for the required Services which meets the needs of DSRD.

2 Scope of RFT

2.1 Services

- 2.1.1 This RFT covers DSRD’s requirements for the delivery of high quality, independent and impartial business advisory services for intending, start-up and established small business owners through a combination of information, counselling and training services in the areas of management, marketing and business planning. The delivery methods include face-to-face discussion, response to telephone, fax and email inquiries, skills workshops and dissemination and access to information resources.
- 2.1.2 The Service will be known as the {Region name} Business Advisory Service and is the name to be used by the Contractor in delivering the Service.
- 2.1.3 The objective of the Service is to reduce small business failure during the early years of business and to maximise the growth of start-up and established firms, of less than 20 employees.
- 2.1.4 The Services are designed to encourage successful business start-ups, to enhance the competitiveness and profitability of existing businesses and to increase their capacity to survive and to grow, to invest, to employ, to develop workplace and management skills, to enter new markets and to adopt innovative business practices.
- 2.1.5 Under this RFT, **one** service provider will be engaged to promote and deliver services to clients in each defined Business Service Area (BSA) as contractors for DSRD.

2.1.6 The Business Service Areas covered under this RFT are detailed below:

Business Service Area	Local Government Areas Covered
Far Western	Broken Hill, Central Darling, Unincorporated NSW
Murray	Albury City, Balranald, Berrigan, Conargo, Corowa, Deniliquin, Greater Hume, Jerilderie, Murray, Urana, Wakool, Wentworth
Orana	Bogan, Bourke, Brewarrina, Cobar, Coonabarabran, Coonamble, Dubbo, Gilgandra, Narromine, Walgett, Warren, Wellington, Mid-Western Regional
Far South Coast	Shoalhaven, Eurobodalla, Bega Valley
Riverina	Carrathool, Coolamon, Cootamundra, Griffith, Gundagai, Hay, Junee, Leeton, Lockhart, Murrumbidgee, Narrandera, Temora, Wagga Wagga
Central West	Bathurst, Bland, Blayney, Cabonne, Cowra, Lithgow, Oberon, Orange, Weddin, Lachlan, Parkes, Forbes
New England - North West	Armidale, Dumaresq, Glen Innes, Gunnedah, Guyra, Gwydir, Inverell, Liverpool Plains, Moree Plains, Narrabri, Severn, Tamworth, Tenterfield, Uralla, Walcha
Southern Tablelands	Bombala, Boorowa, Cooma Monaro, Eastern Capital City, Goulburn, Mulwaree, Greater Queanbeyan, Harden, Snowy River, Upper Lachlan, Wingecarribee, Yass Valley, Young
Mid-North Coast	Bellingen, Coffs Harbour, Greater Taree, Hastings, Kempsey, Nambucca
Illawarra	Kiama, Shellharbour, Wollongong
Northern Rivers	Ballina, Byron, Casino, Clarence Valley, Kyogle, Lismore, Murwillumbah, Richmond Valley, Tweed Heads
Central Coast	Gosford, Wyong
Hunter	Cessnock, Dungog, Gloucester, Great Lakes, Lake Macquarie, Maitland, Muswellbrook, Newcastle, Port Stephens, Singleton, Upper Hunter
Greater Sydney	Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Blue Mountains, Burwood, Campbelltown, Camden, Canada Bay, Canterbury, Fairfield, Hawkesbury, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, South Sydney, Sutherland, Sydney, Warringah, Waverley, Willoughby, Wollondilly, Woollahra

2.1.7 The available budget for the Service, and minimum number of Services required for each BSA is shown in 2.3 below.

2.2 Contract and Duration

It is envisaged that the term of the proposed Agreement will be of 2 years and 9 months (1 October, 2009 to 30 June, 2012), which may be extended for a period of up to 1 year (to 30 June, 2013) at the discretion of DSRD

2.3 Scope and Expenditure

The maximum annual funding and minimum number of Services for each BSA required by the Principal is shown below:

Business Advisory Services Program 2009-2012			
Business Service Area	Minimum Guidance Services	Minimum Training Services	Maximum Annual Funding
Far West BSA	350	10	\$90,000.00
Murray BSA	500	15	\$110,000.00
Orana BSA	500	15	\$110,000.00
Far South Coast BSA	600	20	\$110,000.00
Riverina BSA	600	20	\$120,000.00
Central West BSA	600	20	\$130,000.00
New England North West BSA	600	20	\$130,000.00
Southern Tablelands BSA	600	20	\$130,000.00
Mid-North Coast BSA	800	30	\$170,000.00
Illawarra BSA	800	30	\$170,000.00
Northern Rivers BSA	800	30	\$170,000.00
Central Coast BSA	800	30	\$170,000.00
Hunter BSA	1000	35	\$200,000.00
Greater Sydney BSA	4000	120	\$700,000.00

A detailed description of the Services is shown in Annexure 1 to Part D.

2.4 NSW Government requirements

The successful tenderer must comply with NSW Government codes and guidelines referred in Part B.

3 RFT Structure

3.1 Interpretation

3.1.1 Definitions of terms used in Parts A to C are contained in Clause 1 Part B.

3.2 RFT Structure

This RFT comprises 4 Parts as follows:

Overview – Part A

It is an executive summary of main outcomes, objectives, requirements and expectations for this proposed Agreement and the Statement of Requirements. It provides the tenderer with the essential information to make an informed decision on whether to tender or not.

Conditions of Tender – Part B

It provides the terms, conditions and processes governing the tender phase of the RFT.

Tender Response – Part C

These are response schedules which are required by the Board to evaluate the tenderers' offers.

Agreement - Part D

This is the conditions of contract to be executed between the successful tenderer and the Principal.

If submitting a Tender, retain Parts A, B and D. Part C, once completed, forms the Tender, and is to be submitted in accordance with Parts A, B and D.

Part D is to be executed later by the successful Tenderer(s) and the Principal to form the agreement.

4 Best Price

Tenderers are encouraged to provide their best price(s) with their tender. Whilst the Board reserves the right to negotiate pre award, such negotiations may not occur and it is not the Board's preference.

It is important that tenderers realise that they may not be short-listed for further consideration, if they do not provide their best price with their initial tender.

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PART B Conditions of Tender

1 Definitions

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

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

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

“Agreement” means the proposed agreement to be made between the Principal and the Contractor in the form of Part D to this RFT.

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

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

- (a) Inviting and accepting tenders;
- (b) Determining the conditions under which tenders are invited or accepted;
- (c) Entering into contracts on behalf of the Crown in right of the State of New South Wales; and
- (d) On-going contract administration and management, and includes the duly authorised delegates of the Board, including officers of NSW Procurement – Contracting Services.

“Business Service Area” or “BSA” means the geographical area as defined and listed at para. 2.1.6 of Part A of this RFT.

“Closing Date and Closing Time” means the Closing Date and Closing Time for receipt of tenders specified in the cover sheet of this RFT.

“Code” means the NSW Government Code of Practice for Procurement as amended from time to time, together with any other codes of practice relating to procurement, including any amendments to such codes that may be applicable to the particular RFT. The Code can be viewed and downloaded from: http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0015/1356/code_of_prac-curr.pdf

“Conforming Tender” means a tender that conforms in all material aspects to:

- (a) the Service Specification;
- (b) the terms and conditions of Part D;
- (c) other parts of this RFT, and
- (d) is in the prescribed form.

“Contractor” means a tenderer who has entered into an Agreement with the Principal.

“GST” means 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 (C'th) or if that Act does not exist, means any Act imposing, or relating to a GST and any regulation made under those Acts.

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

“Non-Conforming Tender” means a tender that does not conform in all material aspects to:

- (a) the Service Specification;
- (b) the terms and conditions of Part D;
- (c) other Parts of this RFT;
- (d) is not in the prescribed form.

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

“Price Schedule” means the Schedule in Part C of this RFT wherein the tenderer offers a price to provide the Services.

“Principal” means the party executing the proposed Agreement with the successful tenderer.

“Services” means the services sought under this RFT, as detailed in the Service Specification in Part D.

“State Contracts Control Board” is the Board.

2 Tender Preparation

2.1 Tenderer to inform itself

Before submitting its tender, a tenderer must:

- 2.1.2 Examine all information relevant to the risks and contingencies and other circumstances having an effect on its Tender; and
- 2.1.3 Satisfy itself:
 - (a) that the tender, including the tender price is correct; and
 - (b) that it is financially and practically viable for it to enter into and perform the proposed Agreement.

3 Eligibility to Tender

3.1 Legal Entity of Tenderer

- 3.1.1 Tenders must be submitted by a legal entity or, if a consortium, by legal entities, with the capacity to contract. The Principal will only enter into an Agreement with such legal entity or entities.
- 3.1.2 For the purposes of this proposal a consortium is a group of organisations (ie two or more) which lodge a joint proposal.
- 3.1.3 Consortia must: nominate the lead organisation; provide details of all other organisations involved in the consortium; confirm in writing acceptance by all parties of the authority of the nominated lead organisation who is authorised to negotiate, act and bind each member of the consortium; and meet the criteria of this clause 3.1. Under any resultant agreement the lead organisation shall be the Contractor and shall be responsible for meeting all obligations under the agreement including the performance of all other nominated organisations.
- 3.1.4 If an organisation is a member of a consortium it must not compete against itself individually or as a member of another consortium.
- 3.1.5 The Board may ask a tenderer to provide evidence of its legal status or capacity to contract. If tenders from entities propose to contract in their capacity as trustees, such evidence may include copies of the relevant trust deeds. Any evidence requested is to be provided within 3 working days of the request.

3.2 Financial Capability of Tenderer

- 3.2.1 The Board reserves the right to reject any tender if the Board judges the tenderer not to have appropriate financial capability.
- 3.2.2 Where the Board forms the view that the tenderer does not have the appropriate financial capability, the Board reserves the right to make acceptance of any tender conditional upon the tenderer entering into a bank, parent company or personal guarantee, or an unconditional performance bond in a form satisfactory to the Board.

3.3 ABN Requirements

- 3.3.1 The Principal 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.
- 3.3.2 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 Principal. Such tenderers must state how and when they intend to obtain an ABN and register for GST in their tender response.

4 Tender Process

4.1 Provisional RFT Program

Given below is the Board's provisional RFT program. The Board may, at its absolute discretion, amend the provisional RFT program.

Milestone	Est. Date for Completion
RFT issue	09/06/09
Tenderer briefing	22-23/06/09
RFT Close Date	09/07/09
Execution of Agreement/s	18/09/09
Transitioning requirements completed	30/09/09
Commencement of supply of Services	01/10/09

4.2 Tenderer Briefings

- 4.2.1 Tenderer briefings (one for Greater Sydney BSA and one for Regional BSA's) will be held on the date, time, and place, indicated in 4.2.3 below. The contact officer of NSW Procurement, as well as appropriate officers of DSRD – will be available at that time to answer queries regarding this RFT and the tender process generally.
- 4.2.2 Names of persons attending the tenderer briefing must be provided to Kim Nguyen (DSRD) – telephone 02 9338 6756 at least 2 working days prior to the date. No more than 2 persons from each tenderer will be permitted to attend the tenderer briefing.
- 4.2.3 Tender Briefing Location

Greater Sydney BSA Briefing

Location: NSW Department of State and Regional Development
Hamilton Room, Level 47, MLC Building,
19 Martin Place, Sydney.

Date: Monday, 22 June, 2009

Time: 10.00 am to 1.00 pm - Registration from 9.30 am

Regional BSA Briefing

Location: NSW Department of State and Regional Development
Hamilton Room, Level 47, MLC Building,
19 Martin Place, Sydney.
Date: Tuesday, 23 June, 2009
Time: 10.00 am to 1.00 pm - Registration from 9.30 am

4.3 Contact Officer

4.3.1 Tenderers should refer requests for information or advice regarding this RFT to:

Mark Knowles
P: 0419 257 781
E: mark.knowles@optusnet.com.au

4.3.2 All requests for information or advice are to be made in writing, via email, to the Contact Officer. No tenderer is to contact DSRD staff direct in relation to this RFT.

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

4.4 Conformity of Tenders

4.4.1 The Board seeks Conforming Tenders.

4.4.2 Non-Conforming Tenders may be excluded from the tender process without further consideration at the Board's discretion.

4.5 Alternative Tenders

4.5.1 Tenderers may, if they choose, submit an Alternative Tender. Alternative Tenders will only be considered if submitted in conjunction with a Conforming Tender. An Alternative Tender must be clearly marked "Alternative Tender".

4.6 Submission of Tenders

4.6.1 Prices, responses and other information provided in the tender are to be in writing and in English.

4.6.2 Tenderers must complete all of Part C of this RFT, as directed and must not amend any of the questions provided.

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

4.6.4 All tenders must be provided electronically in the file formats and versions detailed.

4.6.5 Tenderers must ensure that all excel or word attachments can be opened and viewed by Microsoft Excel 2003 or Microsoft Word 2003. Other formats for the attachments are only to be submitted if an arrangement has first been made with the contact officer prior to lodgment of the tender.

