

# ***Summary File ONLY***

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

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

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

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

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



---

**People, Workplace and Planning is a Business Unit  
of the NSW Department of Commerce**

---

**People, Workplace and Planning invites this tender for  
and on behalf of the NSW Department of Commerce**

**Request for Tender  
RFT Id: 0900489**

**Business Managers  
Leadership Development Program**

**Tender Issue Date: 23/03/09**

**Closing Date: 22/04/09**

**Closing Time: 9:30 am Sydney Time (AEST)**

## COPYRIGHT

This Request for Tender document ("RFT") has been prepared by People, Workplace and Planning for the NSW Department of Commerce on behalf of the Crown in right of the State of New South Wales. This RFT is protected by Crown copyright.

© State of New South Wales – NSW Procurement – Contracting Services, for and on behalf of the Crown in right of the State of New South Wales, 2001.

All rights reserved. No part of this RFT may be produced by any process, electronic or otherwise, in any material form or transmitted to any other person or stored electronically in any form, without the prior written permission of the State of New South Wales, except as permitted under the *Copyright Act 1968*.

For the purposes of this RFT, inquiries should be directed to the Contact Officer nominated in **Part B, Clause 4.1.1** of this RFT.

Other matters should be directed to:

Director  
People, Workplace and Planning  
NSW Department of Commerce  
McKell Building  
2-24 Rawson Place  
Sydney NSW 2000  
Tel: (02) 9372 7454  
Fax: (02) 9372 8640

# RFT 0900489 Business Managers Leadership Development Program

---

<b>REQUEST FOR TENDER - PART A – OVERVIEW .....</b>	<b>4</b>
1 Background .....	4
2 Outcome.....	5
3 Objectives .....	6
4 Scope of RFT .....	6
5 RFT Structure.....	7
6 Best Price and Cost Structure .....	7

## REQUEST FOR TENDER - PART A – OVERVIEW

---

### 1 Background

---

#### 1.1 Business Managers Leadership Development Program – Diploma of Management (BSB 51107)

Organisational Development (OD) within the NSW Department of Commerce (Commerce) is seeking tenders for the delivery, assessment and evaluation of the Diploma of Management (BSB 51107) for the Business Managers Leadership Development Program.

The Diploma of Management qualification is a cornerstone of the Business Managers Program within Commerce's Leadership Development Program which provides a significant level of professional development for many of Commerce's existing managers.

#### 1.2 Scope of Commerce Leadership Development Program

The Commerce Leadership Development Program (LDP) aims to ensure the Department's future sustainability by building a highly skilled, resilient and change ready workforce.

The LDP incorporates a suite of five initiatives:

- **New Manager Program** - for managers appointed to a management position within the past 12 months, or longer term managers who have not had the opportunity to undertake formal management qualifications.
- **Business Manager Program** - for managers responsible for an operational unit or function and who have been in a position of management for longer than one year, and/or have previously completed the Certificate IV in Frontline Management or other management qualifications.
- **Senior Manager Program** - for managers of groups or divisions who manage other managers.
- **Executive Program** - for direct reports to the Director General and their immediate reports.
- **Learning Events** - opportunities to explore specific topics or issues. These Events will be available to current and past alumni of other components of the LDP as well as managers who have not yet participated in one of the other programs.

It is expected that all current supervisors and managers (approximately 500 staff members) will participate in the program appropriate to their level of management over the next three years.

#### 1.3 Commerce Structure

Commerce incorporates a number of different Offices with distinct roles and operating procedures. These are:

Government Chief Information Office  
 Office of Fair Trading, including the Consumer Trader and Tenancy Tribunal  
 Office of Industrial Relations  
 NSW Procurement  
 Public Works and Services  
 State Records  
 State Fleet  
 ServiceFirst (HR, Finance and IT Shared Services for a number of organisations)  
 NSW Businesslink (HR and IT Shared Services for a number of organisations)

In addition, Commerce has the following corporate service areas:

Office of the Director General  
Corporate Finance  
Strategic Communications and Government Advertising  
People, Workplace and Planning

#### **1.4 Target Group for the Business Managers Leadership Development Program**

Participants in the Business Managers component of the LDP may come from any area within Commerce and may include:

- Staff members who have progressed within the organisation because of their high level of technical or operational skills and are now in a position with a management/team leadership function.
- Staff members who have been in a position of management for quite some time and who have not had the opportunity to undertake formal qualifications in management.
- Staff who have been in the public service for a number of years and have a good understanding of the specific issues that arise in public sector management.
- Staff who have very recently entered the public service, directly into a management position, and may have very little understanding of the specific governance, legislative and strategic communication requirements of public service management roles.

It is estimated that there are approximately 230 Commerce staff members in the Business Managers target group. However, funding limitations mean that Commerce will not be able to provide places for all these managers in the Leadership Development Program, and places will be offered on a priority basis.

#### **1.5 Procurement Process**

The development and delivery of the LDP has been a staged process. In the first instance, each component of the LDP has been piloted to determine the most appropriate structure, content and qualification level.

This Request for Tender (RFT 0900489)) represents the next phase in the procurement process for the Business Managers program. Separate RFT processes will be conducted for the New and Senior Manager components of the LDP. The provider of the Executive program has been selected from an existing panel contract.

The Department of Commerce has engaged the services of a Probity Adviser to oversee the tender evaluation process.

## **2 Outcome**

---

This Request for Tender ("RFT") is made by the Department of Commerce for the provision of a Business Manager Leadership Development Program to Department of Commerce under the proposed Deed of Agreement provided in Part D of this RFT.

The Department of Commerce is responsible for the delivery of the tender process, and the proposed Deed of Agreement will be executed between the Principal and the successful tenderer.

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

### 3 Objectives

---

Objectives of the proposed Agreement include, but are not limited to the following:

- (a) Provision of leadership development services which are commercially competitive
- (b) Establishment of a sustainable partnership between the Principal and the successful tenderer to deliver quality services
- (c) Delivery of best practice in leadership development through continual review of delivery methods
- (d) Improved performance of the Department, as measured by standard Human Resource metrics, through development of managers and leaders across Commerce.

### 4 Scope of RFT

---

#### 4.1 Services

The purchasing and distribution of the following Services are covered under the proposed Deed of Agreement:

**Delivery, assessment and evaluation of up to 150 places in the Diploma of Management (BSB 51107) over the next three calendar years (2009 – 2011).**

A detailed description of the Services is described in **Part F, Statement of Requirements**.

#### 4.2 Contract and Duration

It is the intention to appoint a single contractor for all the required services as detailed in Part F.

The term of the proposed Deed of Agreement will be for three (3) years, from date of acceptance, which may be extended for an additional two (1) year periods at the discretion of the Principal.

#### 4.3 Current Scope

Over the past four years, a number of Department of Commerce managers have undertaken Commerce-funded leadership development programs, mainly in the form of the Certificate IV in Business (Frontline Management) as part of the Existing Worker Traineeship Program. A very small number of these managers participated in a Diploma-level management course which was put together as an upgrade from the Certificate IV in Business (Frontline Management).

The Department of Commerce is now embarking on a comprehensive range of leadership development activities for all levels of management. In order to determine the type of program that would benefit business managers, Organisational Development staff have consulted with management across different Business Units, and examined the range of programs available for managers at this level.

There is a wide range of management/leadership development activities available in the marketplace. These include qualification-based programs such as the Certificates and Diplomas in (Frontline) Management and the Certificates and Diplomas in Public Sector/Government Management. There are also many non-qualification-based programs that incorporate various tools and techniques to develop management/leadership skills.

After careful examination of the various programs available, the Department of Commerce has opted to offer a qualification-based program, with the appropriate outcomes pegged at the Diploma level. Although Commerce is a public sector organisation, a generic management qualification has been selected to give participants a broad-based outcome to their study. However, for fully customised, in-house programs, Commerce will require the successful tenderer to be able to incorporate a public sector focus within the delivery process. Commerce would also expect that facilitators would be able to draw on the experiences of group members to ensure relevance to individual workplaces.

This tender is the result of the Department of Commerce having identified a number of critical components of its Business Managers Leadership Development Program, including the Diploma of Management (BSB 51107), a range of mechanisms to support participants in this work-based learning pathway, and a comprehensive program evaluation process.

The Business Manager Leadership Development Program will be offered to approximately 60 participants in the first and second years of the Agreement, and approximately 20 - 30 participants per year for the third and subsequent years. This amount is provided for information only and does not constitute a guarantee for future work through the proposed Agreement.

#### **4.4 NSW Government requirements**

The successful tenderer must comply with NSW and Commonwealth Government codes, guidelines and standards listed in **Schedule 1 of Part D**.

### **5 RFT Structure**

---

#### **5.1 RFT Structure**

This RFT comprises 5 Parts as follows:

##### **Overview – Part A**

It is a summary of main outcomes, objectives, requirements and expectations for this proposed Agreement. 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 evaluation phase of the RFT.

##### **Tender Response – Part C**

These are response schedules which are required by the Department of Commerce to evaluate the tenderers' offers.

##### **Deed of Agreement - Part D**

This is the Deed of Agreement containing the terms and conditions of the contract to be executed between the successful tenderer and the Principal.

##### **Special Conditions – Part E (Not Used)**

##### **Statement of Requirements – Part F**

This is a detailed description of the Services to be provided by the successful tenderer including a program delivery plan, required units of competency, learning materials, participant support mechanisms, and the program evaluation strategy. It will form part of the Deed of Agreement to be executed between the successful tenderer and the Principal.

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

### **6 Best Price and Cost Structure**

---

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

Tenderers are to note that in accordance with the **Price Schedule, Part C, Clause 2.1**, the Department of Commerce has a ceiling price of \$6000 per participant for the Business Managers Leadership Development Program. It is therefore important that tenderers realise that they will not be short-listed for further consideration if their tendered price exceeds the ceiling price.