4.6.6 It is recommended that electronic files be kept as small as practical and the lodgement files below an optimum size of 7 MB, as the limitations of the Internet and communications may affect the successful transmittal and receipt of large files.

4.7 Tender Lodgement

4.7.1 Tenders must be fully received by the Closing Date and Closing Time.

4.7.2 A Tender must be submitted electronically to the electronic tender box for this RFT via the NSW Department of Commerce tenders web site at:
<https://tenders.nsw.gov.au/commerce>

(Login in as a system user, locate the web page for this RFT, and follow the on-screen instructions to lodge the tender).

- 4.7.3 The lodgement can only be made by a registered system user of the NSW Government eTendering system – registration through the tenders web site.

4.8 Electronic Tenders

- 4.8.1 A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW).
- 4.8.2 A tenderer, by electronically lodging a tender, is taken to have accepted conditions shown in the conditions and rules on the NSW Department of Commerce tenders web site at <https://tenders.nsw.gov.au/commerce>.
- 4.8.3 A tenderer must follow the following directions:
- (a) A RFT for which electronic lodgement is available through the website can be identified by the blue “Lodge a Response” link on the web pages for the RFT.
 - (b) To lodge a tender electronically, the files containing the tenderer’s response must be up-loaded through the website to the NSW Government eTendering system. Access to the up-loading process is through the blue “Lodge a Response” link, then following the steps and instructions on the NSW Department of Commerce tenders website and any instructions which may have been supplied with the RFT documents, advertisement or invitation.
- 4.8.4 A tenderer must observe the following format for lodgements:
- (a) An electronically lodged tender must be lodged in a file 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.
 - (d) The file/s name/s must have an extension and not have invalid characters or file names/loading path names too long for the system, as detailed on the NSW Department of Commerce tenders website.
- 4.8.5 Signatures are not required for an electronic tender. A tenderer must ensure that a tender response is authorised by the person or persons who may do so on behalf of the tenderer and appropriately identify the person and indicate the person’s approval of the information communicated.
- 4.8.6 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. Tenderers must 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 response.
 - (b) A tenderer should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.
- 4.8.7 The NSW Department of Commerce *eTendering* web site is at peak use on the morning when tenders close.
- 1) Due to the limitations of this means of communication it may take longer to lodge a Tender near Closing Date and Closing Time than at other times.
 - 2) When lodging through the NSW Department of Commerce *eTendering* website, it is recommended that a Tender be lodged well in advance of the Closing Date and Closing Time.

- 4.8.8 If a tenderer experiences any persistent difficulty with the NSW Department of Commerce tenders website in submitting a tender or otherwise, it is encouraged to advise the Contact Officer promptly in writing.
- (a) If there is an extended defect or failure of the NSW Department of Commerce tenders website or eTendering system and the Board is advised, the tender Closing Date and Closing Time may be extended provided that, in the view of the Board, the RFT process will not be compromised by such an extension.
 - (b) Tenders must be fully received by the Closing Date and Closing Time.
- 4.8.9 Tenderers may break down the lodgement of large tenders into smaller packages if clearly identified e.g. package 1 of 3; 2 of 3; 3 of 3.
- 4.8.10 If a tenderer provides multiple lodgements, the latest tender received will be the tender to be evaluated unless the tenderer provides clear directions to whether the lodgement is:
- (a) an alternative tender,
 - (b) supporting information
 - (c) a further part of a tender that has had previous lodgement

4.9 Tender Validity Period

- 4.9.1 The Tender will remain open for acceptance by the Principal for a period of six months from the Closing Date and Closing Time for tenders.

4.10 Late Tenders

- 4.10.1 Late tenders should not be considered, except where the Board is satisfied that the integrity and competitiveness of the tendering process has not been compromised. The Board shall not penalise any supplier whose tender is received late if the delay is due solely to mishandling by the Board or its agents.

4.11 Extension of Closing Date and Closing Time

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

4.12 Corruption or Unethical Conduct

- 4.12.1 Tenderers must comply with the requirements of the Commerce Business Ethics Statement, which is available at the link below and must disclose any conflicts of interests in Part C.

- 4.12.2 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 Principal, or the NSW Government in connection with this RFT or the submitted Tender;
- (b) committed corrupt conduct in the meaning of the Independent Commission Against Corruption Act 1988;
- (c) a record or alleged record of unethical behaviour; or not complied with the requirements of Commerce Business Ethics Statement available at: <http://www.commerce.nsw.gov.au/About+Commerce/Business+ethics+statement/Business+ethics+statement.htm>;

this may result in the tender not receiving further consideration.

- 4.12.3 The Board 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.
- 4.12.4 If the Board and/or the Principal become/s aware of improper conflict of interests by a successful tenderer after an Agreement has been executed, then the Principal reserves the right to terminate the Agreement.

4.13 Code of Practice for Procurement

- 4.13.1 In submitting its tender, the tenderer signifies agreement to comply with the Code.
- 4.13.2 Failure to comply with the Code may be taken into account by the Board when considering the tenderer's tender or any subsequent tender, and may result in the tender being passed over.

4.14 Prescribed Form of Tender

- 4.14.1 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.
- 4.14.2 The Tender will be taken to be for the provision of the Services on the terms and conditions stated in Part D except to the extent that these are amended by the Tender and agreed by the Principal.

4.15 Addenda to RFT

- 4.15.1 If, for any reason the Board, at its sole discretion, requires the RFT to be amended before the Closing Date and Closing Time, an Addendum will be issued.
- 4.15.2 In each case, an Addendum becomes part of the RFT.
- 4.15.3 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.
- 4.15.4 Tenderers must check the web site address,
<https://tenders.nsw.gov.au/commerce> and download the Addendum.

4.16 Tenderer's Costs

The tenderer acknowledges that the Board will not be liable to it for any expenses or costs incurred by it as a result of its participation in this RFT, including where the RFT has been discontinued.

4.17 Custody of Tenders after Receipt

- 4.17.1 Tenders lodged electronically to the NSW Department of Commerce Tenders website will be treated in accordance with the *Electronic Transactions Act 2000*.
- 4.17.2 On receipt of tenders lodged electronically to the NSW Government eTendering system, tenders are encrypted and stored in a secure "electronic tender box."
- 4.17.3 For reasons of probity and security, the Board and its agent are prevented from interrogating the electronic tender box to ascertain whether tenders have been received or for any reason, until after the Closing Date and Closing Time.
- 4.17.4 The e-mail receipt that is sent to system user lodging the tender after successfully lodging the tender electronically to the NSW Government eTendering system is the only evidence of tender lodgement provided.

4.18 Ownership of Tenders

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

4.19 Discontinuance of Tender Process

- 4.19.1 Where the Board determines that awarding a contract would not be in the public interest, the Board reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of Tenders.

4.20 Variations to Tenders

- 4.20.1 At any time after the Closing Date of tenders and before the Board accepts any tender received in response to this RFT, a tenderer may, subject to clause 4.20.2, vary its tenders:

- (a) by providing the Board with further information by way of explanation or clarification;
 - (b) by correcting a mistake or anomaly; or
 - (c) by documenting agreed changes to the tender negotiated under clause 5.5 of this Part B.
- 4.20.2 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 under clause 4.20.1(a)-(b), it appears to the Board reasonable in the circumstances to allow the tenderer to provide the information or correct the mistake or anomaly; or
 - (ii) in the case of variation under clause 4.20.1(c) the Board has confirmed that the draft-documented changes reflect what has been agreed.
- 4.20.3 If a tender is varied in accordance with clause 4.20.1(a) or (b), the Board will provide all other tenderers whose tenders have similar characteristics with the opportunity of varying their tenders in a similar way.
- 4.20.4 A variation of a tender under clause 4.20.1 will not be permitted if in the Board's view:
- (a) it would substantially alter the original tender; or
 - (b) in the case of variation under clause 4.20.1(a) or (b), it would result in the revising or expanding of a tender in a way that would give a tenderer an unfair advantage over other tenderers.

5 Evaluation Process

- 5.1.1 Tenders will be assessed against the evaluation criteria listed below which are not indicated in order of significance or to be given equal weight.
- 5.1.2 The evaluation criteria for this RFT that do not relate to price will account for 90% of the total evaluation score. The evaluation for this RFT that relate to price will account for 10% of the total evaluation score.
- 5.1.3 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 evaluation criteria listed in this RFT.
- 5.1.4 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 electronic tenders that 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.
- 5.1.5 The Board may assess an Alternative Tender against the evaluation criteria where submitted with a Conforming Tender.

5.2 Evaluation Criteria

The evaluation criteria for this RFT (which include but are not limited to) are:

- (a) Past performance of organisation's owners, board of directors or management committee in overseeing the delivery of quality services to small business.
- (b) Skills and experience of current owners, members of the board of directors or management committee, in business management and services to small business.

- (c) Sector Knowledge: Demonstrated capacity to develop and deliver programs and services relevant to the small business sector in the BSA.
- (d) Organisation's Structure and Role: Suitability of governance structure and business relationships of the organisation for ensuring confidential and impartial business advisory services. Synergies of tendered Service to other services/products delivered by the organisation; and level of risk of conflict of interest arising with the tendered Service.
- (e) Quality and Innovation: Demonstrated organisational commitment to continuous quality improvement, professional development and innovative service delivery.
- (f) Qualifications, Skills and Experience: Quality of business facilitator and any other staff involved in the delivery of the Service; currency and relevance of training and experience to small business and to advisory role.
- (g) Referral Networks: Extent and relevance of organisation's established networks with local business service providers, associations and business community members within the BSA, that will enhance the quality of the information and guidance available to clients.
- (h) Business Community Acceptance: Demonstrated high level of acceptance by local business service providers, associations, government agencies and business community members. Quality of referees.
- (i) Value Added Services: Availability of related small business services from within the organisation, for example, for Aboriginal and Torres Strait Islander clients, for people of non-English speaking background, for home-based or isolated clients.
- (j) Delivery Methods: Demonstrated ability to support a range of delivery methods suitable to small business needs in the BSA including face to face counselling, written, email and telephone services; display of, and access by clients to information resources, including via computer and the Internet.
- (k) Infrastructure and Business Systems: Demonstrated availability of appropriate infrastructure (nominated location/s, telephone inquiry capability, information technology, including a website and email facilities, and other equipment) to allow delivery of the Service. Appropriate business processes for delivery, recording and analysis of Business Advisory Services and compliance with contract conditions, specifically performance reporting obligations.
- (l) Financial and Organisational Stability: Track record and expectation of financial and organisational stability during the contract period.
- (m) Resource Commitment: Demonstrated capacity to deliver the Service in addition to other commitments of the organisation. Availability of dedicated staff to perform the Service including the handling of email and telephone inquiries.
- (n) Marketing and Promotion: Demonstrated ability to market the Service to the business community within the BSA to maximise awareness and take-up of the Service to achieve tendered client numbers. Capacity to acknowledge the Department's support in marketing the Service.
- (o) Coverage Capacity: Demonstrated capacity to deliver the Service across the BSA in numbers commensurate with the distribution of the population across the BSA.
- (p) Compliance with conditions of contract including the Service Specification in Part D.
- (q) Compliance with NSW Government Procurement Policy and OHS and R policy requirements.

- (r) Tendered price.

5.3 Presentations/Site Inspections

- 5.3.1 The Board may, during the evaluation of tenders, undertake site inspections of tenderer's or their subcontractor's proposed premises.
- 5.3.2 The Board may, in its discretion and as part of the evaluation process, invite any or some of the tenderers to make personal presentations regarding their tender. The tenderer shall make any presentations at its own cost.
- 5.3.3 Receiving a presentation by a tenderer in no way represents a commitment by the Board to accept any aspect of the tender.
- 5.3.4 All information obtained during the course of presentation or site inspection may be taken into consideration in the evaluation of tenders.

5.4 Acceptance or Rejection of Tenders

- 5.4.1 The Board may assess an Alternative Tender against the evaluation criteria when submitted with a Conforming Tender.
- 5.4.2 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, when submitted with a Conforming Tender; and
 - (b) Any other Non-Conforming Tender or part of a Non-Conforming Tender (not, in either case, being an Alternative Tender or part of an Alternative Tender) that, in the Board's opinion, is substantially a Conforming Tender.
- 5.4.3 The Board is not bound to accept the lowest tender.
- 5.4.4 If the Board rejects all the tenders received it may 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).

5.5 Post Tender Negotiations

- 5.5.1 Before making any determination as to acceptance or rejection of Tenders the Board may, at its discretion, elect to conduct limited negotiations with preferred tenderers, including those who have submitted Alternative Tenders or who have submitted Conforming Tenders, to mutually improve outcomes.
- 5.5.2 The Board will generally not enter into negotiations to amend standard conditions of contract contained in Part D.
- 5.5.3 If the Board considers that none of the tenders are fully acceptable either due to the level of non-conformance or because they do not represent sufficient value for money, but considers that full conformity is achievable, negotiations may be conducted with the tenderer that submitted the most conforming tender based on the evaluation criteria. The purpose of the negotiations will be advised by the Board and made clear to the participants before the commencement of negotiation.
- 5.5.4 The Board may at its absolute discretion elect to conduct post tender negotiations under clause 5.5.3 with more than 1 tenderer in the event that it decides that the closeness of the tenders or timing constraints warrants doing so.

5.6 Exchange of Information between Government Agencies

- 5.6.1 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 on any contract that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of contract.

- 5.6.2 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 30 of the Defamation Act 2005 (NSW)*, and the tenderer shall have no claim against the Board and the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the tenderer arising out of the communication
- 5.6.3 In the evaluation of tenders, the Board may take into account any information about the tenderer that the Board receives from any source.
- 5.6.4 To avoid doubt, information that may be collected, exchanged and used in accordance with this provision includes “personal information” about the tenderer for the purposes of the Privacy and Personal Information Protection Act 1998. Lodgement of a tender will be an authorisation by the tenderer to the Board to collect such information from third parties, and to use and exchange such information in accordance with this clause 5.6.
- 5.6.5 The tenderer’s attention is drawn to the Freedom of Information Act 1989 which obliges disclosure of the contract documents resulting from the tender and may confer rights, subject to the terms of that Act, to access, and to require the correction of, information held by certain agencies, including tenders held by the Board. A summary of the provisions is contained in the Annexure 1 to Part B (Disclosure Information).

6 Method of Acceptance

- 6.1.1 Acceptance of a tender or part tender will be subject to the execution of a formal Deed of agreement in the terms of Part D. Until the Principal and the successful tenderer(s) execute a formal Agreement there will be no legally enforceable agreement concluded between them.

7 Disclosure Information

- 7.1.1 Following the Board’s decision, all tenderers will be notified in writing of the outcome of their Tenders.
- 7.1.2 Details of tenderers and the outcome of the tender process will be disclosed in accordance with the Freedom of Information Act 1989 and the NSW Government Tendering Guidelines, available at:
<http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>
- 7.1.3 An outline of these requirements can be found in Annexure 1 to Part B of this RFT.

8 Complaints Procedure

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, it is invited to write to:

Chairperson
 State Contracts Control Board
 Level 22, McKell Building
 2-24 Rawson Place
 Sydney NSW 2000

ANNEXURE 1 TO PART B (Disclosure of Information)

Disclosure of information concerning tenderers and outcome of the tender process

1. In accordance with the NSW Government Tendering Guidelines referred to in clause 7.1.2 and found at <http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>, the following **tender information** is required to be disclosed -

Tender Type	Level of disclosure	Basis of disclosure
For all public calls for tender, expressions of interest or other such public calls which may result in a contract with the private sector.	<p>As a minimum:</p> <ul style="list-style-type: none"> a concise description of the proposed works, goods or services the subject of the tender call; the date responses to the tender call close and where responses are lodged; and location of the tender call documents. <p>The names and addresses of all entities which submit responses.</p>	<p>Routine public disclosure at the time tender calls are advertised.</p> <p>Routine public disclosure within 7 days of the date tender calls closed.</p>
In a multi-stage tender process.	The names and addresses of the shortlisted entities, except where such disclosure is likely to compromise the competitiveness of the subsequent tender process.	Routine public disclosure within 7 days of these entities being advised of their shortlisting.

2. In accordance with the NSW Government Tendering Guidelines referred to in clause 7.1.2, the following **contract** information is required to be disclosed -

Contract size and type	Level of disclosure	Basis of disclosure
<p>Class 1 contracts All government contracts with estimated value \$150,000 or above).</p>	<ul style="list-style-type: none"> a) The name and business address of the contractor; b) Particulars of any related body corporate (within the meaning of the Corporations Act 2001 of the Commonwealth) in respect of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in carrying out any of the contractor's obligations under the contract or will receive a benefit under the contract; c) The date on which the contract became effective and the duration of the contract; d) Particulars of the project to be undertaken, the goods or services to be provided or the real property to be leased or transferred under the contract; e) The estimated amount payable to the contractor under the contract; f) A description of any provisions under which the amount payable to the contractor may be varied; g) A description of any provisions with respect 	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>

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

	when; and <ul style="list-style-type: none"> • where some but not all of the provisions of the contract have been disclosed, a general description of the types of provisions that have not been published. 	
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3. Requests for disclosure of additional contract information

Tenderers must acknowledge that any person may make a specific request to the State Contracts Control Board for any item of contract information for class 1 or class 2 contracts, or for a copy of a contract where it is a class 3 contract, which is not required to be routinely disclosed under section 15A of the Freedom of Information Act 1989. ("FOI Act") The State Contracts Control Board must provide the requested contract information or the requested copy of the contract to the requesting person (less any confidential information) within 60 days of receiving the request.

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

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

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

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

5. Confidential information

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

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

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

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



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

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

PART C - TENDER RESPONSE

RFT Id: 0800362 – BUSINESS ADVISORY
SERVICES FOR NSW DEPARTMENT OF
STATE AND REGIONAL DEVELOPMENT
1 OCTOBER, 2009 TO 30 JUNE, 2012
Plus one year extension option

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

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

Your Company's ABN: <Insert ABN number>

Your Company's street address: <Insert street address>

Your Contact Name: <Insert name of Contact Person for
enquiries regarding your tender>

Your Contact Person's Phone: <insert telephone no>

State Name/s of Business Service Area/s for which your Company is tendering:

<u>BSA Name/s</u>

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PART C The Tender Response

PART C1 Tender Response to Part B

1. INTRODUCTION

- 1.1 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.
- 1.2 References to “you” in this Part means the tenderer and all responses given will be taken to be responses of the tenderer.

2. PRICING AND RELATED FACTORS

2.1 Price Schedule

- 2.1.1 Tenderers are required to submit pricing in accordance with the format below. Failure to quote in the required format may result in a tender receiving no further consideration.
- 2.1.2 Tenderers should note that the area for each BSA includes all Local Government Areas as defined in para. 2.1.6 of Part A.
- 2.1.3 Tenderers should also note that in formulating their tendered prices absolute attention should be paid to the maximum annual funding defined in para. 2.3 of Part A.

Requirement – Provision of Business Advisory Services in each of the following BSA's	Flat Fee (Exclusive of GST) per annum	GST Applicable Per annum	Total Flat Fee (Including GST) Per annum
Far West BSA	\$_____pa	\$_____pa	\$_____pa
Murray BSA	\$_____pa	\$_____pa	\$_____pa
Orana BSA	\$_____pa	\$_____pa	\$_____pa
Riverina BSA	\$_____pa	\$_____pa	\$_____pa
Far South Coast BSA	\$_____pa	\$_____pa	\$_____pa
Central West BSA	\$_____pa	\$_____pa	\$_____pa
New England North West BSA	\$_____pa	\$_____pa	\$_____pa
Southern Tablelands BSA	\$_____pa	\$_____pa	\$_____pa
Mid-North Coast BSA	\$_____pa	\$_____pa	\$_____pa
Illawarra BSA	\$_____pa	\$_____pa	\$_____pa
Northern Rivers BSA	\$_____pa	\$_____pa	\$_____pa

Central Coast BSA	\$_____pa	\$_____pa	\$_____pa
Hunter BSA	\$_____pa	\$_____pa	\$_____pa
Greater Sydney BSA	\$_____pa	\$_____pa	\$_____pa

2.2 Price Basis

- 2.2.1 The tendered price/s shall be FIRM for the initial 2 years and 9 months period of the Contract. If the option to extend the Contract by a further 12 months is adopted by DSRD, then the tendered price/s shall remain firm for the extension period. The tenderer agrees to be bound by FIRM prices for the Contract period, as well as any extension period.

Yes/No (Please delete whichever is not applicable).

If no, please provide alternative price basis conditions hereunder:

2.3 Tender Validity Period

- 2.3.1 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 para. 4.9 of Part B.

3. SELECTION CRITERIA

Tenderers are required to respond individually to each of the selection criteria outlined, in the following spaces. The information provided will be used in the assessment of tenders. Responses are to be concise and focus on key elements of the tenderer's proposal as it relates to each of the selection criteria.

- (a) **Past performance** of organisation's owners, board of directors or management committee in overseeing the delivery of quality services to small business:

[illegible]

(b) **Skills and experience** of current owners, members of the board of directors or management committee, in business management and services to small business:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

(c) **Sector Knowledge:** Demonstrated capacity to develop and deliver programs and services relevant to the small business sector in the BSA:

[illegible]

(d) **Organisation's Structure and Role:** Suitability of governance structure and business relationships of the organisation for ensuring confidential and impartial business advisory Services. Synergies of tendered Service to other services/products delivered by the organisation; and level of risk of conflict of interest arising with the tendered Service:

[illegible]

(e) **Quality and Innovation:** Demonstrated organisational commitment to continuous quality improvement, professional development and innovative service delivery:

[illegible]

- (f) **Qualifications, Skills and Experience:** Quality of business facilitator and any other staff involved in the delivery of the Service; currency and relevance of training and experience to small business and to advisory role:

This image shows a full page of blank, lined paper. It features approximately 20 evenly spaced horizontal grey lines running across the width of the page, providing a guide for handwriting or typing. The background is a solid off-white color.

- (g) **Referral Networks:** Extent and relevance of organisation's established networks with local business service providers, associations and business community members within the BSA, that will enhance the quality of the information and guidance available to clients:

[illegible]

(h) **Business Community Acceptance:** Demonstrated high level of acceptance by local business service providers, associations, government agencies and business community members. Quality of referees:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

- (i) **Value Added Services:** Availability of related small business services from within the organisation, for example, for Aboriginal and Torres Strait Islander clients, for people of non-English speaking background, for home-based or isolated clients:

[illegible]

- (j) **Delivery Methods:** Demonstrated ability to support a range of delivery methods suitable to small business needs in the BSA including face-to-face counselling, written, email and telephone services; display of and access by clients to information resources including via computer and the Internet:

[illegible]

- (k) **Infrastructure and Business Systems:** Demonstrated availability of appropriate infrastructure (nominated location/s, telephone inquiry capability, information technology, including a website and email facilities, and other equipment) to allow delivery of the Service. Appropriate business processes for delivery, recording and analysis of Business Advisory Services and compliance with contract conditions, specifically performance reporting obligations:

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

(I) **Financial and Organisational Stability:** Track record and expectation of financial and organisational stability during the contract period:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

- (m) **Resource Commitment:** Demonstrated capacity to deliver the Service in addition to other commitments of the organisation. Availability of dedicated staff to perform the Service, including the handling of email and telephone inquiries:

[illegible]

- (n) **Marketing and Promotion:** Demonstrated ability to market the Service to the business community within the BSA to maximise awareness and take-up of the Service to achieve tendered client numbers. Capacity to acknowledge the Department's support in marketing the Service:

[illegible]

- (o) **Coverage Capacity:** Demonstrated capacity to deliver the Service across the BSA in numbers commensurate with the distribution of the population across the BSA:

[illegible]

(p) Compliance with Conditions of Contract, including the Service Specification, in Part D:

Does the tenderer fully comply with all conditions and specifications listed in Part D of this Tender Request?

Yes/No

If No, please list clause numbers not complied with below and provide full details of non-compliance.

(q) Compliance with NSW Government procurement policy.

(i) Code of Practice for Procurement

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

Yes/No

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

Yes/No

Provide any other relevant information below

(ii) Occupational Health Safety & Rehabilitation

Do you currently comply with your OHS&R statutory obligations and will you continue to do so including obligations relating to performance monitoring and sub-contractor performance for the duration of any contract awarded?

Yes/No

If “No”, provide details below

(iii) Competitive Neutrality (To be completed by Government Agencies or Trading Enterprises only)

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, such as rental or resources that will be used as infrastructure for the Service that are paid for, in part or full, by a government agency.

and

(r) Tendered Price

No response is required by tenderers as information provided elsewhere in Part C will be used to assess this criterion.

4. ADDITIONAL INFORMATION ON CAPACITY AND CAPABILITY TO PERFORM CONTRACT

Note: If any of the questions under this clause 4 have been answered by responses to selection criteria at clause 3, a cross reference to that response will suffice.

4.1 Details of Ownership

4.1.1 If you are a company, please provide details of your ownership, that is, Australian, Overseas, largest shareholder, paid-up capital and other relevant details.