---

**People, Workplace and Planning is a Business Unit  
of the NSW Department of Commerce**

---

**People, Workplace and Planning invites this tender for  
and on behalf of the NSW Department of Commerce**

**Request for Tender  
RFT Id: 0900489**

**Business Managers  
Leadership Development Program**

Agreement No: \_\_\_\_\_

<b>PART B</b>	<b>Conditions of Tender .....</b>	<b>3</b>
1	Definitions of Terms Used in Parts A , B and C .....	3
2	Tender Preparation .....	4
3	Eligibility to Tender .....	4
4	Tender Process .....	5
5	Evaluation of Tenders.....	10
6	Presentations/Site Inspections .....	11
7	Acceptance or Rejection of Tenders.....	11
8	Post Tender Negotiations .....	11
9	Exchange of Information between Government Agencies .....	12
10	Method of Acceptance .....	12
11	Disclosure Information .....	13
12	Complaints Procedure .....	13
<b>ANNEXURE 1 TO PART B (Disclosure of Information).....</b>		<b>14</b>

---

## PART B Conditions of Tender

---

### 1 Definitions of Terms Used in Parts A , B and C

---

Unless the context indicates otherwise, the following terms, where used in Parts A, B and 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 NSW Department of Commerce 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.

**“NSW Department of Commerce”** - The NSW Department of Commerce 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 NSW Department of Commerce, including officers of NSW Procurement – Contracting Services.

**“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](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 Statement of Requirements;
- (b) the terms and conditions of **Part D – Deed of Agreement**;
- (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.

**“LDP”** means the Commerce Leadership Development Program.

**“Business Managers Leadership Development Program”** means the Diploma of Management BSB 51107 and supporting activities and services.

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

- (a) **Part F - Statement of Requirements**;
- (b) the terms and conditions of **Part D – Deed of Agreement**;
- (c) other Parts of this RFT;
- (d) is not in the prescribed form.

---

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

**“Probity Adviser”** means the individual engaged by the Department of Commerce to oversee the tender evaluation process.

**“Services”** means the services sought under this RFT, as detailed in the Statement of Requirements.

**“Statement of Requirements”** means the detailed description of the Services contained in Part F.

## **2 Tender Preparation**

---

### **2.1 Tenderer to inform itself**

Before submitting its tender, a tenderer must:

- 2.1.1 Examine all information relevant to the risks and contingencies and other circumstances having an effect on its Tender; and
- 2.1.2 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.

### **2.2 Information Supplied in Part F – Statement of Requirements**

The information contained in Part F has been provided with due care for the tenderer's guidance, but is not guaranteed as being completely accurate. The NSW Department of Commerce shall not be held liable for any errors or omissions contained in Part F.

## **3 Eligibility to Tender**

---

### **3.1 Legal Entity of Tenderer**

- 3.1.1 Tenders must be submitted by a legal entity or, if a joint tender, by legal entities, with the capacity to contract. The Principal will only enter into an Agreement with such legal entity or entities.
- 3.1.2 The NSW Department of Commerce 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 NSW Department of Commerce reserves the right to reject any tender if the Department judges the tenderer not to have appropriate financial capability.
- 3.2.2 Where the NSW Department of Commerce forms the view that the tenderer does not have the appropriate financial capability, the Department 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 Department.

### **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 NSW Department of Commerce'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 Contact Officer, and officer assisting \***

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

Susan Hungar	* Louella Hodge
P: 02 9372 8841	P: 02 9372 7134
Susan.Hungar@commerce.nsw.gov.au	Louella.Hodge@commerce.nsw.gov.au

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

### **4.2 Conformity of Tenders**

4.2.1 The NSW Department of Commerce seeks Conforming Tenders.

4.2.2 Non-Conforming Tenders may be excluded from the tender process without further consideration at the NSW Department of Commerce's discretion.

### **4.3 Alternative Tenders**

4.3.1 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".

### **4.4 Submission of Tenders**

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

4.4.2 Tenderers must complete all of **Part C – Tender Response** of this RFT, as directed and must not amend any of the questions provided.

4.4.3 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.

4.4.4 All tenders must be provided electronically unless prior arrangements have been made with the Contact Officer prior to lodgement of the tender.

4.4.5 Tenderers must ensure that all attachments can be opened and viewed by Microsoft Excel 2003 and/or Microsoft Word 2003 and/or Adobe Reader 7.0. Other formats for the attachments are only to be submitted if an arrangement has first been made with the contact officer prior to lodgement of the tender.

4.4.6 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.

4.4.7 Tenderers should note that only five files can be submitted electronically at one time. If the tender response is contained in more than five files, tenderers should either create one or more zip files containing one or more files, or submit multiple lots of five files until all files have been submitted.

4.4.8 Tenderers

### **4.5 Tender Lodgement**

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

A Tender must be lodged into one of the designated secure tender boxes below:

4.5.2 Lodge 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). The lodgement can only be made by a registered system user of the NSW Government eTendering system

4.5.3 Alternative Hard Copy or Facsimile Lodgement

(a) Delivery into the Physical Tender Box at:

Tender Box  
NSW Department of Commerce  
Level 3 McKell Building (Ground floor west)  
2-24 Rawson Place Sydney NSW

OR Transmission into the Facsimile Tender Box, at Fax No. 02 9372 8974

- (b) A Hard copy tender must be able to be lodged into the physical tender box deposit slot of 400mm by 90mm, and must be lodged during normal McKell Building opening hours of 7:30am to 6:30pm Monday to Friday (excluding Public Holidays).
- (c) No receipt can be given for hard copy lodgment however written acknowledgement of delivery of a container may be given by prior arrangement. Contact on (02) 9372 8900.
- (d) If the tender is larger in physical size and cannot be broken down, or delivery personnel require a signature as evidence of delivery the tender must be delivered between 8:30am and 4:30pm Monday to Friday (excluding Public Holidays) and only by prior arrangement. Contact Tenders Office on (02) 9372 8900. Commerce personnel will not take delivery of containers that present an OH&S risk in terms of size or weight.
- (e) Tenders must be clearly marked with the RFT Id 0900489.

**4.6 Electronic Tenders**

4.6.1 A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW).

4.6.2 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 website at <https://tenders.nsw.gov.au/commerce>.

4.6.3 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.

4.6.4 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 in the NSW Department of Commerce tenders web site.
- 4.6.5 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.
- 4.6.6 Electronically submitted tenders may be made corrupt or incomplete, for example by computer viruses. The NSW Department of Commerce 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.
- 4.6.7 If a tenderer experiences any persistent difficulty with the NSW Department of Commerce tenders web site in submitting a tender or otherwise, it is encouraged to advise the Contact Officer promptly in writing. In addition, the tenderer should contact the NSW Procurement Client Support Centre on 1 800 NSW BUY (679 289).
- (a) If there is a verified extended defect or failure of the NSW Department of Commerce tenders web site or eTendering system and the Contact Officer is advised, the tender Closing Date and Closing Time may be extended provided that, in the view of the NSW Department of Commerce, the RFT process will not be compromised by such an extension.
- (b) Tenders must be fully received by the Closing Date and Closing Time.
- 4.6.8 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. Tenderers should note that only five separate files can be submitted electronically at one time, however files may be zipped together (optimally below 7MB in total for an upload) separate uploads may be made to enable the full tender to be lodged.
- 4.6.9 If a tenderer provides multiple lodgements, the latest complete 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

#### **4.7 Tender Validity Period**

- 4.7.1 The Tender will remain open for acceptance by the Principal for a period of six (6) months from the Closing Date and Closing Time for tenders. Tenderers are required to state the validity period of their tender in **Part C1, Clause 2.4**.

#### **4.8 Late Tenders**

- 4.8.1 Late tenders will not be considered, except where the NSW Department of Commerce is satisfied that the integrity and competitiveness of the tendering process has not been compromised. The NSW Department of Commerce shall not otherwise penalise any supplier whose tender is received late if the delay is due solely to mishandling by the NSW Department of Commerce.

#### **4.9 Extension of Closing Date and Closing Time**

- 4.9.1 The NSW Department of Commerce may, in its discretion, extend the Closing Date and Closing Time.

---

#### **4.10 Corruption or Unethical Conduct**

4.10.1 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 C1, Clause 7.5**.

4.10.2 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 NSW Department of Commerce, 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.

4.10.3 The NSW Department of Commerce may, in its discretion, invite a relevant tenderer to provide written comments within a specified time before the NSW Department of Commerce excludes the tenderer on this basis.

4.10.4 If the NSW Department of Commerce 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.

#### **4.11 NSW Government Code of Practice for Procurement**

4.11.1 In submitting its tender, the tenderer signifies agreement to comply with the Code.

4.11.2 Failure to comply with the Code may be taken into account by the NSW Department of Commerce when considering the tenderer's tender or any subsequent tender, and may result in the tender being passed over.

#### **4.12 Prescribed Form of Tender**

4.12.1 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.

4.12.2 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.

#### **4.13 Addenda to RFT**

4.13.1 If, for any reason the NSW Department of Commerce, at its sole discretion, requires the RFT to be amended before the Closing Date and Closing Time, an amendment will be issued through the tenders web site, which may be an Addendum, a Notice, or a Change of Tender Period,

4.13.2 In each case, an Addendum becomes part of the RFT.

4.13.3 The NSW Department of Commerce, 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.

4.13.4 Tenderers must check the web site address, <https://tenders.nsw.gov.au/commerce> and download the Addendum.



---

#### **4.14 Tenderer's Costs**

The tenderer acknowledges that the NSW Department of Commerce 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.

#### **4.15 Custody of Tenders after Receipt**

- 4.15.1 Tenders lodged electronically to the NSW Department of Commerce Tenders website will be treated in accordance with the *Electronic Transactions Act 2000*.
- 4.15.2 On receipt of tenders lodged electronically to the NSW Government eTendering system, tenders are encrypted and stored in a secure "electronic tender box."
- 4.15.3 For reasons of probity and security, the NSW Department of Commerce and its agents 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.
- 4.15.4 The e-mail receipt that is sent to the 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.

#### **4.16 Ownership of Tenders**

- 4.16.1 All tenders become the property of the NSW Department of Commerce on submission.
- 4.16.2 The NSW Department of Commerce may make copies of the tenders for any purpose related to this RFT.

#### **4.17 Discontinuance of Tender Process**

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

#### **4.18 Variations to Tenders**

- 4.18.1 At any time after the Closing Date of tenders and before the NSW Department of Commerce accepts any tender received in response to this RFT, a tenderer may, subject to clause 4.18.2, vary its tenders:
  - (a) by providing the NSW Department of Commerce 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.
- 4.18.2 Such a variation may be made either:
  - (a) at the request of the NSW Department of Commerce, or
  - (b) with the consent of the NSW Department of Commerce at the request of the tenderer; but only if,
    - (i) in the case of variation requested by the tenderer under clause 4.18.1(a)-(b), it appears to the NSW Department of Commerce 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 4.18.1(c) the NSW Department of Commerce has confirmed that the draft-documented changes reflect what has been agreed.
- 4.18.3 If a tender is varied in accordance with clause 4.18.1(a) or (b), the NSW Department of Commerce will provide all other tenderers whose tenders have similar characteristics with the opportunity of varying their tenders in a similar way.

---

4.18.4 A variation of a tender under clause 4.18.1 will not be permitted if in the NSW Department of Commerce's view:

- (a) it would substantially alter the original tender; or
- (b) in the case of variation under clause 4.18.1(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 of Tenders**

---

### **5.1 General**

- 5.1.1 Tenders will be assessed against the selection criteria listed below which are not necessarily exhaustive, 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. Tenders that exceed the stated maximum price per participant will not be considered.
- 5.1.3 Information supplied by the tenderer in **Part C – Tender Response** will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the selection criteria listed in this RFT.
- 5.1.4 Tenders that do not include a fully completed **Part C – Tender Response**, 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 NSW Department of Commerce's discretion.
- 5.1.5 The NSW Department of Commerce may assess an Alternative Tender against the evaluation criteria where submitted with a Conforming Tender.

### **5.2 Selection Criteria**

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

- Criterion 1**      **Demonstrated ability to deliver and assess a Diploma of Management (51107) training program of the highest possible quality, in accordance with the Statement of Requirements provided in Part F of this RFT.**
- Criterion 2**      **Demonstrated ability to provide professionally-produced, multi-sensory learning resources in accordance with the Statement of Requirements provided in Part F of this RFT.**
- Criterion 3**      **Demonstrated ability to incorporate structured involvement of line managers of participants in the delivery, assessment and evaluation of Diploma of Management (51107) programs in accordance with the Statement of Requirements provided in Part F of this RFT.**
- Criterion 4**      **Demonstrated ability to provide a high level of learning support to program participants outside of face-to-face sessions in accordance with the Statement of Requirements provided in Part F of this RFT.**
- Criterion 5**      **Provision of a Proposed Program Evaluation Strategy to ensure measurable outcomes against identified levels of the Kirkpatrick Model of Evaluation in accordance with the Statement of Requirements provided in Part F of this RFT.**
- Criterion 6**      **Price (the response to this criterion is evaluated based on the information provided in the Price Schedule - Part C1, Clause 2).**
- Criterion 7**      **Capacity to perform the full scope of the Agreement and to offer places in programs commencing no later than 1 July 2009.**
- Criterion 8**      **Ability to deliver Diploma of Management (BSB 51107) programs in the following locations for the same price per participant, subject to the**

---

**Department being able to attract sufficient participant numbers for a Commerce-only group, or both the Department and the tenderer being able to attract sufficient participant numbers for a mixed/open course group.**

Sydney CBD  
Parramatta  
Baulkham Hills  
Lismore  
Newcastle  
Queanbeyan  
Wollongong

**Criterion 9 Compliance with the Deed of Agreement – Part D.**

**Criterion 10 Financial capacity and stability.**

**Criterion 11 Compliance with NSW Government Procurement Policy and other applicable NSW and Commonwealth Government policies, standards and legislation.**

Tenderers are required to address the Selection Criteria at Part C1, Clauses 4 and 5.

## **6 Presentations/Site Inspections**

---

- 6.1.1 The NSW Department of Commerce, may during the evaluation of tenders, undertake site inspections of tenderer's or their subcontractor's proposed premises.
- 6.1.2 The NSW Department of Commerce, 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.
- 6.1.3 Receiving a presentation by a tenderer in no way represents a commitment by the NSW Department of Commerce to accept any aspect of the tender.
- 6.1.4 All information obtained during the course of presentation or site inspection may be taken into consideration in the evaluation of tenders.

## **7 Acceptance or Rejection of Tenders**

---

- 7.1 The NSW Department of Commerce may assess an Alternative Tender against the evaluation criteria when submitted with a Conforming Tender.
- 7.2 The NSW Department of Commerce 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 NSW Department of Commerce's opinion, is substantially a Conforming Tender.
- 7.3 The NSW Department of Commerce is not bound to accept the lowest tender.
- 7.4 If the NSW Department of Commerce rejects all the tenders received it may invite fresh tenders based on the same or different criteria (Statement of Requirements and details contained in Alternative Tenders will not be used as the basis for the calling of new tenders).

## **8 Post Tender Negotiations**

---

- 8.1 Before making any determination as to acceptance or rejection of tenders the NSW Department of Commerce 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.

- 8.2 The NSW Department of Commerce will generally not enter into negotiations to amend standard conditions of contract contained in **Part D – Deed of Agreement**.
- 8.3 If the NSW Department of Commerce 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 NSW Department of Commerce and made clear to the participants before the commencement of negotiation.
- 8.4 The NSW Department of Commerce may at its absolute discretion elect to conduct post tender negotiations under Clause 8.1 with more than 1 tenderer in the event that it decides that the closeness of the tenders or timing constraints warrants doing so.

## **9 Exchange of Information between Government Agencies**

---

- 9.1 Lodgement of a tender will itself be an authorisation by the tenderer to the NSW Department of Commerce 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.
- 9.2 The provision of the information by the NSW Department of Commerce 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 NSW Department of Commerce and the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the tenderer arising out of the communication
- 9.3 In the evaluation of tenders, the NSW Department of Commerce may take into account any information about the tenderer that the NSW Department of Commerce receives from any source.
- 9.4 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 NSW Department of Commerce to collect such information from third parties, and to use and exchange such information in accordance with this Clause 9.4.
- 9.5 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 NSW Department of Commerce. A summary of the provisions is contained in the Annexure 1 to Part B (Disclosure Information).

## **10 Method of Acceptance**

---

- 10.1 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.

---

## **11 Disclosure Information**

---

- 11.1 Following the NSW Department of Commerce's decision, all tenderers will be notified in writing of the outcome of their Tenders.
- 11.2 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>
- 11.3 An outline of these requirements can be found in Annexure 1 to Part B of this RFT.

## **12 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, or the Statement of Requirements in Part F, it is invited to write to:

Chairperson  
State Contracts Control Board  
NSW Department of Commerce  
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 11.2 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"> <li>a concise description of the proposed works, goods or services the subject of the tender call;</li> <li>the date responses to the tender call close and where responses are lodged; and</li> <li>location of the tender call documents.</li> </ul> <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 11.2, the following **contract** information is required to be disclosed -

Contract size and type	Level of disclosure	Basis of disclosure
<p><b>Class 1 contracts</b> All government contracts with estimated value \$150,000 or above).</p>	<ul style="list-style-type: none"> <li>a) The name and business address of the contractor;</li> <li>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;</li> <li>c) The date on which the contract became effective and the duration of the contract;</li> <li>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;</li> <li>e) The estimated amount payable to the contractor under the contract;</li> <li>f) A description of any provisions under which the amount payable to the contractor may be varied;</li> </ul>	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>

	<p>g) A description of any provisions with respect 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><b>Class 2 contracts</b> Class 1 contracts (ie government contracts with estimated value \$150,000 or above) which also:</p> <ul style="list-style-type: none"> <li>- result from a direct negotiation where there has not been a tender process; or</li> <li>- 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</li> <li>- involve operation or maintenance obligations for 10 years or longer; or</li> <li>- involve a privately financed project as defined by relevant Treasury guidelines; or</li> <li>- involve a transfer of land or other asset to a party in exchange for the transfer of land or other asset to an agency.</li> </ul>	<p>The information required for class 1 contracts and</p> <ul style="list-style-type: none"> <li>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;</li> <li>b) Particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer;</li> <li>c) The results of any cost-benefit analysis of the contract conducted by the agency;</li> <li>d) The components and quantum of the public sector comparator if used;</li> <li>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);</li> <li>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;</li> <li>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</li> <li>h) Particulars of any other key elements of the contract.</li> </ul>	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>
<p><b>Class 3 contracts</b> 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"> <li>• the reasons for not publishing the contract or provisions;</li> <li>• a statement as to whether the contract or</li> </ul>	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>

---

	provisions will be published and, if so, when; and <ul style="list-style-type: none"> <li>• 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.</li> </ul>	
--	---	--

### 3. Requests for disclosure of additional contract information

Tenderers must acknowledge that any person may make a specific request to the State Contracts Control NSW Department of Commerce 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.





**People, Workplace and Planning is a Business Unit  
of the NSW Department of Commerce**

**People, Workplace and Planning invites this tender for  
and on behalf of the NSW Department of Commerce**

## **TENDER RESPONSE**

**RFT Id: 0900489  
Business Managers  
Leadership Development Program**

**Tender Issue Date: 23/03/09**

**Closing Date: 22/04/09**

**Closing Time: 9:30 am Sydney Time (AEST)**

Your Company's Legal Entity: \_\_\_\_\_

Your Company's Trading Name: \_\_\_\_\_

Your Company's ABN: \_\_\_\_\_

Your Company's Street Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_  
<insert name of person to whom enquiries should be directed>