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

- 4.1.3 If you are a consortium, nominate the lead organisation (the tenderer), provide details of all other organisations involved in the consortium, and attach confirmation of acceptance by all parties of the authority of the nominated lead organisation who is authorised to negotiate, act and bind each member of the consortium (refer Part B, clause 3.4).

4.2 Contracting as Agent/Trustee

- 4.2.1 If awarded a Contract, do you intend to enter the Contract in your own right or as agent or trustee for some other entity or entities? If the latter, provide full details.

4.3 Current Legal Proceedings

4.3.1 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:

4.4 Supply of Australian Business Number

4.4.1 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.

4.5 Years in Business

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

4.5.2 State the number of years providing the required Service: _____

4.5.3 Scope of tenderer's current business activities

4.6 Human Resource Capability

4.6.1 Total Number of Employees: _____

4.6.2 Details of Employee Numbers:

	Management	Business Facilitators	Support staff
Full-time			
Part-time			

4.6.3 Key Personnel:

Provide the following details for each Key Personnel to be utilised under the contract.

Name:

Position:

Roles and Responsibilities:

Qualifications:

Experience:

4.7 Sub-Contractors

4.7.1 Is any part of the Service to be provided through sub-contract?

Yes/No

If “**Yes**”, give details of service, name, address and ABN of proposed sub-contractor(s).

4.8 Suitability of Proposed Sub-Contractors

4.8.1 Provide details of proposed sub-contractors' legal status (company, partnership, individual etc) and their experience and qualifications in the provision of similar services.

4.9 Previous Contract Experience

- 4.9.1 Provide details of any previous contract(s) with Department of State and Regional Development, other NSW Government Agencies, the Board and/or private organisations that you have been involved in during the past four years, providing similar services:

Contract No.	Contract Name	Client Organisation	Contract Period	Contract Manager	Phone Number

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

4.10 Proposed Location of Service

- 4.10.1 Tenderer to nominate address for the Primary Location for the BSA, together with the address of any Other Locations offered within the BSA.

Primary Location:

Other Location(s):

4.11 Service Delivery

4.11.1 Tenderers are required to complete the table below.

Note: Tenderers offering Services in more than one BSA should repeat table below for each BSA for which it is tendering.

BSA: _____ (Tenderer to state BSA for which it is tendering)

(a) Expected Number of Business Guidance Services (refer to 2.2 of Part A for the minimum number required in the BSA for which you are tendering).

Tenderer to state minimum number of services it will provide: _____ per 12 month period

(b) Expected Minimum Number of Business Training Services (refer to 2.2 of Part A for the minimum number required in the BSA for which you are tendering).

Tenderer to state minimum number of services it will provide: _____ per 12 month period

4.12 Conflicts of Interest

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

Yes/No

If the answer is "Yes, disclose conflict of interest

4.13 Further Information and Comments on Capacity or Ability to Perform the Contract

4.13.1 State here any other details you may wish to add. Please also address your capacity to perform the Contract in the context of the current commitments of your organisation. (Note that details of previous performance of similar Contracts are sought in cl.4.9 above, and should not be referred to here.)

4.14 Referee Reports

Provide details required below for persons willing to act as referees to the tenderer's standard of service and performance in relation to their ability as a provider for the required Service

Referee No 1.

Name: _____
Position: _____
Company: _____
No. of Years tenderer has provided required Service to Referee: _____ years
Telephone No: _____
Fax No: _____
Email Address: _____

Referee No 2.

Name: _____
Position: _____
Company: _____
No. of Years tenderer has provided required Service to Referee: _____ years
Telephone No: _____
Fax No: _____
Email Address: _____

Referee No 3.

Name: _____
Position: _____
Company: _____
No. of Years tenderer has provided required Service to Referee: _____ years
Telephone No: _____
Fax No: _____
Email Address: _____

5. SCHEDULE OF INSURANCES

5.1 Worker's Compensation Insurance

Insurance Company: _____
Address: _____

Phone number: _____
Policy number: _____
Expiry Date: _____

5.2 Public Liability Insurance

Insurance Company: _____
Address: _____

Phone number: _____
Policy number: _____
Expiry Date: _____
Limit of Liability: _____

5.3 Professional Indemnity

Insurance Company: _____
Address: _____

Phone number: _____
Policy number: _____
Expiry Date: _____
Limit of Liability: _____

6. ADDENDA TO THIS RFT AFTER ISSUE

6.1 If there have been any Addenda by the Board to this RFT after the issue of this RFT, indicate below the Addenda numbers and 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

PART C2 TENDERER IDENTIFICATION DETAILS AND CONFIRMATION OF TENDER

1. TENDERER IDENTIFICATION DETAILS

1.1 Name of Tenderer

Individual: [Print name]

Trading Name (if applicable):

or

Company: [Full name]

Trading Name (if applicable):

Name and official position of authorised officer
completing tender:

or

Partnership: [Trading Name of partnership]

Name of partner completing tender:

1.2 **ABN:**

1.3 **Address of Tenderer**

[in the case of a company, state registered office and, if
different, principal place of business]

1.4 **Business Postal Address:**

STD Area Code:

Telephone No.:

()

Facsimile No:

()

Email:

Website:

Contact Name for general enquiries:

Telephone No.:

Tenderer's reference number

2. ACKNOWLEDGEMENT AND CONFIRMATION OF TENDER

- 2.1 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 Contract.
- 2.2 In 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 Service at the prices tendered on the conditions contained in Part A, 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

Print Name and Title



Part D - Conditions of Contract

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

Dated: <Insert Date>

Department of State and Regional Development

and

<Insert Contractor name>

(REQUEST FOR TENDER, PART D) AGREEMENT No. 0800362 FOR

*PROVISION OF BUSINESS ADVISORY SERVICES TO DEPARTMENT OF
STATE AND REGIONAL DEVELOPMENT*

FOR THE PERIOD: 1 OCTOBER, 2009 TO 30 JUNE, 2012

COMMERCIAL IN CONFIDENCE

CONTRACT AGREEMENT

BUSINESS ADVISORY SERVICES PROGRAM 2009-2012

**BETWEEN XXXX AND NSW DEPARTMENT OF
STATE AND REGIONAL DEVELOPMENT**

FOR THE PERIOD: 1 OCTOBER 2009 TO 30 JUNE 2012

This **AGREEMENT** is made on _____ day of _____ 2009

BETWEEN

. **DEPARTMENT OF STATE AND REGIONAL DEVELOPMENT**
(hereinafter referred to as “DSRD”) of Level 49, MLC Centre, 19 Martin Place, SYDNEY NSW 2000 of the one part.

AND

XXXXXX of XXXXX ABN XXXXXX (hereinafter referred to as the “Contractor”) of the other part.

WHEREAS:

- A. DSRD wishes to have Services provided in the XXXX Business Service Area.
- B. The Contractor has agreed that it will provide the said services in accordance with this Contract, including the Schedule and the Annexures.

SIGNED BY the DIRECTOR-GENERAL, DEPARTMENT OF STATE AND REGIONAL DEVELOPMENT, for and on behalf of the Crown in right of the State of New South Wales in the presence of:

Witness

Director-General

Please print name

Please print name

SIGNED BY

Witness

Director

Please print name

Please print name

NOW THE PARTIES AGREE AS FOLLOWS:-

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CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

In this Contract, including the Schedule and the Annexures, the following terms shall (unless the context otherwise requires) have the following meanings:

“Accepted Tender Response” means the final version of the Contractor’s response to the Tender that has been accepted by DSRD. A copy of the Accepted Tender response forms Annexure 2 to this Agreement.

“Accounting Period” means any period of six months ending on either 31 March or 30 September;

“ACDC” means the Australian Commercial Disputes Centre;

“ATSI” means Aboriginal and Torres Strait Islander Clients;

“Business Day” means a day that is not a Saturday, Sunday or public holiday in the State of New South Wales;

“Business Service Area (BSA)” means the geographical area defined in Item 1 of the Schedule;

“Business Advisor” means a person employed by the Contractor in accordance with clause 4 to deliver the Services;

“Business Guidance” means the provision by the Business Advisor of counselling services to Clients as described more fully in Annexure 1.

“Business Hours” means from 9.00 am to 5.00 pm;

“Business Skills Training” means the delivery to Clients by the Contractor of Business Skills Training Workshops as described more fully in Annexure 1.

“Client” or **“Clients”** means any client of the Contractor who is the owner or potential owner of either an Established Small Business or a Start-Up Small Business;

“Code of Conduct” means the Code of Conduct set out in Annexure 3, as amended by DSRD from time to time;

“Confidential Information” means any information which may reasonably be considered to be of a confidential nature, including:

- (a) any information relating to the Services, the Contractor, any Client, or the Department that is not in the public domain; and
- (b) the terms and conditions of this Contract but excluding the definition of the Services;

“Contract” means the contract set out herein including the Schedule and the Annexures as varied by written agreement between the Parties from time to time;

“Contractor” means the Contractor and where the context so admits includes the officers, employees, agents and authorised Sub-Contractors of the Contractor.

“Contract Manager” means the person for the time being holding or performing the duties of Manager, Small Business Programs, Enterprise, Small Business and Regional Development Division, NSW Department of State and Regional Development and includes an officer who is authorised by the Director General to perform the functions of the Contract Manager;

“Corporate Identity Guidelines” means the Corporate Identity Guidelines published by DSRD from time to time;

“Delegate” means the person for the time being holding or performing the duties of the Executive Director, Enterprise, Small Business and Regional Development Division, NSW Department of State and Regional Development and includes an officer who is authorised by the Director General to perform the functions of the Delegate;

“DSRD” means the New South Wales Department of State and Regional Development, Level 47, MLC Centre, 19 Martin Place, Sydney NSW and includes any other government department, or body which may from time to time take over the functions of DSRD;

“Established Small Business” means a business with an Australian Business Number having less than 20 employees and having operated for at least six months at the time Services are first sought or provided;

“Fee” means the moneys as set out in Item 5 of the Schedule payable by DSRD to the Contractor in consideration for the Contractor performing the Services;

“Government” means the Government of the State of New South Wales;

“GST” means any tax on goods and/or services, including any value-added tax, broad-based consumption tax or other similar tax introduced in Australia;

In respect only of GST the expressions “adjustment note”, “consideration”, “GST”, “input tax credit”, “recipient”, “supply”, and “tax invoice” have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 and the expression “net dollar margin” has the meaning given to that expression in the guidelines in force under Section 75AV of the Trade Practices Act 1974 of the Commonwealth;

“GST law” includes any Act, order, ruling or regulation, which imposes or otherwise deals with the administration or imposition of a GST in Australia;

“Information Services” may be delivered orally, electronically or in writing. They include fact sheets, databases, software programs and Internet services that are provided to clients for free and which provide information on small business management and related issues however they do not include group emails sent to a more than one Client, as described more fully in Annexure 1. ;

“Intellectual Property Rights” means all rights in copyright, patents, letters patent, registered and unregistered trademarks, designs, trade secrets, trade, business or company names, confidential or other proprietary rights, or any rights to registration and all other rights of intellectual property as recognised by New South Wales and Australian law and whether created before or after the date of the contract and whether created in Australia or elsewhere and includes rights acquired by way of a licence for the use of such Intellectual Property Rights;

“Location” means, as the context permits, any or all of the Primary Location and/or the Other Location or Locations;

“Minister” means the NSW Minister for Small Business;

“Name” means the name nominated in the Request for Tender by DSRD for use by the Contractor in delivering the Services;

“Other Location” means any location set out in Item 2(b) of the Schedule other than the Primary Location from which the Contractor delivers Services;

“Parties” means DSRD and the Contractor;

“Primary Location” means the main premises as set out in Item 2(a) of the Schedule from which the Contractor delivers Services;

“Relative”, in relation to a person, means the spouse (legal or de facto), parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister of the person;

“Request for Tender” means the Request for Tender number 0800362 issued by the NSW Government on 9 June, 2009 for the purpose of obtaining the Tender Response for provision of the Services by the Contractor; and

“Service” or **“Services”** means the services provided by the Contractor described in the Request for Tender, the Accepted Tender Response, in Annexure 1 and otherwise in this Contract.

“Start-up Small Business” means a business having less than 20 employees that has or will have operated for less than 6 months, or has been acquired by its current owner for less than six months at the time Services are first sought or provided;

“State” means the State of New South Wales;

“Sub-Contractor” means a person, including a volunteer, who delivers Services on behalf of the Contractor;

“Supply” has the same meaning given to it in the GST Law; and

“Term” means the term of this Contract as set out in clause 2 including if relevant the term of any extension.