Contact Phone: \_\_\_\_\_

## TABLE OF CONTENTS

<b>PART C1</b>	<b>INFORMATION SUPPLIED IN RESPONSE TO PARTS B AND F .....</b>	<b>3</b>
1.	INTRODUCTION .....	3
1.1	<i>Use of Information</i> .....	3
1.2	<i>Responses</i> .....	3
1.3	<i>Additional space</i> .....	3
2	PRICING AND RELATED FACTORS .....	4
2.1	<i>Price Schedule</i> .....	4
2.2	<i>Price Basis</i> .....	5
2.3	<i>Settlement discounts</i> .....	5
2.4	<i>Tender validity period</i> .....	5
3.	CERTIFICATION .....	6
3.1	<i>Quality Management Certification</i> .....	6
3.2	<i>Mandatory Certification Requirement</i> .....	6
4.	SELECTION CRITERIA .....	7
5.	CAPACITY TO PERFORM THE AGREEMENT .....	15
6.	SCHEDULE OF INSURANCE .....	20
6.1	<i>Worker's Compensation Insurance</i> .....	20
6.2	<i>Public Liability Insurance</i> .....	20
6.3	<i>Professional Indemnity Insurance</i> .....	20
7.	OTHER INFORMATION REQUIRED .....	21
7.1	<i>Details of Ownership</i> .....	21
7.2	<i>Contracting as Agent/Trustee</i> .....	21
7.3	<i>Current Legal Proceedings</i> .....	21
7.4	<i>Referee Details</i> .....	22
7.5	<i>Conflicts of Interests</i> .....	23
8.	FURTHER INFORMATION .....	24
9.	ADDENDA TO THIS RFT AFTER ISSUE .....	24
9.1	<i>Compliance with Addenda</i> .....	24
<b>PART C2</b>	<b>STATEMENT OF COMPLIANCE WITH STATEMENT OF REQUIREMENTS (PART F)</b>	
	.....	<b>25</b>
<b>PART C3</b>	<b>ACKNOWLEDGEMENT AND CONFIRMATION OF TENDER .....</b>	<b>32</b>

# PART C The Tender Response

## PART C1 INFORMATION SUPPLIED IN RESPONSE TO PARTS B AND F

### 1. Introduction

#### 1.1 Use of Information

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 Responses

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

Tenderers are required to respond individually to each of the selection criteria outlined in the **RFT Part B, Clause 5.2**. 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. Please provide responses to the selection criteria in software applications compatible with Microsoft Office 2003, and cross reference your responses to the criterion the response addresses.

#### 1.3 Additional space

If additional space is required for any item, please attach additional pages, clearly identifying the relevant clause(s) that the information addresses.

## 2 Pricing and related factors

The Department of Commerce has allocated a maximum value of \$6,000 per person to develop our existing managers who are currently responsible for an operational unit or function and who have been in a position of management for longer than one year. This allocation must cover all pre, during and post-program delivery; provision of Myers Briggs Type Indicator to all participants; unit and course assessment; overall program evaluation; structured involvement of line managers; all multi-sensory learning resources; hire of venue (where necessary) and catering (minimal).

The Department of Commerce will be responsible for training venue hire and catering, although these expenses are expected to be minimal as Government venues will be used wherever possible and only minimal morning and afternoon tea will be provided. Please note that the costs of participant travel, accommodation and release to attend training will be met by the participants' Business Unit and are not part of the \$6,000 per person allocation.

**Tenderers must provide all other program components. Tenders which exceed the maximum value of \$6,000 per participant will not be considered.**

### 2.1 Price Schedule

You must complete the Price Schedule provided below. Please note that the Business Managers Leadership Development Program leads to the achievement of a Diploma of Management (BSB 51107), which is a recognised education/training program. Therefore, the program does not attract GST.

DESCRIPTION (Refer to Part F, Clause 2 of this RFT for the Specific Requirements of the Program/Project Delivery)	TENDERED RATE
1. Pre-program Specific Requirements (refer to Part F, Clause 2)	Price per participant (excluding GST) \$ _____
2. Pre-course Specific Requirements (refer to Part F, Clause 2)	Price per participant (excluding GST) \$ _____
3. During-course Specific Requirements (refer to Part F, Clause 2)	Price per participant (excluding GST) \$ _____
4. Post-course Specific Requirements (refer to Part F, Clause 2)	Price per participant (excluding GST) \$ _____
5. Ongoing program Specific Requirements (refer to Part F, Clause 2)	Price per participant (excluding GST) \$ _____

<b>Total Price Per Participant for all Specific Requirements described in Part F, Clause 2 and items 1 - 5 of this Price Schedule</b>	<b>Total Price per Participant of all Components (excluding GST)</b>  \$ _____
---	--

## 2.2 Price Basis

2.2.1 Tenderers must indicate below the price basis of your Tender. Select the price basis from one of the options below (tick corresponding box below):

**Option 1:** Firm for the entire duration of the Agreement three (\_3\_) years plus two (\_2\_) years optional extension period (tick box below if this is your preferred price basis).

**Option 2:** Firm for the first twelve (12) months of the term of the Agreement then subject to review at the end of that period and each twelve (12) months following and at the request of the Contractor based on CPI (tick box below if this is your preferred price basis).

2.2.2 Indicate your preferred options using the boxes below.

**Option 1** ☐ (proceed to Clause 2.3)

**Option 2** ☐ (proceed to Clause 2.2.3)

2.2.3 Where you have nominated **Option 2** as your preferred price basis, you must indicate the CPI at the Base Date.

CPI	Base Date (date or quarter closest to lodgement date of the tender)

## 2.3 Settlement discounts

The Tender Price is subject to a settlement discount of:

2.3(a)  for payment within 14 days from the date of receipt of invoice.

2.3(b)  for payment made during the month following that in which the invoice has been rendered.

2.3(c)  for payment within  days from the date of receipt of invoice.

## 2.4 Tender validity period

Indicate below the period for which your Tender will remain valid for acceptance from the deadline for lodgement of tenders.

**N.B.** The minimum validity period is six months from the deadline for lodgement of tenders.

---



---



---

### 3. Certification

#### 3.1 Quality Management Certification

Indicate whether your company has attained certification under AS/NZS ISO 9001:2000 (including if you are in the process of transition from AS/NZS ISO 9001:1994 or AS/NZS ISO 9002:1994 to AS/NZS ISO 9001:2000) or is proceeding towards getting certification.

**Yes/No**

---



---

##### 3.1.1 If quality management certification is being sought

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

---



---



---

#### 3.2 Mandatory Certification Requirement

Please provide evidence of current Registered Training Organisation status with the NSW Vocational Education and Training Accreditation Board (VETAB) and presence on the National Training Information System with the Diploma of Management (BSB 51107) on scope.

Description of Evidence of Current RTO Status with VETAB	Description of NTIS Identification Information

#### 4. Selection Criteria

##### 4.1 Demonstrated ability to deliver and assess a Diploma of Management (BSB 51107) training program of the highest possible quality, in accordance with the Statement of Requirements provided in Part F of this RFT.

Please respond to this selection criterion in the space below, and add additional pages if required.

---



---



---

**Tenderers are also required to complete the following tables and provide additional statements as outlined below. Please add additional pages if necessary.**

**Table 1 – Proposed Program Delivery Plan**

Please provide a Proposed Program Delivery Plan in accordance with the Statement of Requirements provided in Part F, of this RFT. The plan should include:

- Title of each session.
- Unit(s) of competency covered in each session.
- Session content and structure, including number, timing and length of sessions (please ensure that this information relates to each delivery pattern that could be requested by Commerce, ie half-day/fortnightly; full-day/monthly; and multi-day workshops).
- Learning activities to be used, including learning activities that illustrate learner-centred, not facilitator-centred nature of delivery; learning activities that demonstrate experiential, practical nature of delivery, eg case studies and simulations; and learning activities that reflect workplace environment of participants (covered in more detail under Table 3 below).
- Identified points of integration of Commerce-based case studies and Commerce guest speakers into the program (covered in more detail under Table 2 below).
- Involvement of participants' line managers (covered in more detail under Criterion 4.3 and Table 6 below).
- Assessment activities (covered in more detail under Table 4 below).
- Approximate hours per week required for study outside of face-to-face workshop time.

Title of session	Unit(s) of Competence covered	Session content and structure	Learning and assessment activities	Other information including approximate hours per week of study

**Table 2 – Contextualisation to the NSW Public Service**

Please provide a description of how your organisation will ensure that delivery of the units of competency will reflect the environment and context of the NSW Public Service. If available, please attach at least two examples of program activities that have been tailored to the context and environment of the NSW Public Service.

Title of Session	Unit(s) of Competence Covered	Methodology for tailoring context to the NSW Public Service (please attach at least two examples of program activities that have been tailored to the NSW Public Service)

**Table 3 – Tailoring to Client**

Please provide an explanation of how the facilitators used by your organisation will tailor the delivery of the units of competency in order to reflect the context and environment of the different Business Units of the Department of Commerce. If available, please provide examples of case studies or guest speakers that your organisation has used in similar programs to tailor the content of the program to your clients. You should remove any commercial-in-confidence or other confidential information from the examples.

Title of Session	Unit(s) of Competence Covered	Description of client-based case studies/guest speakers used in previous Diploma of Management or similar programs (please provide at least one sample case study with client-identifying information removed)

**Table 4 – Assessment**

Please provide a description of the assessment events you will be using to determine competence, in accordance with the Statement of Requirements provided in Part F of this RFT, including samples of holistic and integrated activities.

Title of Session	Unit(s) of Competence Covered	Description of Assessment Events/Activities Used

**Statement of Ability to Provide Electronic/Online Access and Submission of Assessment Events**

Please provide a statement acknowledging your organisation's ability to provide access to all assessment events electronically/online. Please also provide a statement acknowledging your organisation's ability to allow program participants to be able to submit all assessment events either in person through attendance at face-to-face workshops, or electronically/online.

---



---



---



**Statement of Ability to Assess and Record Outcomes on Statements of Attainment as either Competent or Not Yet Competent**

Please provide a statement acknowledging your organisation's ability to assess and record outcomes of all units of competency as either Competent or Not Yet Competent.

---

---

---

**RTO Assessment Policy and Procedures**

Please attach a copy of your organisation's Assessment Policy and Procedures to your tender response.

**Ability to integrate Commerce-purchased learning resources within the program**

Are you able and willing to integrate Commerce-purchased learning resources such as 50 Les50ns into the Program Delivery Plan?

**Yes/No**

If you answered 'No', please explain.

---

---

---

**4.2 Demonstrated ability to provide professionally-produced, multi-sensory learning resources in accordance with the Statement of Requirements provided in Part F of this RFT.**

Please respond to this selection criterion in the space below, and add additional pages if required.

---

---

---

**Tenderers are also required to complete the following table and provide additional statements as outlined below. Please add additional pages if necessary.**

**Table 5 – Learning Resources**

Please provide a description of the learning resources used in the program, and at least two physical examples of resources in two different sensory modes (eg one in audio mode and one in visual mode).

Title of Session	Unit(s) of Competence Covered	Learning Resources Used (please provide at least two examples of Learning Resources in at least two different sensory modes, eg audio and visual)

**Statement of Ability to Provide Electronic/Online Versions of Learning Resource Material**

Please provide a statement acknowledging your organisation's ability to provide access to all learning resource materials electronically/online and for audio/visual material, in formats that can be downloaded onto Personal Computers (PCs), MP3 players, and PDAs such as Blackberries.

---



---



---

**4.3 Demonstrated ability to incorporate structured involvement of line managers of participants in the delivery, assessment and evaluation of the Diploma of Management (BSB 51107) programs in accordance with the Statement of Requirements provided in Part F of this RFT.**

Please respond to this selection criterion in the space below, and add additional pages if required.

---



---



---

**Tenderers are also required to complete the following table and add additional pages if necessary.**

**Table 6 – Structured Involvement of Line Managers**

Please provide a description of the structured involvement of line managers of participants in the delivery, assessment and evaluation of current or previous Diploma of Management or similar programs.

Please provide the contact details of at least two (2) line managers of participants in current or previous programs who can provide corroboration of their structured involvement in these programs. This information should be provided in **Part C1, Clause 7.4 Referee Details** below.

Title of Session/ Activity	Description of Involvement of Line Manager	Intended Outcome of Involvement of Line Manager

**4.4 Demonstrated ability to provide a high level of learning support to program participants outside of face-to-face sessions in accordance with the Statement of Requirements provided in Part F of this RFT.**

Please respond to this selection criterion in the space below, and add additional pages if required.

---



---



---

**Tenderers are also required to complete the following table and add additional pages if necessary.**

**Table 7 – Learning Support**

Please use the table below to provide information about the learning support you provide to program participants outside of face-to-face session times. Please remove identifying information on attached documentation in order to ensure privacy and confidentiality.

Please provide the details of at least two referees who can corroborate the provision of learning support. This information should be provided below in **Part C1, Clause 7.4 - Referee Details**.

Type of Support Provided	Samples (eg emails, client testimonials, client feedback forms, program evaluation reports provided to previous clients). Please remove identifying information on these documents in order to ensure privacy and confidentiality.

**4.5 Provision of a Proposed Program Evaluation Strategy to ensure measurable outcomes against identified levels of the Kirkpatrick Model of Evaluation in accordance with the Statement of Requirements provided in Part F of this RFT.**

Please attach your Proposed Program Evaluation Strategy addressing the elements below in accordance with **Part F, Clause 4**.

Type of data to be collected	Data collection tool/source of information	Timing of data collection	Reporting parameters	Reporting time frame
------------------------------	--	---------------------------	----------------------	----------------------

Tenderers are also required to complete the following tables and add additional pages if necessary.

**Table 8 – Evidence of Experience in Data Collection and Program Evaluation**

Please use the table below to provide information about previous experience in evaluating programs against the identified levels of the Kirkpatrick Model. Please provide the names of at least two clients who can corroborate this information (refer to **Part C1, Clause 7.4 – Referee Details**).

Kirkpatrick Level/Outcome	Type of Data Collection Instrument Used (attach blank example)	Name of Client(s) With Whom Used (include contact details in Part C1, Clause 7.4 – Referees)
Program Attendance		
Qualification Completion Rate		
Level 1 (Evaluation by participants of learning experience)		
Level 2 (Evaluation of amount of learning achieved by participants)		
Level 3 (Evaluation of application of learning by participants and/or behaviour change by participants as a result of the program)		
Level 4 – Commerce responsibility (Evaluation of impact of program on organisational performance)	N/A – Commerce to determine this, although if your organisation has evidence of this from previous programs, please submit it.	N/A - although if your organisation has evidence of this from previous programs, please submit it.
Level 4 – RTO responsibility (Evaluation of Return on Investment of program to individuals and/or client organisation)		

- 4.6 Price (no response necessary here as this criterion is evaluated based on the information provided in the Price Schedule - Part C1, Clause 2.1)
- 4.7 Capacity to perform the full scope of the Agreement and to commence first program delivery no later than 1 July 2009.

Please respond to this selection criterion in the space below, and add additional pages if required.

---

---

---

Tenderers please note that the information provided in **Part C1, Clause 5** below will also be used to evaluate tenderers' capacity to perform the Agreement.

- 4.8 Ability to deliver Diploma of Management (BSB 51107) programs in the following locations, subject to the Department being able to attract sufficient participant numbers for a Commerce-only group, or both the Department and the tenderer being able to attract sufficient participant numbers for a mixed/open course group.**

Sydney CBD  
Parramatta  
Baulkham Hills  
Lismore  
Newcastle  
Queanbeyan  
Wollongong

Please respond to this selection criterion in the space below, and add additional pages if required.

---

---

---

- 4.9 Compliance with the Deed of Agreement – Part D**

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

**Yes/No**

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

---

---

---

- 4.10 Financial capacity and stability**

No response required as the information provided in **Part C1, Clause 5** below will also be used to evaluate tenderers' financial capacity and stability.

- 4.11 NSW Government 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**

Tenderers must comply with the Code and agree to provide periodic evidence of compliance with the Code and access to all relevant information to demonstrate compliance for the duration of any agreement that may be awarded?

Will you comply with the Code and the requirements imposed by it?

**Yes/No**

**4.12 Competitive Neutrality**

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

**Yes/No**

If “No”, provide details

---

---

---

**4.13. Compliance with relevant legislation and standards**

Do you agree to comply with the following acts, regulations and standards:

NSW Occupational Health and Safety Act (2000)  
NSW Occupational Health and Safety Regulation (2001)  
NSW Workers Compensation Act (1987)  
Australian Quality Training Framework 2007

**Yes/No**

If No, please provide an explanation:

---

---

---

## 5. Capacity to Perform the Agreement

### 5.1 Human Resource Capability

**Table 9 – Human Resource Details**

Use the table below to provide details of qualifications and experience of key personnel to be involved in the operation of the proposed agreement. Attach additional pages if required.

Tenderers must be willing to provide representatives of the Department of Commerce with the opportunity to observe the practice of all proposed facilitators/presenters/coaches prior to consenting to their use in the program. The Department of Commerce reserves the right to approve/endorse all facilitators/coaches/ presenters used in the program.

Name (Surname/ Christian Name)	Length of Service	Employment Status (Employee/Sub- Contractor)	Qualifications	No. of Years Relevant Experience	Area of Expertise

### 5.2 Key Contact/Relationship Manager

Please provide the details of the person who will be the Key Contact/Relationship Manager for this Agreement if you are the successful tenderer. The Key Contact/Relationship Manager will be responsible for maintaining ongoing telephone/email support during business hours and provide information/reporting to the Commerce project coordinator for the duration of the program.

---



---



---

### 5.3 Information on sub-contractors

**Table 10 – Sub Contractor Details**

For any facilitators, coaches or presenters listed above under **Table 9 – Human Resource Details** that are identified as Sub-Contractors, please give details as outlined below. Attach additional pages as required.

<b>Sub-contractor</b>	
<b>If a company, Company Name</b>	
<b>If a partnership, Partnership Name</b>	
<b>If an individual, Individual's name</b>	
<b>Trading Name</b>	
<b>Australian Business Number (ABN)/Company Number (ACN</b>	
<b>Registered Office (if a company)</b>	
<b>Site Address (principal place of business)</b>	
<b>Postal Address (if different to site address)</b>	
<b>Contact Telephone Number:</b>	
<b>Contact Email Address:</b>	
<b>Contact Fax Number:</b>	
<b>Website address</b>	

#### 5.4 Years in business

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

---

#### 5.5 Financial viability

Please respond to this selection criterion in the space below, and add additional pages if required.



---



---

**Tenderers are also required to complete the following table and add additional pages if necessary.**

**Table 11 – Annual Turnover**

Use the table below to provide in \$A the annual turnover for the past three years relating to the delivery and assessment of the Diploma of Management or equivalent qualification (BSB 511107, BSB 50401 or BSB 51104).

Name of Organisation	ABN	Annual Australian turnover relating to the Diploma of Management or equivalent qualification (BSB 511107, BSB 50401 or BSB 51104) for the past 3 Years in A\$		Ability to provide Annual Financial Reports for the past three financial years if requested  Yes/No
		Year	A\$	

## 5.6 Previous experience

Please respond to this selection criterion in the space below, and add additional pages if required.

---



---



---

**Tenderers are also required to complete the following tables and add additional pages if necessary.**

**Table 12 – Previous government contracts**

In the table below, please provide details of any of the following agreements/contracts with relevant entities. Please attach additional pages as required.

- Any previous Agreement(s) including Period Contract(s) with the State Contracts Control Board.
- Any previous Agreement(s) or Contract(s) with the Client Agency or other NSW Government Agencies.
- Any previous Agreement(s) or Contract(s) with the Commonwealth Government or any other State or Local Government.

Qualification Title	Contract No. (if applicable)	Contract Name	Client Organisation	Contract Period	Contract Manager (If not supplied below under Part C1, Clause 7.4 – Referee Details)	Contract Manager Contact Details (If not supplied below under Part C1, Clause 7.4 – Referee Details)

**Table 13 – Other previous experience**

Use the table below to provide information about other previous experience in the provision of leadership development programs on a similar scale to the current RFT, particularly programs that involved similar Services/Deliverables, as identified in **Part F, Clause 2**.

Qualification Title (if applicable)	Program Name (if applicable)	Client Organisation	Target Group	Client Contact Information (If not supplied below under Part C1, Clause 7.4 – Referee Details)

### 5.7 Previous standard of performance

If you have undertaken any previous Agreements or Contracts for the delivery of similar programs, please provide details of any assessment undertaken of your performance. **If performance reports were prepared in respect of your performance, please provide copies.**

### 5.8 Other comments on capacity or ability to perform the agreement

Please provide any additional information you wish to add to support your tender in relation to your capacity or ability to perform the agreement. You may wish to address your capacity to perform the Agreement in the context of current commitments of your organisation. You may also wish to state here information regarding the innovative aspects and performance of the tendered Services/Deliverables by your organisation.

Tenderers are also required to complete the following table and add additional pages if necessary.

**Table 14 – Additional Services**

Please provide in the table below information on value added services you provide within the existing price per participant, as identified in **Part F, Clause 3.3 – Value added services**.