1.2 INTERPRETATION

1.2.1 Except where the context otherwise requires a reference in the contract to:-

- (a) The singular number includes a reference to a plural number and vice versa;
- (b) A gender includes a reference to the other genders and each of them;
- (c) Any reference to a person or company shall mean and include the legal personal representative, successor in title, and permitted assigns of such person or company as the circumstances may require;
- (d) Any organisations, associations, societies, groups or bodies shall, in the event of them ceasing to exist or being reconstituted, renamed or replaced or if the powers or functions of any of them are transferred to any other entity, body or group, refer respectively to any such entity, body or group, established or constituted in lieu thereof or succeeding to similar powers or functions;
- (e) Statutes, regulations, ordinances or by-laws shall be deemed for all purposes to be extended to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time; and
- (f) A month shall be construed as a reference to a calendar month.

1.2.2 Where any time limit pursuant to the contract falls on a Saturday, Sunday or Public Holiday in the State of New South Wales then that time limit shall be deemed to have expired on the next Business Day.

1.2.3 Where any covenant, condition, agreement, warranty or other provision of the contract expressly or implicitly binds more than one person then it shall bind each such person separately and all such persons jointly.

1.2.4 Where a word or phrase is given a defined meaning in the Contract, any other part of speech or other grammatical form in respect of such word or phrase shall unless the context otherwise requires have a corresponding meaning.

1.2.5 No amendment of or addition to the provisions of the Contract shall be valid and binding unless it is in writing by DSRD.

- 1.2.6 The headings used in the Contract are for convenience only and shall not effect the interpretation of the Contract.
- 1.2.7 The Schedule and the Annexures are part of this Contract and are as binding upon the Parties as if the contents thereof had been set out in full in the text of this Contract.

2. TERM OF CONTRACT

DSRD engages the Contractor to provide the Services in accordance with this Contract.

- 2.1 The Contract shall be for the period set out in Item 3 of the Schedule ('the Term'), with one following option to extend the Term for a further period of twelve months, such option being exercisable solely at the discretion of DSRD and subject to the written acceptance of the Contractor.
- 2.2 DSRD may offer the extension at any time during the last six months of the Term by giving the Contractor at least three months notice in writing. The Contractor may accept the offer of the extension by notice in writing to DSRD within one month of receipt of such notice, failing which the offer shall lapse.
- 2.3 If the offer of extension is accepted, the Term shall be deemed to be extended by a further twelve months, and the terms and conditions contained herein shall continue to apply with the exception of:
- (a) the termination date in item 3 of the Schedule, which shall be extended accordingly;
 - (b) the option to extend set out in clause 2.2 which shall be extinguished;
 - (c) any other amendment to this Contract that the Parties have agreed to in writing; and
 - (d) the price shall be calculated in accordance with item 5 of the Schedule.
- 2.4 The Contractor shall establish immediately, at no additional cost to DSRD, all necessary facilities for the effective conduct and management of all aspects of the Contract so as to deliver the Services continuously throughout the whole of the Term.

3. SCOPE AND STANDARD OF SERVICES

- 3.1 The Contractor agrees to provide the Services:
- (a) competently,
 - (b) diligently,
 - (c) as far as reasonably practicable, utilising the latest technology and techniques currently available,
 - (d) in conformance with the specifications and descriptions in this Contract, and
 - (e) in conformance with the Accepted Tender Response,
- to the complete satisfaction of the Delegate and to the minimum standard as set out in clause 16.
- 3.2 The Contractor warrants and undertakes to perform the Services lawfully, in accordance with all relevant codes, policies and standards, in a diligent manner and with all necessary skill and care expected in the provision of such Services and in accordance with all representations and warranties as to the Contractor's experience and ability expressly or impliedly made by reference to the Accepted Tender Response, this Contract, any associated verbal or written communications, or by law.

- 3.3 The Contractor will deliver the Service across the BSA in numbers commensurate with the distribution of the population across the BSA.
- 3.4 The Contractor must use its best endeavours to protect and enhance the interests and property of the DSRD
- 3.5 The Contractor must obtain at its sole cost all approvals, licences and permits which are necessary for the Contractor to lawfully provide the Services.
- 3.6 The Contractor shall ensure that in carrying out the Services it complies with all relevant Commonwealth, State and Local Government laws.
- 3.7 If, in the Delegate's opinion, any Service cannot be promptly or conveniently obtained under this Contract, it shall be lawful for DSRD to make, or authorise the making of, special arrangements for the supply of the Service and the Contract shall not be considered as infringed or vitiated thereby.

4. SUB-CONTRACTING/ASSIGNMENT

- 4.1 The Contractor acknowledges and agrees that the obligations to be performed under this Contract are personal to the Contractor, and any person employed by the Contractor, and the Contractor will not assign and/or sub-contract the whole or any part of this Contract without the prior written consent of the DSRD. If the Contractor is incorporated, then for the purposes of this Contract, an assignment shall be deemed to have taken place if there is a change of control in the shareholding of the Contractor.
- 4.2 The Contractor agrees and acknowledges that it will be liable to the DSRD for any acts, defaults and neglects of any assignee or sub-contractor or any employee or agent of the assignee or sub-contractor as fully as if they were the acts, defaults or neglects of the Contractor and will indemnify and release and keep indemnified and released, the DSRD from any liability or loss resulting from any or all such acts, defaults and neglects of any assignee or sub-contractor or their employee.
- 4.3 Prior to any sub-contractor or any employee or agent of the sub-contractor commencing work in respect of the Services, the Contractor must obtain from that person, and provide to the DSRD, a written assignment from the person to the DSRD of the Intellectual Property created as a result of that person performing that work.
- 4.4 All Sub-Contract(s) shall include all relevant conditions of this Contract. If there is any difficulty in achieving acceptance of such conditions, the Contractor shall seek guidance from DSRD.
- 4.5 The Contractor shall be responsible for ensuring the suitability of any proposed Sub-Contractor and that all work performed by Sub-Contractors meets the requirements of this Contract.
- 4.6 Nothing contained in this Contract shall in any way be construed as relieving the Contractor of its responsibility for the performance of the Sub-Contractor.
- 4.7 The Contractor must notify the Delegate in writing prior to the engagement of any Sub-Contractor.

5. PERSONNEL

- 5.1 The Contractor must employ on a full time basis at least one Business Advisor to provide Business Guidance.
- 5.2 The Contractor must ensure that all Business Advisors are formally qualified in a business-related discipline, have substantial and contemporary management experience, knowledge and skills relevant to small business and small business counselling, and must have qualifications and skills sufficient for that person to be able to deliver the Services in accordance with the requirements of this Contract.

- 5.3 The Contractor must ensure that the Business Advisor(s) have a minimum qualification of a certificate IV in Small Business or equivalent and a minimum of 5 years small business management experience.
- 5.4 Unless the Contractor is a proprietary limited company, the Contractor must not employ as a Business Advisor a director of the Contractor or a person who is a Relative of a director of the Contractor.
- 5.5 The Contractor must ensure that a Business Advisor is not employed in any other organisation nor engaged in any other activity that is likely to:
- (a) raise an actual or potential conflict of interest with his or her duties to the Contractor; or
 - (b) diminish or hinder in any way the ability of the Business Advisor to carry out his or her duties as contemplated by this Contract.
- 5.6 The Contractor must ensure that at least one of the Business Advisors employed carries out his or her duties in the delivery of the Services for at least 35 hours per week during Business Hours, subject to the exercise of any leave entitlement, in which case the Contractor must ensure that information is made available to Clients.
- 5.7 The Contractor must ensure that appropriate administrative support is available to support the delivery of Services.

6. NEGATION OF EMPLOYMENT

- 6.1 The Contractor shall not represent itself, and ensure that its employees, Sub-Contractors and agents do not represent themselves as being employees or agents of DSRD.

7. LOCATION

- 7.1 At all times during Business Hours during the Term, the Contractor must ensure that the Primary Location as set out in item 2(a) of the Schedule:
- (a) provides an area for the display of and access to general information including up-to-date business information and publications and computer equipment with the capacity to operate the Internet, licensed software programs and printing facilities;
 - (b) has appropriate security for Client and other records;
 - (c) has email facilities for staff to respond to email enquiries by business clients;
 - (d) has incoming telecommunication services that can handle the level of demand for Client inquiries, including all calls forwarded by any 1300 telephone service for small businesses operated by DSRD;
 - (e) is situated in a commercial district within the nominated town and is accessible by public transport and/or sealed roads;
 - (f) provides an area where face to face confidential Business Guidance is delivered;
 - (g) is clean and well presented;
 - (h) has visible signage that prominently displays the name of the Service as assigned by DSRD and the number of any 1300-telephone service for small businesses operated by DSRD;
 - (i) prominently displays signage provided by DSRD including the DSRD logo and a "Business Advisory Service" badge as set out in the Corporate Identity Guidelines;
 - (j) has serviceable furniture and fittings to create a comfortable and safe environment for Clients; and
 - (k) otherwise provides an environment suitable for the delivery of all the Services.

- 7.2 At all times during Business Hours during the Term, the Contractor must ensure that any Other Locations as set out in item 2(b) of the Schedule are situated in a commercial district within the BSA, are accessible, and meet the requirements set out in subparagraphs (f), (g), (h), (i), (j) and (k) in the immediately preceding sub-clause.

8. OTHER CONTRACTOR OBLIGATIONS

- 8.1 The Contractor must at all times during the Term be an Australian incorporated entity with an operational presence in New South Wales.
- 8.2 Outside of Business Hours, or when the Business Advisor(s) are absent from any Location or unable to take a phone call for any other reason during Business Hours, the Contractor must provide voicemail or answering services, and must return and follow up any messages relating to the Services by no later than the next Business Day.
- 8.3 The Contractor must at all times comply strictly with the Code of Conduct.
- 8.4 The Contractor must, to the greatest extent practicable, accommodate the needs of disabled persons and those from non-English speaking backgrounds in the delivery of Services.
- 8.5 The Contractor must provide facilities to Clients, including computer equipment, software packages, on-line information, and hard-copy information, that are in good working order, easily accessible and up-to-date.
- 8.6 The Contractor must establish and maintain information and referral arrangements for the benefit of its Clients with business service organisations within the Business Service Area including but not limited to government agencies, banks, accountants, legal professionals, psychologist, Chambers of Commerce and the like.
- 8.7 The Contractor must provide sufficient facilities and personnel to answer telephone enquiries routed to the Location via any 1300 telephone service for small businesses operated by DSRD.
- 8.8 DSRD hereby grants to the Contractor a licence to use the Name while this Contract is in force. The Contractor agrees that;
- (a) it will use the Name only in connection with delivery of the Services;
 - (b) it will comply with any direction by the Delegate from time to time concerning the use of the Name;
 - (c) the right to use the Name shall at all times remain vested in DSRD;
 - (d) it will not use any other name, title or logo in connection with delivery of the Services; and
 - (e) it will inform DSRD promptly if it becomes aware of any other entity using or attempting to use the Name.
- 8.9 DSRD reserves the right in its absolute discretion to change the Name at any time during the Term and the Contractor must comply with any direction by the Delegate as a consequence of such change.
- 8.10 The Contractor shall be solely liable for payment of all overheads, costs and expenses incurred in connection with the performance of this Contract.
- 8.11 The Contractor must bear the cost of all taxes, duties and charges imposed or levied in Australia or overseas in connection with the performance of this Contract.

9. CONFIDENTIALITY

- 9.1 The Contractor, its employees, agents, representatives, advisers and Sub-Contractors, must treat all Contract related material provided to it by DSRD in connection with the Contract as Confidential and shall not disclose such information without the prior consent of the Delegate to anyone other than such persons having a need to know who will be required to take appropriate measures to safeguard such information. The Contractor shall maintain all records in conjunction with this Contract in a strictly confidential manner.
- 9.2 The Parties agree to disclose to each other so much of the Confidential Information as may be necessary in connection with the Contract.
- 9.3 The Parties agree and acknowledge that:-
- (a) they will not disclose the Confidential Information to any person without the prior written consent of the other party; and
 - (b) they will take reasonable steps to ensure that the Confidential Information in their possession is kept confidential and protected against unauthorised use and access.
- 9.4 The Parties acknowledge and agree that they may make any disclosures in relation to the Confidential Information in the following circumstances:
- (a) in order to comply with any applicable law, audit requirements or requirement of any regulatory body or any organ of parliament; or
 - (b) to any of their employees to whom it is necessary to disclose the terms if the employee undertakes to keep the terms confidential; or
 - (c) to its legal and/or financial advisers to obtain advice on the operation of the Contract.
- 9.5 The Contractor also agrees to ensure that any information received by it from Clients in the course of delivering the Services, or otherwise in accordance with the Contract or arising from it will be treated as confidential subject always to the requirements of the law, with the exception of providing Client names, phone numbers and addresses to DSRD for the purpose of evaluating service performance.
- 9.6 Without limiting the generality of this clause 9, the Parties expressly agree that the Contract, its terms and conditions and the negotiations leading up to it, excluding the specifications, are confidential and the Parties agree not to make any disclosure thereof without the prior written consent of the other party.
- 9.7 This clause will survive the expiry or termination of this Contract for so long as any of the Confidential Information remains confidential within the meaning of this Contract.

10. PROMOTION AND MARKETING

- 10.1 The Contractor must acknowledge and promote the Services provided pursuant to this Contract as a service funded and supported by the NSW Department of State and Regional Development.
- 10.2 The Contractor is responsible for promoting the Service in the BSA through effective and consistent marketing across the BSA, including media, networking, and public relations activities, provided the Contractor obtains the prior consent of the Delegate for any marketing activities that will involve the use of the DSRD logo.
- 10.3 The Contractor is responsible for the promotion of DSRD's small business advisory services online resource across the BSA.

- 10.4 The Contractor must promote other DSRD services that may be of benefit to clients, such as DSRD's Innovation Advisory Services, Small Business September, Home-based Business Initiatives, and mentoring programs.
- 10.5 The Contractor must incorporate in all visual marketing of the Services, including stationery and letterhead, the Name, the number of any 1300 telephone service for small businesses operated by DSRD, acknowledgement of the support of DSRD and branding provided by DSRD including the DSRD logo as set out in the Corporate Identity Guidelines.
- 10.6 At least 10 business days prior to any occurrence listed below, the Contractor must notify DSRD of the proposed occurrence by an email to the Contract Manager accompanied, if relevant, by any proposed press release or other form of public announcement in relation to such occurrence;
- (a) The issue of any media release, public announcement or other contact with any form of media relating to the Service; or
 - (b) Any activity related to the Service where media coverage is possible or is likely.
- 10.7 At any time before the proposed release date of a media release or other written public announcement ("the Statement"), the Delegate may, in its absolute discretion:
- (a) Direct the Contractor to amend any part of the Statement as it sees fit; or
 - (b) Direct the Contractor that DSRD will issue its own statement containing the same or similar subject matter, in which case the Contractor must not issue the proposed Statement without the consent in writing of the Delegate.
- The Contractor must not issue any Statement other than in full compliance with this clause and any direction by the Delegate.
- 10.8 Other promotional activities of the Contractor must not create a conflict of interest with the Contract obligations.
- 10.9 The Contractor shall not furnish any information, make any statement or issue any document or other written or printed material concerning the Contract and or/DSRD in any of the media without the prior written approval of the Delegate.
- 10.10 The Contractor must obtain DSRD's prior written consent before accepting any sponsor in relation to the Services.

11. CONFLICT OF INTEREST/CODE OF CONDUCT

- 11.1 The Contractor represents and warrants that no conflict of interest exists or is likely to arise in the performance of the Services at the date of this Contract.
- 11.2 If the Contractor becomes aware of the existence of an actual or possible conflict of interest, it must immediately notify DSRD in writing. The Contractor must not thereafter undertake any further work the subject of such notification without the express prior written consent of DSRD.
- 11.3 The Contractor represents and warrants that it does not hold any office, possess any property, is not engaged in any business, trade or calling and does not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with its duties and interests under this Contract.
- 11.4 The Contractor warrants that the Contractor will be managed and operated free from criminal influence or exploitation and will be conducted honestly and in accordance with the Code of Conduct. The Contractor warrants and undertakes that all persons involved in the carrying out of the Services and/or holding position associated with the administration or management of the Contractor including but not limited to a position on the Contractor Committee of Management or Board of Directors, will not be persons with known criminal records, habits, or associations or persons known to be deficient in business probity, ability and experience.

- 11.5 The Contractor agrees and warrants that it must notify DSRD immediately if it becomes aware of any corrupt or unethical conduct or possible corrupt or unethical conduct relating to the delivery of Services by any of the Contractor personnel, any Sub-Contractor and/or the Contractor generally.
- 11.6 The Contractor agrees, warrants and undertakes that any referral by the Contractor of a Client to a third party service provider or recommendation of a third party service provider to a Client will be solely based on the merits of the service that the provider can supply the Client and that the Contractor, or any employee or agent of the Contractor, will not seek or accept any payment, or other benefit in exchange for giving of a referral or recommendation.
- 11.7 The Contractor must not refer or recommend to any of its Clients a commercial service provider who is:
- (a) a shareholder of the Contractor;
 - (b) a director of the Contractor;
 - (c) a Relative of a shareholder of the Contractor;
 - (d) a related corporation of the Contractor as defined in section 50 of the *Corporations Act 2001* (Cth); or
 - (e) a Corporation in which a shareholder, director or Relative of the Contractor has a controlling interest
- unless:
- (i) the referral or recommendation is based solely on the merits of the service that the provider can supply the Client; and
 - (ii) as far as practicable, at least two other similar service providers are also so referred or recommended on an equal footing.

12. PAYMENT OF THE FEE

- 12.1 The Contractor may submit a claim for advance payment of half the possible annual Fee, as set out in Item 5 of the Schedule, once in every Accounting Period during the Term. Claims shall be in the form of a tax invoice, with, in the case of the second and all subsequent Accounting Periods, relevant Reports in respect of the previous Accounting Period ("the Relevant Period") attached.
- 12.2 Claims for payment are to be submitted to:
- Manager, Small Business Programs
Department of State and Regional Development
GPO Box 5477 Sydney NSW 2001
- 12.3 DSRD agrees to pay any amount properly claimed by the within 30 days of receipt of invoice.
- 12.4 DSRD reserves the right to defer or withhold payment of any sum claimed by the Contractor until the Delegate is satisfied that Services were performed by the Contractor during the Relevant Period in compliance with the requirements of the Contract and that the Contractor is not otherwise in breach of any provision of this Contract.
- 12.5 If at any time during the Term the Delegate determines that payment has been made to the Contractor in circumstances where Services were not properly performed during the Relevant Period, or if the Fee or any part of it has not been expended solely in the course of the provision of the Services, the Contractor must repay to DSRD so much of the Fee as DSRD has demanded in writing, having regard to the nature and extent of the shortfall in performance. DSRD's rights to enforce this clause shall survive termination of this Contract.

- 12.6 Wherever requested by DSRD as a precondition to the payment by DSRD of any part of the Fee, the Contractor shall give DSRD a statutory declaration to the effect that no wages are due and owing by the Contractor in respect of work undertaken pursuant to this Contract and/or that no payments are overdue to any other creditor of the Contractor in respect of goods or services supplied to the Contractor in connection with the delivery of Services.

13. COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS

- 13.1 The Contractor agrees and acknowledges that the Intellectual Property Rights in the Name of the Service as assigned by DSRD, software and any other materials designed and issued by DSRD and provided to the Contractor by DSRD from time to time for the provision of the Services, are owned solely by DSRD for and on behalf of the Crown.
- 13.2 The Contractor agrees, when using the software and other materials designed and issued by DSRD, to acknowledge DSRD's ownership of, or any licence for the use of, the Intellectual Property Rights in the software and other materials of DSRD.
- 13.3 The Contractor agrees and acknowledges that it must return the software and any other materials designed and issued by DSRD and provided by DSRD to the Contractor from time to time:
- (a) at any time on demand from DSRD; and/or
 - (b) upon termination of the Contract; and/or
 - (c) upon the Contractor otherwise ceasing to provide the Services if requested to do so by DSRD.
- 13.4 The Contractor agrees, warrants and undertakes that it will not, in carrying out the Services, infringe or breach or permit or suffer to be infringed or breached any Intellectual Property Rights of any third party. The Contractor acknowledges that DSRD may take legal proceedings including but not limited to injunctive proceedings against the Contractor if there is any actual, threatened or suspected breach of this clause.
- 13.5 The Contractor agrees, warrants and undertakes that it will obtain, at its sole cost, any necessary and appropriate licence for the use of any third party Intellectual Property Rights necessary for the provision of the Services.
- 13.6 Without in anyway limiting the generality of this clause, the Contractor will indemnify and at all times keep DSRD indemnified and hold DSRD harmless against, and release DSRD from, any action, claim, suit, demand, costs and expenses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights in respect of or in connection with the Contract. DSRD will notify the Contractor immediately if any claim is brought against it. The Contractor will conduct all negotiations for settlement of the claim or defend any litigation that may arise from it.
- 13.7 Without limiting the generality of this clause, the Contractor will indemnify and keep DSRD indemnified against, and release DSRD from, any action, claim, suit, demand, costs and expenses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights in respect of any machine, equipment, work, material, system or method used by the Contractor for the purposes of the Contract.
- 13.8 The Contractor consents to any act or omission of DSRD that might otherwise breach its moral rights (if any) conferred by the Copyright Act 1968 attaching to all material in connection with this Contract.

14. INSURANCE

- 14.1 The Contractor shall take out and maintain during the Term, and must ensure that any Sub-Contractor takes out and maintains, with a reputable insurance company for the Term of the Contract:
- (a) A public liability insurance policy with a reputable insurer of not less than the amount of \$20,000,000 in respect of each and every occurrence. Coverage shall be extended to Sub-Contractors. and

- (b) Workers compensation insurance as required by all relevant laws of Australia relating to workers compensation; and
 - (c) A policy of professional indemnity insurance including a description of the risk covered by the policy with coverage for an amount not less than \$5 million in respect of each and every occurrence and unlimited in the aggregate for any one period of cover. Coverage shall be extended to Sub-Contractors as appropriate and must be maintained for at least 7 years after termination or expiry of this Contract for an amount sufficient to indemnify DSRD in respect of all liabilities arising out of this Contract.
- .
- 14.2 The Contractor must, and must ensure that Sub-Contractors, as soon as practicable, inform DSRD in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by this Contract and must ensure that DSRD is kept fully informed of subsequent action and developments concerning the claim.
- 14.3 The Contractor shall, at time of execution of the Contract and on request from time to time by the Delegate, produce to the Delegate satisfactory evidence of all insurances required under this clause including a valid certificate of currency and evidence of payment of the premium.
- 14.4 The taking out of any insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Contract.
- 15. INDEMNITIES**
- 15.1 The Contractor hereby releases and indemnifies the Delegate, DSRD and the Government of New South Wales (including its officers, employees and agents) from and against all liability for and in respect of physical, psychological or emotional injury or harm (including death) to persons, damage to property or losses, damages, costs and expenses, arising directly or indirectly out of any act or omission of the Contractor, its employees, Sub-Contractors or agents in the course of carrying out the Services under this Contract and the Contractor agrees to release and discharge the Delegate, DSRD and the Government of NSW from any such actions, proceedings, claims or demands which, but for this provision, might be brought or made against or upon the Delegate, DSRD or NSW Government,
- 15.2 The Contractor hereby releases and indemnifies the Delegate, DSRD and the Government of New South Wales against all liability for and in respect of any claim of defamation by any person arising directly or indirectly out of any act or omission of the Contractor, its employees, contractors or agents in the course of carrying out the Services under this Contract.
- 15.3 The Contractor hereby releases and indemnifies the Delegate, DSRD and the Government of New South Wales against all liability for and in respect of all claims and losses resulting from the publication, translation, reproduction, delivery, use or disposition of any data processed or information gathered under this Contract in a manner not authorised herein or under applicable law.
- 15.4 The Contractor shall be responsible for and shall pay extra costs occasioned by any discrepancies, errors or omissions in data, documentation or other information supplied in writing by it, whether they have been approved by DSRD or not, provided that such discrepancies, errors or omissions are not due to inaccurate data or information supplied in writing to the Contractor by DSRD.
- 15.5 Where the Delegate receives notice of the commencement of any legal proceedings arising out of the Contractor's performance of this Contract, the Delegate shall notify the Contractor without undue delay and the Contractor shall, without limiting the Delegate's right to separate legal representation, assume the defence thereof.

15.6 The Contractor agrees that it will at all times hereafter indemnify and keep indemnified DSRD against all actions, proceedings, claims and demands, costs, damages and expenses which may be levied, brought or made against DSRD or which it may pay, sustain or incur by reason of statute or otherwise in the event that the personnel supplied by the Contractor are deemed to be or alleged to be employees of DSRD.

15.7 This clause survives expiry or earlier termination of this Contract.

16. PERFORMANCE MANAGEMENT, SERVICE EVALUATION AND REPORTING

16.1 The Contractor must deliver the Services to at least the minimum standard of 75% as satisfactory or higher as assessed by the Client feedback in relation to the quality of Business Guidance.

16.2 The Contractor must deliver the Services to at least the minimum standard of 75% as satisfactory or higher as assessed by the Client assessment for Business Skills Training.

16.3 The Contractor must make available a nominated representative to meet and hold discussions with a DSRD representative two times a calendar year during the Term or on as many occasions as deemed necessary by DSRD to discuss ongoing satisfaction of the quality of the Service, initiatives to improve the quality of Services delivered, and the Contractor's compliance generally with the provisions of this Contract.