Name of Additional Service Provided	Purpose of Additional Service Provided	Description of Additional Service (please provide a demonstration or sample of additional service)

## **6. Schedule of Insurance**

### **6.1 Worker's Compensation Insurance**

Insurance Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone number: \_\_\_\_\_  
Policy number: \_\_\_\_\_  
Expiry Date: \_\_\_\_\_

### **6.2 Public Liability Insurance**

Insurance Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone number: \_\_\_\_\_  
Policy number: \_\_\_\_\_  
Expiry Date: \_\_\_\_\_  
Limit of Liability: \_\_\_\_\_

### **6.3 Professional Indemnity Insurance**

Insurance Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone number: \_\_\_\_\_  
Policy number: \_\_\_\_\_  
Expiry Date: \_\_\_\_\_  
Limit of Liability: \_\_\_\_\_

## 7. Other Information Required

### 7.1 Details of Ownership

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

---

---

---

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

---

---

---

---

### 7.2 Contracting as Agent/Trustee

- 7.2.1 If you are the successful tenderer, and are asked to sign an Agreement, do you intend to enter into the Agreement in your own right or as agent or trustee for some other entity or entities? If the latter, provide full details.

---

---

---

---

### 7.3 Current Legal Proceedings

- 6.3.1 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 and add additional pages if required:

---

---

---

---

#### 7.4 Referee Details

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. Please cross reference each Referee to the relevant item(s) in **Part C1, Clauses 4 and 5** above in this document.

##### **Referee No 1.**

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Company: \_\_\_\_\_

No. of Years tenderer has provided required Service to Referee: \_\_\_\_\_ years

Role in relation to services provided by your organisation, eg Program Participant, Line Manager of Participant, Program Administrator \_\_\_\_\_

Areas in which Referee can provide feedback (cross reference to the relevant clauses in **Part C1, Clauses 4 and 5** above) \_\_\_\_\_

Telephone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Email Address: \_\_\_\_\_

##### **Referee No 2.**

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Company: \_\_\_\_\_

No. of Years tenderer has provided required Service to Referee: \_\_\_\_\_ years

Role in relation to services provided by your organisation, eg Program Participant, Line Manager of Participant, Program Administrator \_\_\_\_\_

Areas in which Referee can provide feedback (cross reference to the relevant clauses in **Part C1, Clauses 4 and 5** above ) \_\_\_\_\_

Telephone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Referee No 3.**

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Company: \_\_\_\_\_

No. of Years tenderer has provided required Service to Referee: \_\_\_\_\_ years

Role in relation to services provided by your organisation, eg Program Participant, Line Manager of Participant, Program Administrator \_\_\_\_\_

Areas in which Referee can provide feedback (cross reference to the relevant clauses in **Part C1, Clauses 4 and 5** above) \_\_\_\_\_

Telephone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Email Address: \_\_\_\_\_

Please provide information for as many additional referees as required covering all relevant Clauses in **Part C1, Clauses 4 and 5**, above.

**7.5 Conflicts of Interests**

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

**Yes/No**

If the answer is "Yes, disclose conflict of interest

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**8. Further information**

- 8.1 Provide below any further information you believe is relevant to your Tender, and cross-reference to any Clauses of this RFT if applicable.

---

---

---

**9. Addenda to this RFT after issue**

**9.1 Compliance with Addenda**

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

**YES/NO/THERE HAVE BEEN NO ADDENDA TO THIS RFT**

If **NO**, provide reasons below

---

---

---

---

---

---

---



**PART C2 Statement of Compliance with Statement of Requirements (Part F)**

Required Item	Statement of Compliance by Tenderer
	<p>Tenderers must state whether they comply or do not comply with each item. If tenderers do not comply, a full statement of deviations must be given, specifying the relevant clause/s or Deliverable/s and the extent of non-compliance to each.</p>
<p><b>1. Project</b></p> <p>The name of this project is the Business Manager Leadership Development Program for the Department of Commerce.</p>	<hr/>
<p><b>2. Specific Requirements for Program/Project Delivery (as stated in Part F, Clause 2).</b></p> <p><b>Pre-program deliverables to be provided by 1 July 2009.</b></p> <ul style="list-style-type: none"> <li>• Current Registered Training Organisation status with the NSW Vocational Education and Training Accreditation Board (VETAB) and presence on the National Training Information System (NTIS) with the Diploma of Management (BSB 51107) on scope.</li> <li>• Establishment of a joint project management team with representatives of the successful tenderer and Commerce Organisational Development.</li> <li>• A review by the successful tenderer of internal Commerce documents including organisational culture surveys and human resource metrics to provide a historical organisational context for the program. Organisational Development will provide this material to the program provider.</li> </ul>	<hr/> <hr/> <hr/>

Required Item	Statement of Compliance by Tenderer
<p><b>Pre-program deliverables to be provided by 1 July 2009, continued.</b></p> <ul style="list-style-type: none"> <li>• Provision of a <b>Final Program Delivery Plan</b> including session content, learning activities, assessment activities, number, timing and length of sessions for relevant delivery pattern identified by Commerce (half-day fortnightly; full-day monthly; multi-day workshops) and process for involving participants' line managers throughout the program.</li> <li>• All sessions, learning and assessment activities in the program delivery plan must incorporate the principles of adult learning theory).</li> <li>• Where possible and appropriate, learning and assessment activities in the program delivery plan should reflect the environment and context of the NSW Public Service generally, and the Department of Commerce specifically.</li> <li>• All sessions, learning and assessment activities in the program delivery plan must reflect a learner-centred, as opposed to facilitator-centred methodology.</li> <li>• Experiential learning opportunities must be incorporated into the program delivery plan through such activities as case study analysis and simulations.</li> <li>• Where possible and appropriate, assessment events identified in the program delivery plan should be integrated and holistic. Integrated assessment activities are those that reflect the participants' workplace environment and job role. Holistic assessment activities are those that assess elements from two or more units of competency.</li> <li>• Program delivery plan must incorporate structured involvement of line managers of participants.</li> <li>• Program delivery plan must identify points of integration of Commerce-based case studies and Commerce guest speakers into the program.</li> </ul>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>

Required Item	Statement of Compliance by Tenderer
<p><b>Pre-program deliverables to be provided by 1 July 2009, continued.</b></p> <ul style="list-style-type: none"> <li>• Provision of <b>Final Program Evaluation Strategy</b> incorporating data collection instruments to be used, and data analysis and reporting processes which will provide information on the participants' attendance and completion rates and the identified levels of the Kirkpatrick Model of Evaluation.</li> </ul>	<hr/> <hr/>
<p><b>Pre-course deliverables to be provided prior to commencement of each course.</b></p> <ul style="list-style-type: none"> <li>• Commencement of first program no later than 1 July 2009.</li> <li>• Provision of the pre course introduction, overview and assessment session.</li> <li>• Involvement of participants' line managers in pre-course introduction, overview and assessment session.</li> </ul>	<hr/> <hr/> <hr/>
<p><b>During-course deliverables to be provided during each course.</b></p> <ul style="list-style-type: none"> <li>• Delivery and assessment of Diploma of Management (BSB 51107) and identified units of competency via face-to-face learning using Commerce-endorsed facilitators/presenters/coaches.</li> <li>• Provision of all professionally-produced, multi-sensory learning materials/resources both electronically/online (audio/visual) and as a text copy (visual). Audio/visual material must be able to be downloaded onto Personal Computers (PCs), MP3 players and Personal Digital Assistants (PDAs) such as Blackberries. Where possible/appropriate, learning materials/resources should incorporate Commerce and LDP logos.</li> <li>• Learning materials/resources must reflect adult learning principles articulated above and address different learning styles including auditory, visual and kinaesthetic learning styles.</li> </ul>	<hr/> <hr/> <hr/> <hr/>

Required Item	Statement of Compliance by Tenderer
<p><b>During-course deliverables to be provided during each course, continued.</b></p> <ul style="list-style-type: none"> <li>• Provision and completion of Myers Briggs Type Indicator (MBTI) instrument to participants and full analysis/debrief of process including using knowledge to Myers Briggs Typology to support team communication strategies. Also provision to Commerce Program Coordinator of summary of MBTI types in each cohort. Structured involvement in the program of line managers of participants.</li> <li>• Provision of a minimum of three coaching/review sessions with the participant, the participant's line manager and the program facilitator (beginning, middle and end of program).</li> <li>• Provision of learning support mechanisms, value-adding activities and strategies for maximising participants' completion of the program, including telephone, email and face-to-face discussions with participants, line managers of participants and Department of Commerce program administrators; site visits; participation in client research activities and support for individual/group projects.</li> <li>• Provision of a mid-course review session (may be combined with mid-course individual coaching/review sessions).</li> <li>• Provision of assessment events to be able to make professional judgements about participants' competence in all units of competence.</li> <li>• All assessment events must have the option of being able to be accessed online/electronically, and lodged online/electronically. Assessment events must also be able to be provided to, and collected from, participants during face-to-face training sessions.</li> <li>• All units of competency must be assessed and outcomes of the assessment process must be able to be recorded on Statements of Attainment as either Competent or Not Yet Competent.</li> </ul>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>

Required Item	Statement of Compliance by Tenderer
<p><b>During-course deliverables to be provided during each course, continued.</b></p> <ul style="list-style-type: none"> <li>• Ongoing provision of support, information and feedback to program coordinator by Key Contact/Relationship Manager.</li> <li>• Provision of graduation and project presentation session.</li> <li>• Administration of session feedback and program evaluation instruments</li> <li>• Fortnightly, monthly or as needed reports on attendance, withdrawals, deferments, and any feedback from participants at identified levels of the Kirkpatrick Evaluation Model.</li> <li>• Head count of participants in the week before a progress payment falls due.</li> </ul>	<hr/> <hr/> <hr/> <hr/> <hr/>
<p><b>Post-course deliverables to be provided within three months of the completion of each course.</b></p> <ul style="list-style-type: none"> <li>• Post course evaluation and review session (may be combined with post-course individual coaching/review sessions).</li> <li>• Re-focus session (two months after course completion).</li> <li>• Provision of a Statement of Units Attained to all participants and the Diploma of Management (BSB 51107) qualification awarded to all eligible participants.</li> <li>• Report on completion rates of course participants and analysis of data collected and feedback from participants at identified levels of the Kirkpatrick Evaluation Model.</li> </ul>	<hr/> <hr/> <hr/> <hr/>
<p><b>Ongoing program deliverables to be provided as required and on the anniversary of the commencement of the Deed of Agreement for the duration of the Deed of Agreement.</b></p> <ul style="list-style-type: none"> <li>• Provision of a report to Organisational Development on results of the Program Evaluation Strategy, outcomes of the program and analysis of the evaluation processes for the identified levels of the Kirkpatrick evaluation model:</li> </ul>	<hr/>