16.4 The Contractor shall maintain a regular consultative relationship with DSRD and allow DSRD, if so required, to:

- (a) visit the Contractor's (and Sub-Contractors/agents) premises from which the Service is being delivered; and
- (b) have access to the Contractor's (and Sub-Contractors/agents) accounts, financial, operational and Client records in regard to the Service.

16.5 The Contractor must report to DSRD on a monthly basis using a reporting system as determined by DSRD on the matters set out in Annexure 4.

16.6 DSRD or its nominee(s) may regularly monitor and evaluate the Contractor's performance under this Contract. The Contractor must co-operate in such monitoring and evaluation and provide to DSRD all information and reports requested in connection with same, including the matters set out below in this clause and also in Annexure 4. Monitoring and evaluation may include but are not limited to:

- (a) Regular site visits to assess quality of staff and delivery of Service and discussion of Contract issues with staff and management on a needs basis.
- (b) Direct feedback from Clients on the quality of Service. Client assessment of the quality of Service as satisfactory or better should be at least 75%.
- (c) Provision by the Contractor of regular reports indicating service levels coverage and Client outcomes and including, if requested by DSRD, Client contact details for the reporting period.
- (e) Preparation and provision by the Contractor to DSRD of one case study of a successful Client each month, if requested by DSRD.
- (f) Provision of audited financial statements including income and expenditure statements, balance sheet and a statement from an external firm of accountants to certify that the Fee has been expended in accordance with the terms of the Contract.

16.7 At all times during the Term the Contractor will promptly provide any information requested by DSRD in relation to the provision of Services or any other matter pursuant to this Contract.

17. TERMINATION OF CONTRACT**17.1 If the Contractor:-**

- (a) is in breach of any term of this Contract, the default of which is not capable of being remedied; or
- (b) is in breach of any other provision of this Contract and fails to remedy such breach within thirty (14) days of being notified of such breach by the Delegate; or
- (c) assigns its rights under, or sub-contracts the whole or part of, the Contract without the written consent of the Delegate; or
- (d) becomes bankrupt, goes into liquidation, has a summons for its winding up presented to a Court, enters into an arrangement or composition with its creditors, fails to pay its debts as they fall due, or if a receiver and manager is appointed in respect of the Contractor; or
- (e) makes or provides any statement, information, representation or material to DSRD in connection with its selection to provide the Services that is false or incorrect in a way that affects the Contract or the delivery of Services; or
- (f) 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 collusive pricing;

DSRD may, by notice in writing addressed to the Contractor, terminate this Contract without prejudice to any right of action or remedy of DSRD which has accrued or which may accrue under this Contract, with immediate effect whereupon all further payments of the Fee to the Contractor shall cease.

18. TERMINATION BY DSRD WITHOUT CAUSE

18.1 DSRD may at any time and for any reason, upon giving notice in writing to the Contractor, terminate the Contract or any part or further part thereof, and upon such notice being given, the Contractor shall cease or reduce work according to the notice and shall forthwith do everything possible to mitigate losses consequent thereto. Without being under liability so to do, the Delegate shall, at the earliest possible time, inform the Contractor if circumstances arise which make it likely that the Delegate shall exercise its right pursuant to this clause.

18.2 If a notice under the preceding paragraph is given, the Contractor may submit a claim for compensation and DSRD shall pay to the Contractor such sums as are fair and reasonable in respect of the loss or damage sustained by the Contractor in unavoidable consequence provided always the Contractor shall not be entitled to compensation for the loss of prospective profits.

19. CONSEQUENCES OF TERMINATION

19.1 Upon termination of this Contract in any circumstances, the Contractor shall, in any manner directed by the Delegate;

- (a) immediately cease the provision of any Services;
- (b) return to DSRD all documents, equipment, computer programs, publications and other material provided by DSRD to the Contractor for the purpose of this Contract;
- (c) return to DSRD all information or data in any format whatsoever that is Confidential to DSRD;

19.2 Termination by the DSRD will not release the Contractor from liability in respect of any breach of, or non-performance of any obligation by the Contractor pursuant to this Contract.

- 19.3 Without limiting the DSRD's rights in relation to this Contract, if the DSRD pre-paid any amounts to the Contractor for Services to be performed which at the date of termination have not been performed and this Contract is terminated for any reason:
- (a) the Contractor must refund to the DSRD such pre-paid amounts within seven (7) days of termination of this Contract; and
 - (b) the DSRD may recover in an appropriate court the balance of any pre-paid amount not refunded as a debt due and payable by the Contractor to the DSRD.
- 19.4 Any damages, costs and expenses recoverable by DSRD from the Contractor in consequence of the Contractor's breach of the Contract may be deducted from money then due to the Contractor under the Contract and if that money is insufficient for that purpose, the balance remaining unpaid shall be a debt due by the Contractor to DSRD and:
- (a) may be set off against any other money due to the Contractor by DSRD under this or any other contract between DSRD and the Contractor; or
 - (b) will be payable within 7 days of the issue of a demand by DSRD to the Contractor and if not paid within such time shall bear interest at the rate then applicable to the recovery of debts in the NSW Local Court.
- 19.5 The covenants, conditions and provisions of this Contract that are capable of having effect after the expiration of this Contract shall remain in full force and effect following the expiration or termination of this Contract.

20. DISPUTES/ARBITRATION

- 20.1 If a dispute of any kind arises out of or relating to this Contract or any alleged breach of the Contract or the operation, validity or subject matter of the Contract, a party to the dispute may not commence any Court or arbitration proceedings relating to the dispute unless written notice of the dispute has been given to the other party with which it is in dispute specifying the nature of the dispute ("notice of dispute").
- 20.2 On receipt of a notice of dispute in accordance with clause 20.1 the Parties to the dispute must endeavour in good faith to resolve the dispute expeditiously using the informal dispute resolution process provided for in the Contract.

21. MEDIATION

- 21.1 Initially the dispute will be referred to mediation conducted by ACDC in accordance with the mediation guidelines administered by ACDC from time to time which are incorporated into this Contract by reference.
- 21.2 The Parties to a dispute shall do all things reasonably required to refer the dispute to mediation by ACDC.
- 21.3 Unless directed otherwise by the Delegate, the Contractor agrees to continue to provide the Services while the dispute is being dealt with in accordance with this clause.
- 21.4 Nothing in this clause will preclude either party from seeking urgent interlocutory relief.

22. GOODS AND SERVICES TAX

- 22.1 The Fee is exclusive of GST.
- 22.2 Any invoice rendered by a party to this Contract in connection with a Supply under this Contract which seeks to recover an amount of GST payable by that party must conform to the requirements for a tax invoice.
- 22.3 The Contractor warrants and undertakes that at the time any Supply on which GST is imposed is made by it to the DSRD under this Contract it is or will be registered under the GST Law. If the DSRD requests written evidence of registration, the Contractor will promptly produce evidence satisfactory to the DSRD.
- 22.4 If the amount of GST paid or payable by the Contractor on any Supply made under this Contract differs from the amount of GST paid by the DSRD by reason of the Commissioner of

Taxation lawfully adjusting the value of the taxable supply for the purpose of calculating the GST, or if the rate of GST is changed, then the amount of GST paid by the DSRD shall be adjusted accordingly by a further payment by the DSRD to the Contractor or the Contractor to the DSRD as the case requires.

23. PRIVACY COMPLIANCE

- 23.1 The Contractor must, and must ensure that its officers, employees, agents and sub-contractors, comply with the DSRD's privacy policy in respect of any Personal Information disclosed to the Contractor by the DSRD or acquired by the Contractor in performing the Services. A copy of the DSRD's privacy policy can be obtained at www.business.nsw.gov.au.

24. VARIATION OF CONTRACT CONDITIONS

- 24.1 None of the conditions of the Contract shall be varied, waived, discharged or released either at law or in equity, unless by the express consent of DSRD in writing.

25. WAIVER

- 25.1 Failure by either party at any time to enforce any of the provisions of the Contract must not be construed as a waiver by that party of that provision or in any way affect the validity of the Contract, in whole or in part.

26. AMENDMENTS

- 26.1 Unless otherwise specifically provided for under this Contract, any variation to the Contract, including any variation to the Schedules, must be in writing and signed by both parties.

27. ENTIRE AGREEMENT

- 27.1 The Contract (including the specifications) constitutes the entire agreement between the Parties. Any prior arrangements, agreements, representations or undertakings are superseded. No notification of alteration of any clause of the Contract will be valid except in writing by DSRD.

28. NOTICES

- 28.1 All notices and communications required to be or which may be given or served by the Delegate to or upon the Contractor shall be sufficiently given or served if signed by the Delegate or the person acting as such for the time being and if left at or sent by certified mail addressed to the Contractor at the office of the Contractor last known to DSRD.
- 28.2 All notices and communications required to be or which may be given or served by the Contractor to or upon DSRD or the Delegate shall be sufficiently given or served if signed by an authorised officer of the Contractor and if left at or sent by certified mail the name and address set out in item 6 of the Schedule or such other name and address as may be advised by the Delegate from time to time.
- 28.3 Any notice given under the Contract:
- (a) must be in writing addressed to the intended recipient at the address last notified by the intended recipient to the sender;
 - (b) must be signed by a person duly authorised by the sender; and

- (c) will be taken to have been given or made:
- (i) in the case of delivery in person or by post when delivered or received, or left at the above address; and
 - (ii) in the case of delivery by facsimile when a confirmation report is received on the facsimile machine showing confirmation of receipt

but if delivery or receipt occurs on a day other than a business day at the place to which the communication is sent or is later than 4pm (local time) it will be taken to have been duly given or made at the commencement of business on the next day.

29. SEVERABILITY

- 29.1 If any part of this Contract is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Contract but without affecting the continued operation of the remainder of the Contract.

30. NO MERGER

- 30.1 The rights and obligations of the parties will not merge on completion of any transaction under this Contract. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transactions.

31. COUNTERPARTS

- 31.1 The Contract may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

32. APPLICABLE LAW

- 32.1 This Contract will be governed and construed in all respects in accordance with the laws of the State of New South Wales and the Parties to this Contract hereby submit to the non exclusive jurisdiction applicable to the courts of the State of New South Wales and the Commonwealth of Australia in respect of all matters arising under this Contract or relating to this Contract.

33. RIGHTS CUMULATIVE

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

34. LEGAL COSTS

- 34.1 Each party must bear its own legal and other costs and expenses relating directly or indirectly to the preparation of and compliance with its obligations under this Contract.

THE SCHEDULE

Item 1: Business Service Area

XXXX Business Service Area is comprised of the Local Government areas of XXXX

Item 2: Location

(a) The Primary Location: xxxxxxxx

(b) Other Location(s)

xxxxxxx

xxxxxxx

Item 3: Term

Commencing 1 October 2009 and terminating on 30 June 2012.

Item 4: The Services

A minimum of

xxxxx free Business Guidances are to be delivered per annum with no less than 20% of the total in any one quarter.

xxxxx DSRD Business Skills Training (small business workshops) are to be delivered per annum with no less than 20% of the total in any one quarter.

Item 5: The Fee

Description	Price Excluding GST	GST Component	Price Including GST
Contract Fee for provision of a service to small business for the xxxx Business Service Area	\$xxxxx pa	\$xxxxpa	\$xxxxpa

ITEM 6 NOTICES

THE ANNEXURES

ANNEXURE 1 SERVICE SPECIFICATION

1. SERVICE TYPE

1.1 General

- 1.1.1 The Contractor will support small business formation by Start-up Small Business, including small business intenders, by providing services that enhance survival and long term viability of small businesses formed through better planning including realistic assessment of business readiness and business ideas.
- 1.1.2 The Contractor will also service the needs of Established Small Businesses by providing services that underpin profitability, business expansion and long term business growth prospects, and supports orderly succession of ownership of existing businesses in the Business Service Area serviced by the Contractor.
- 1.1.3 The Contractor must provide Clients services that include Business Guidance, Business Skills Training, and Information Services.