<p><b>3. Program Content and Structure (as stated in Part F, Clause 3)</b></p> <p><b>Ability to provide program content as per Part F, Clause 3.1.</b></p> <p>Pre-program overview  Myers Briggs Type Indicator session  Individual coaching/review sessions  Mid course review session  Graduation/project presentation  Post-course review meeting  Re-focus meeting  BSB LED 501A  BSB MGT 502A  BSB MGT 515A  BSB MGT 516A  BSB CUS 501A  BSB INN 601A  BSB PMG 510A  BSB WOR 501A  BSB WOR 502A</p> <p><b>Ability to offer preferred delivery patterns as per Part F, Clause 3.2.1</b></p> <p>Option 1      18 – 24 half day sessions 12 months  Option 2      9 – 12 full day sessions over 12 months  Option 3      3 – 5 two/three-day workshops over 12 months</p> <p><b>Ability to accept proposed program group sizes, progress payments and participant withdrawal arrangements as per Part F, Clause 3.2.2</b></p>	<hr/> <hr/> <hr/>
---	-------------------

<p><b>4. Program Evaluation Strategy (as stated in Part F, Clause 4)</b></p> <p><b>Ability to provide Proposed Program Evaluation Strategy as outlined in Part F, Clause 4.</b></p> <ul style="list-style-type: none"> <li>• Attendance by participants.</li> <li>• Number of participants in the program.</li> <li>• Number of participants achieving Diploma of Management (BSB 51107).</li> <li>• Completion rate.</li> <li>• <b>Reaction</b> - Feedback from participants on program experience.</li> <li>• <b>Learning</b> - level of knowledge of participants at beginning of the course, level of knowledge of participants at end of course.</li> <li>• <b>Behaviour/application</b> - Evidence of behaviour change/application of learning achieved.</li> <li>• <b>Results</b> - evidence of Return on Training Investment to Individual and/or Department of Commerce.</li> </ul>	<hr/>
--	-------

## **PART C3 Acknowledgement and Confirmation of Tender**

Note to tenderers: If submitting a hard copy Tender, execute Clause 1.2. If submitting an electronic Tender, only complete Clause 1.3.

- 1.1 Lodgement of a Tender will itself be an acknowledgment and representation by you that you are aware of the requirements of the Code; that you will comply with the Code; and that you agree to report to the State Contracts Control Board any breaches of the Code for the duration of the Contract.
- 1.2 I affirm that this is my Tender to supply the Service sought in the RFT at the prices tendered, and in accordance with the conditions of the RFT except as expressly amended in my Tender, and that the information given in my Tender is correct:

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature of tenderer (if an individual)

OR

\_\_\_\_\_  
Signature of authorised officer of tenderer

OR

\_\_\_\_\_  
Signature of partner completing tender on behalf of partnership

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

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

**Yes/No**

\_\_\_\_\_





---

**People, Workplace and Planning is a Business Unit of the NSW  
Department of Commerce**

---

**Dated:**

---

**<NSW Department of Commerce>**

and

**<Insert Contractor name>**

---

**Deed of Agreement (Request For Tenders - 0900489, Part D) for**

**Business Managers Leadership Development Program**

---

## Table of Contents

---

<b>Table of Contents .....</b>	<b>2</b>
1 Interpretation .....	3
2 Term .....	6
3 Formation .....	6
4 The Services/Deliverables .....	7
5 Pricing.....	8
6 Payment .....	8
7 Variations.....	9
8 Provision of Services/Deliverables .....	9
9 Confidentiality .....	10
10 Intellectual Property .....	10
11 Specific Obligations of Contractor.....	10
12 Performance Management .....	13
13 Personnel .....	14
14 Conduct and Dispute Management .....	15
15 Termination by the Principal .....	16
16 General.....	17
<b>Schedule 1 Agreement Details .....</b>	<b>19</b>
<b>Schedule 2 Statement of Requirements .....</b>	<b>21</b>
1. Project Scope .....	21
2. Specific Requirements for Program/Project Delivery .....	21
3. Program Content and Structure .....	26
4. Program Evaluation Strategy .....	30
<b>Schedule 3 Pricing and Price Variation Mechanism.....</b>	<b>35</b>
<b>Schedule 4 Deed of Confidentiality .....</b>	<b>36</b>
<b>Schedule 5 Performance Management .....</b>	<b>42</b>
<b>Schedule 6 List of Approved Sub-Contractors .....</b>	<b>47</b>
<b>Schedule 7 Expert Determination Procedure.....</b>	<b>48</b>
<b>Schedule 8 Program Delivery Plan.....</b>	<b>50</b>

THIS AGREEMENT executed by DEED is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**BETWEEN**

The Crown in right of the State of New South Wales, acting through the NSW DEPARTMENT OF COMMERCE of McKell Building, 2 – 24 Rawson Place, Sydney in the State of New South Wales ("the Principal").

**AND**

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

**BACKGROUND**

- A. The Department of Commerce issued the Request for Tender for the Services/Deliverables.
- B. The Contractor submitted a tender that was accepted by the Principal.
- C. The Principal and the Contractor have agreed to enter into an Agreement for the supply of the Services/Deliverables in the form of this Agreement.

**NOW THE PARTIES AGREE:**

**1 Interpretation**

---

**1.1 Definitions**

**"Agreement"** means this Deed of Agreement including the Schedules and Part E, Special Conditions of Agreement, where applicable.

**"Applicable Discount"** means an applicable discount in Schedule 3 Pricing, as varied from time to time in accordance with this Agreement, or any other Applicable Discount which may be offered by the Contractor from time to time.

**"Approved Sub-Contractors"** means the sub-contractors approved by the Principal and indicated in Schedule 6.

**"Change in Control"** means a circumstance in which control is or may be exercised over the Contractor:

- (a) through removal or appointment of directors of the Contractor;
- (b) by virtue of the direct holding of at least 15% of the voting shares in the Contractor or a holding company of the Contractor; or
- (c) by any other means whatsoever.

**"Circumstances Beyond the Control of the Contractor"** include:

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

**"Confidential Information"** means, in relation to a Party, information that:

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

**"Consequential Loss"** means any loss recoverable at law (other than loss arising in the usual course of things) which is:

- (a) consequential upon other loss;
- (b) a loss of opportunity or goodwill;
- (c) a loss of profits;
- (d) a loss of anticipated savings or business;
- (e) loss of value of any equipment,

and any costs or expenses in connection with the foregoing.

**“Contractor”** means the contractor under this Agreement and includes its subcontractors.

**“Contract Material”** means New Contract Material and Existing Contract Material.

**“Contract Price”** means the total amount payable by the Principal to the Contractor for the Services/Deliverables ordered under this Agreement and calculated in accordance with Part D, Clause 5.2.

**“Contractor Information”** means the information provided by the Contractor in Schedule 1 and includes information on Approved Subcontractors.

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

- (a) insolvency;
- (b) the Contractor indicates that it does not have the resources to perform the Agreement;
- (c) an application for winding up is made and not stayed within 14 days;
- (d) a winding up order is made;
- (e) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed;
- (f) a mortgagee enters the possession of any property of the Contractor;
- (g) notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (h) any actions of a similar effect are taken.

**Existing Contract Material”** means any material which is existing at the date of this Agreement and which may be incorporated in to the New Contract Material.

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

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

**“Key Performance Indicators”** means performance indicators in respect of the Contractor’s performance of this Agreement.

**“Key Personnel”** means the personnel of the Contractor specified in Schedule 1 item 5.

**“LDP”** means the Commerce Leadership Development Program.

**“New Contract Material”** means any material brought into existence as part of, or for the purpose of providing the Services/Deliverables including records, documents and Information stored by any means.

**“Parties”** means the Principal and the Contractor.

**“Personal Information”** has the same meaning as in Privacy and Personal Information Protection Act 1998 (NSW).

**“Personnel”** of a Party means;

- (a) the officers, employees, agents and contractors of that Party,
- (b) in the case of the Contractor, includes subcontractors, and the Key Personnel in Schedule 1 item 5.

**“Price”** means the price payable for a Service/Deliverable as set out in Schedule 3 and, where relevant, means the price inclusive of any Applicable Discount specified in Schedule 3.

**“Price Schedule”** means Schedule 3 to this Agreement and/or variations made to it in accordance with this Agreement.

**“Principal’s Material”** means any material, document, or Information supplied by the Principal to the Contractor by whatever means.

**“Principal’s Delegate”** means the Principal’s employee named in Schedule 1 item 8 responsible for the overall administration of this Agreement on behalf of the Principal.

**“Progress Payment”** means a payment in accordance with Part D, Clause 6.2.6.

**“Public Service”** has the same meaning as that given to it in the *Public Sector Employment and Management Act 2002* (NSW).

**“Public Sector Service”** has the same meaning as that given to it in the *Public Sector Employment and Management Act 2002* (NSW).

**“Relationship Manager”** means the Contractor’s employee named in Schedule 1 item 5.

**“Request for Tender”** means the request for tender issued by the Principal or on behalf of the Principal, consequent to which this Agreement was awarded to the Contractor for the supply of the Services/Deliverables.

**“Schedule”** means a schedule to this Agreement.

**“Services/Deliverables”** means the services/deliverables to be provided by the Contractor in accordance with Schedule 2 of this Agreement and itemised in Schedule 3, and includes any goods which are ancillary to the provision of the Services/Deliverables.

**“Statement of Requirements”** means the detailed description of the Services/Deliverables to be provided under this Agreement in Schedule 2.

**“Standards”** means Australian Standards, where such exist and are applicable to the Services/Deliverables, and includes international standards in the event of the lack of an applicable Australian Standard.