1.2 Information Services

- 1.2.1 Information Services include information on small business management issues, business evaluation, Government licensing requirements, Government assistance and resources such as business planning templates etc. Information Services may be delivered either orally (phone or face-to-face), electronically (website and email), in writing (email, fax, hard copy handed over personally or through the post), and/or through a group format such as workshops, small business telecasts etc.
- 1.2.2 Information Services will be made available to business Clients by the Contractor free of charge and shall include the following specialist tools and resources for Clients to enable them to undertake business research and analysis. Business resources include:
 - (a) Information/fact sheets on a range of small business management and regulatory topics. These resources will be provided electronically, which will be available free of charge to the Contractor by DSRD and expanded and reviewed from time to time, and
 - (b) Databases and Internet Services available for Clients to assess readiness to start a business, and allow benchmarking and assessment of business strengths and weaknesses. The services may include licensed software programs to be made available to the Contractor by DSRD at no cost to the Contractor. This service must be available in hard copy and/or software program and/or down loadable electronic format as applicable. Self-help tools include provision of Internet based business information. This service will be provided in an electronic format on a computer connected to the Internet, and may be supported by hard copy information sheets.
- 1.2.3 Business databases, software and Internet based resources will be made available by the Contractor to Clients on a computer located in a comfortable, private and accessible position on the Contractor's premises.
- 1.2.4 All information resources supplied by DSRD to the Contractor and other free resources available to the Contractor will be provided to Clients free of charge, except where the product or licensing for products has not been provided by DSRD in which case the service can be charged on a cost recovery basis only.
- 1.2.5 Information resources supplied by DSRD cannot be incorporated into a commercial product, or sold in any manner, without the express written permission of DSRD.

1.3 Business Guidance

- 1.3.1 Business Guidance means the provision of counselling services to Clients by a Business Advisor. These services will generally be provided either at the small business premises or the Contractor's Primary or Other Location. In exceptional circumstances these services may be provided by telephone, fax or email. Details of the counselling need to be recorded and reported via regular reporting procedures.
- 1.3.2 Counselling services are delivered by a Business Advisor to the Client on the development of their own small business or small business idea. Advisory services may be provided at Contractor premises or during a site visit at Client premises or at other operating bases for the service, if available.
- 1.3.3 DSRD acknowledges that Clients are not always aware of the issues they confront in starting and managing a small business. Business Advisors will be required to take a diagnostic approach to advisory services rather than simply answering the questions raised by the client.
- 1.3.4 It is expected that face-to-face individual counselling services will be offered after Clients have undertaken some business preparatory work, accessed self-help resources or participated in group activities offered by the Contractor. The Contractor will use the DSRD's small business advisory services online resource as a key element of the preparatory work.
- 1.3.5 The Contractor, during a guidance service will provide contacts such as accountants, solicitors, business associations, and DSRD staff to enhance business outcomes. This service must be provided by a Business Advisor after assessing the needs and circumstances of the Clients.
- 1.3.6 It will be necessary for the Contractor to deliver face-to-face advisory services across their region. It is expected that the number of face-to-face advisory services in any location will be commensurate with the population in that area.

1.4 Business Skills Training

- 1.4.1 Business Skills Training means the delivery of a range of short user-pay workshops to address a number of business management issues for clients. Resources may be developed and made available to the Contractor from time to time (for example, financial management workshops) by DSRD.
- 1.4.2 Other Resources may be developed and/or delivered by the Contractor as part of this Contract with the prior written permission of the Manager, Small Business Programs.
- 1.4.3 The delivery of Business Skills Training is designed for a group format but may be used in self-tuition mode for remote or isolated clients, provided appropriate guidance and feedback support is also delivered. A workshop will generally have a minimum number of 6 participants.
- 1.4.4 The delivery of Business Skills Training can be offered to Clients and their staff on a fee-for-service basis. The price must not exceed \$75 (including GST) per Client per session, unless a higher fee has been agreed with DSRD in writing.
- 1.4.5 The delivery of training must be provided by a Business Advisor and/or an appropriately skilled presenter with expertise on the subject matter and must be presented in a manner that promotes group participation and interaction. Where such training is provided by a person other than a Business Advisor, the Contractor will seek prior written permission from DSRD, based on the skills and experience of the proposed presenter.
- 1.4.6 The Contractor must provide a feedback form to each participant for completion for the purpose of DSRD's Service evaluation.

ANNEXURE 2 ACCEPTED TENDER RESPONSE

ANNEXURE 3 CONTRACTOR CODE OF CONDUCT

“CODE OF CONDUCT AND ETHICS “

Performance of work for the Department of State and Regional Development implies a unique obligation to the public interest and requires that we demonstrate standards of professional behaviour and ethics that will maintain public trust. The Department of State and Regional Development work involves access to confidential and/or sensitive information.

The following Code of Conduct has been developed to assist you to understand our expectations and requirements:-

1. Personal and professional behaviour

You must always:

- be honest, reasonable, fair and sensitive in your dealings with members of the public and staff
- give accurate and impartial advice to the Government and implement its programs conscientiously
- follow relevant legislative, industrial and administrative requirements
- adhere to the Equal Employment Opportunity principles and the Ethnic Affairs Priorities Statement
- adhere to the Department's values as set out in this code.

2. Conflicts of interest

You must ensure that your interests, or those of people close to you, do not conflict with the proper performance of your responsibilities while you are engaged by the Department. A conflict of interest would exist when any one or more of these circumstances arise while you are contracted to the Department

- you have a financial interest in a matter the Department deals with, or you have friends or relatives with such an interest that you are aware of. For example, owning shares in a company where you are responsible for determining the payment of a grant or subsidy
- you have a personal, philosophical, religious, moral or political belief or attitude that could influence, or be seen to influence, the impartiality of the advice you give
- you accept secondary employment that may, or may appear to, compromise your integrity and that of the Department
- you are a member of a external Board of an organisation which is seeking a grant from the Department or is an entrant in an industry awards program the Department is sponsoring or judging.

It is your responsibility to avoid conflicts that could compromise the impartial performance of your role, and to disclose potential, actual or perceived conflicts of interest to the Department.

3. Official and confidential information

During your work you could have access to commercially confidential and/or sensitive information which could relate to clients, the NSW Government, or Departmental employees. You must ensure the integrity and security of information and documents for which you are responsible.

Some simple rules apply:

- you may not use confidential information for any unofficial purpose outside the Department
- you may use confidential or official information only in a manner that will be consistent with your obligation to act impartially
- you must exercise caution and sound judgment in discussing sensitive information with other Departmental employees. It should normally be confined to those who require access to that information in order to do their jobs, or those who can by reason of their experience, provide useful assistance
- you may not use information gained in your professional capacity for personal gain
- you may disclose information that is normally available to members of the public or if you are satisfied the request is legitimate and you have appropriate authority to release it
- you must not improperly collect, use or disclose the personal information of individuals, be they clients or Departmental employees
- information gained in the course of your work must not be used to cause harm or detriment to the Department or any person or body
- Departmental documents, including Cabinet and other in-confidence documents, emails and electronic information, must be properly and safely secured at all times

- you must ensure that you document all your activities into the Department's official record-keeping systems
- you must not remove official information from the Department's premises unless required for work purposes
- you must treat email as carefully as hard copy information.

Misuse of official information or documents includes:

- speculation in shares, commodities, or property on the basis of confidential information about the affairs of a business or of proposed Government actions
- seeking to take advantage of another person, for personal reasons, on the basis of information held in official records
- disclosing sensitive information to members of the public, clients, lobby groups, other public servants or other Government organisations without proper authority
- providing or trading confidential information for use by private investigators, banks and credit agencies.

It is your responsibility to maintain the Department's reputation for integrity and credibility with managing official and confidential information. These requirements apply to any information you obtain during the course of your engagement and continue after you leave the Department.

4. Intellectual property

Intellectual property includes rights relating to scientific discoveries, industrial designs, trademarks, service marks, commercial names and designations, inventions and activity in the industrial, scientific, literary or artistic fields.

Unless your contract of engagement specifies otherwise, the Department has engaged you on the basis that the intellectual property created by you in the course of your work vests in the Department. You may not sell or give away intellectual property created during or in connection with the course of your engagement with the Department.

5. Use of official facilities and equipment

You are expected to be efficient and economical in your use and management of public resources (including your own work time). You should be scrupulous in your use of the Department's property and services.

The Department's communication devices, including the Internet, are not to be used to browse or download illegal, inappropriate or offensive material. Your use of the Department's Internet and e-mail must be appropriate, lawful, efficient, proper and ethical.

Further information regarding the use of the Department's communication devices, including use of the Internet and e-mail, can be found under the policy outlining *Protocol for Acceptable Use of Communication Devices and Systems* in the Corporate Handbook on the Department's Intranet. You are required to comply with this policy at all times if you access the Department's communication devices.

6. Public comment

Public comment includes public speaking engagements, comments on radio and television or to a journalist, views expressed in letters to newspapers or in books, journals and notices where it might be expected that the publication or circulation of the comment will spread to the community at large. Comments made in email messages may also be interpreted as public comment.

The official spokespersons for the Department are the Premier of NSW and portfolio Ministers. In some circumstances the Director General speaks on behalf of the Department and the General Manager Tourism NSW for Tourism NSW.

You must not initiate contact with the media at any time.

You must direct any media enquiries to the Communications Unit or on specific tourism matters to the designated Media Manager at Tourism NSW. You must not attempt to respond to the enquiry (even if "off the record"), under any circumstances.

Outside your work for the Department, you have a right to comment publicly on political and social issues, provided you make it clear you are not making an official comment on behalf of the Department or NSW Public Service and that you are only commenting as a private citizen.

7. Alcohol and drugs

You must not conduct business on behalf of the Department if you are under the influence of any drug or substance that is likely to adversely affect your ability to do your work or may pose a risk to yourself or staff or members of the public.

8. Breaches of the Code

You should be aware that the Department may take action for breaches of this Code. Action may include termination of the engagement/contract and in serious cases the matter may be referred to the Police or other appropriate authorities.

ANNEXURE 4 PERFORMANCE MANAGEMENT AND REPORTING REQUIREMENTS

As part of the performance management for the delivery of services, the Contractor is required to collect and report information to DSRD. The reporting and client record keeping requirements are outlined below.

1. Monthly Activity Report

1.1 The Contractor is required to provide activity reports to DSRD in a format specified by DSRD. The reports will need to be submitted to DSRD no later than at the end of each calendar month. The reports will be made in a manner and form determined by the Department. The information that will be included in the Activity Reports includes:

- Total services delivered with splits for Information Services, Business Guidance and Business Skills Training.
- Detailed information on Business Guidance services. This information will include number of businesses, business operators, business services, new and repeat Clients, gender mix and whether they are of Indigenous (ATSI) background.
- Details about the nature of the discussions, location of the service provision, and time taken to deliver the service will be required.
- The Contractor is required to record both small business start-up including intenders (prospective) and established (existing) business entities and business operators that are assisted.
- The Contractor is required to provide a range of information regarding the services provided, including but not limited to, the time taken to deliver the service, the location of the service, the topics discussed during the service, the outcome of the service, any referrals made, etc. These are to be provided in a manner and form determined by the Department.
- Business Skills Training– Number of workshops, participants, workshop title and number of other skills training.
- Names and contact details for each participant will be required along with feedback reports from each participant.
- Marketing and Networking events held by the Contractor– number of events and number of participants.
- Employment Impacts – equivalent full-time (EFT) numbers:
 - (i) Operators of businesses under new ownership;
 - (ii) Operators of new businesses formed;
 - (iii) Jobs created from new businesses formed; and
 - (iv) Jobs created from expansion of existing/established businesses.

2. Ongoing Client Record Keeping

2.1 Client feedback will form part of the evaluation of the service. To allow DSRD to obtain client feedback, the Contractor is required to provide contact details of Clients who have received Business Guidance (including names, business type, client type (start up or established business) and client contact details (phone, email and address) to DSRD. This information is to be made available to DSRD on request. The number of Client contact details required will be sufficient to allow for a valid, random sample to be drawn for the Contractor. DSRD will undertake random sample surveys of Clients on Service quality issues.

3. Performance Measurement

- 3.1 The benchmark for client feedback related to Guidance Services is that Client assessment of the quality of service be rated at least 75% as satisfactory or better, as reported by the Client Satisfaction Survey.
- 3.2 The benchmark for client satisfaction from the conduct of Business Skills Training is that Client assessment of the quality of service be rated at least 75% as satisfactory or better, as reported by the Client Satisfaction Survey.

4. Definitions

“Marketing and Networking Events” –means business related events undertaken by the Contractor to promote the Service within the Business Service Area.

“Jobs Impact” –means the jobs impact of the Service in the BSA. Jobs impact is measured in units of full-time employment that has resulted from significant input from the Contractor through the Service. Jobs impacts arise from:

- Operators of businesses under new ownership where a business operator has created a job for themselves through acquisition of an existing/established business;
- Jobs impact from new businesses formed arises from a business owner operating their own business and by employing staff in a new business formed; and
- Jobs impact from expansion of established businesses when an established business has employed additional staff as a consequence of expanding the business. Included in this definition are net jobs created from expansion by purchasing a new business i.e. accounting for new jobs created, as distinct from transfer of existing jobs to the new business structure.

Jobs impact should be recorded where the Contractor can verify that the new employment resulted from significant input/assistance provided by the Contractor through the Service.

The information is to be recorded in the reporting period that relates to when the new employment impacts became known and can be verified by the Contractor. The Contractor must ensure that double counting of jobs impact is avoided at all times.