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

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

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

**“Substantial Breach”** means:

- (a) in the case of this Agreement, a substantial breach of a term of this Agreement by the Contractor and includes but is not limited to, any breach of the following clauses:
  - (i) Clauses 5.1 to 5.7 (Pricing),
  - (ii) Clause 8.1 (Time of the Essence) without being granted an extension of time under Clause 8.2,
  - (iii) Clause 9 (Confidentiality),
  - (iv) Clause 11.6 (Minimum Insurance Requirements),
  - (v) Clause 15.2.1 (b) (Financial Security – Not Used),
  - (vi) Clause 11.13 (Child Protection – Not Used),
  - (vii) Clause 12.1 (Service/Deliverables),
  - (viii) Clause 16.1 (No Assignment or Novation); and
  - (ix) Clause 16.2 (Conflicts of Interests).

**“Term”** means the period of this Agreement, set out in Schedule 1 item 2 and any extension of the Term in accordance with Clause 2.2 of this Agreement.

## **1.2 Rules for interpreting this Agreement**

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

1.2.2 A reference to:

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

- (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
- (d) any thing (including a right, obligation or concept) includes each part of it.

1.2.3 Where:

- (a) the Contractor consists of more than one person or corporation, this Agreement binds each of them separately and any two or more of them jointly and severally;
- (b) an obligation, representation or warranty made by the Contractor in this Agreement shall bind each person or corporation separately and jointly and each person or corporation shall alone be responsible for the performance of every obligation, representation or contained in this Agreement.

1.2.4 A singular word includes the plural, and vice versa.

1.2.5 A word which suggests one gender includes the other genders.

1.2.6 If a word is defined, another part of speech of that word has a corresponding meaning.

1.2.7 The Parties may undertake business by the electronic exchange of information and the provisions of this Agreement will be interpreted to give effect to undertaking business in this manner.

1.2.8 In the event of any ambiguity, discrepancy or inconsistency in interpreting any term or terms of this Agreement, the order of priority in the interpretation of such term or terms will be in the order of:

- (a) The terms and conditions of this Agreement;
- (b) Schedules 1 and 2 to this Agreement;
- (c) Any other Schedules to this Agreement.

## **2 Term**

---

### **2.1 Duration**

2.1.1 This Agreement commences on the commencement date specified in item 2 of Schedule 1 and expires on the expiry date specified in the same item 2, unless terminated earlier in accordance with this Agreement.

### **2.2 Extension**

2.2.1 The Principal may in its sole discretion extend this Agreement for the period or periods specified in item 2 of Schedule 1.

## **3 Formation**

---

### **3.1 Nature of the Agreement between the Principal and the Contractor**

3.1.1 This Agreement describes the terms and conditions between the Principal and the Contractor under which the Contractor agrees with the Principal that it will supply the Services/Deliverables.

### **3.2 Approved Sub-Contractors**

3.2.1 The Contractor may with the written consent of the Principal, sub-contract any part of this Agreement to an Approved Sub-Contractor in Schedule 6.

3.2.2 The Contractor must make the Approved Sub-contractor aware of the terms and conditions of this Agreement and this clause.

3.2.3 The terms and conditions of the sub-contract must be consistent with this Agreement.

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

3.2.5 The Principal may, without incurring liability, withdraw its approval of an Approved Sub-contractor if in its reasonable opinion the sub-contractor is not meeting the requirements of this Agreement. The Principal will notify the Contractor in writing that its approval is withdrawn and the Contractor will immediately terminate its arrangement with the sub-contractor.

3.2.6 To the extent that loss is not attributable to the Principal's withdrawal of approval of a sub-contractor:

- (a) the Contractor will be liable for any acts or omissions of any sub-contractor or any employee or agent of the sub-contractor as fully as if they were the acts or omissions of the Contractor, and
- (b) the Contractor will indemnify and release the Principal from any liability or loss resulting from the acts or omissions of any sub-contractor.

## **4 The Services/Deliverables**

---

### **4.1 Description of Services/Deliverables**

- 4.1.1 The Services/Deliverables to be supplied by the contractor under this Agreement are listed in Schedules 2, 3 and 5 and include all labour, materials, plant and equipment necessary to perform the Services/Deliverables.

### **4.2 Provision of the Services/Deliverables**

- 4.2.1 The Contractor must provide the Services/Deliverables at the Service Site/s and within the Term of this Agreement.
- 4.2.2 The Principal may reject Services/Deliverables which are not in accordance with the Agreement.

### **4.3 Provision of Facilities by the Principal**

- 4.3.1 The Contractor may request the Principal to provide storage space for the Contractor's equipment and materials and the Principal will endeavour to do so. Equipment and materials so stored are at the Contractor's risk. It is the Contractor's responsibility to keep this storage space in a clean, tidy and safe condition.

### **4.4 Variation of a Service/Deliverable**

- 4.4.1 The Contractor must notify the Principal in writing as soon as practicable of any variation to the Service/Deliverable described in Schedules 2, 3 and 5.
- 4.4.2 A variation under Clause 4.4.1 may include a variation to the description of the number or name of the Service/Deliverable but excludes a variation:
  - (a) to the Price of the Service/Deliverable;
  - (b) that modifies or upgrades the Service/Deliverable; or
  - (c) that introduces a new Service/Deliverable to the Price Schedule.
- 4.4.3 The Principal will notify the Contractor of its acceptance or rejection of the variation to the description of a Service/Deliverable. If the variation is accepted, it shall be taken to be incorporated into Schedule 3.

### **4.5 Improvements to Services/Deliverables**

- 4.5.1 If during the Term the Contractor makes available on a general commercial basis services/deliverables that are modified versions or upgrades of a Service/Deliverable, the Contractor must offer the Principal the same service/deliverable as a Service/Deliverable under this Agreement within 30 days of such service/deliverable being available on a general commercial basis.
- 4.5.2 The Services/Deliverables offered by the Contractor under Clause 4.5.1 will form part of Schedule 3 when the Principal notifies its acceptance of the offer. Prior to accepting or rejecting the Contractor's offer, the Principal may request the Contractor to provide any further data reasonably required within 14 days to enable the making of an informed decision on the offer. The Contractor must supply the data within the nominated time frame.
- 4.5.3 In the event that the Principal has not notified the Contractor of its acceptance of the Contractor's offer within 30 days, the offer will be deemed not to have been accepted by the Principal.

### **4.6 Access to Service Sites**

- 4.6.1 The Principal shall allow the Contractor reasonable access to its Service Site/s for the purpose of meeting its obligations under this Agreement.
- 4.6.2 Program Delivery Plan
- 4.6.3 The Contractor warrants that:
  - (a) the Program Delivery Plan in Schedule 8 meets the requirements of this Agreement; and
  - (b) that the Program Delivery Plan is fit for its intended purpose.

The Contractor is responsible for ensuring that all of the requirements of the Program Delivery Plan are complied with at the Contractor's cost

## **5 Pricing**

---

### **5.1 Contractor's Obligations**

5.1.1 The Contractor must supply the Services/Deliverables on the basis of the Prices in Schedule 3.

### **5.2 Calculating the Contract Price**

5.2.1 The Pricing for the Services/Deliverables in Schedule 3, which are fixed for the periods indicated therein, includes all applicable levies, duties, taxes, insurances, packaging, imposts, overheads and profits, and any Applicable Discounts, but is exclusive of GST.

#### **Price Variation**

5.3.1 The Contractor may not apply to vary the Price of a Service/Deliverable listed in Schedule 3 except in accordance with the frequencies and methodology indicated in Schedule 3. Subject to the Contractor having provided the Principal with sufficient documentation to justify the application, and subject to Clause 12.1.2(a), the Principal may in writing, approve the application within 30 days of lodgement.

5.3.2 Where the Price variation is accepted, Schedule 3 will be updated to include the varied Price. The varied Price becomes the basis from which any future applications for Price variations will be calculated.

5.3.3 The Principal reserves the right to delete a Service/Deliverable from Schedule 3 if it considers a Price variation application to be unreasonable.

5.3.4 Notwithstanding any other provision in this Agreement, the Contractor may apply in writing to the Principal to decrease its Prices at any time without any supporting documentation.

### **5.4 Benchmarking (not used)**

### **5.5 Rebates (not used)**

### **5.6 Continuous Best Price (not used)**

### **5.7 Goods and Services Tax (not used)**

## **6 Payment**

---

### **6.1 Payment of Contract Price**

6.1.1 In consideration of the Contractor providing the Services/Deliverables under this Agreement, the Principal shall, subject to the terms and conditions of this Agreement, pay the Contractor the Contract Price.

6.1.2 Failure by the Principal to pay the Contract Price at the due time will not be a ground for the Contractor to avoid performance of its obligations under this Agreement.

### **6.2 Invoices and Time for Payment**

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

6.2.2 Subject to this Clause 6.2, the Principal shall make payment within 30 days from the end of the month after receipt of a valid Tax Invoice and documents necessary provide evidence of supply of the Services/Deliverables to the Principal.

6.2.3 The Parties agree the making of a payment is not intended to be an acknowledgement that the Services/Deliverables have been supplied in accordance with this Agreement.

6.2.4 If the Principal disputes an invoice amount the Principal shall certify the amount it believes is due for payment and shall pay that amount and the liability for the balance of payment shall be determined in accordance with this Agreement.

6.2.5 The Contractor will not be entitled to any credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment by the Principal of money becoming due for the supply of the Services/Deliverables.



- 6.2.6 Where the Services/Deliverables are to be delivered on a staged basis as per the Program Delivery Plan in Schedule 8, Progress Payments shall be made by the Principal upon completion of each Stage in the Program Delivery Plan and in accordance with this Clause 6.2.

**Set-Off/Money Recoverable by the Principal**

- 6.3.1 The Principal may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Principal in connection with the supply of the Services/Deliverables.
- 6.3.2 Without limiting Clause 6.3.1, any damages, costs and expenses recoverable by the Principal from the Contractor in consequence of the Contractor's breach of this Agreement may be deducted from money then due to the Contractor. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due and owing from the Contractor to the Principal and may be:
- (a) set off against any other money due to the Contractor by the Principal under this or any other Agreement between the Principal and the Contractor; or
  - (b) recovered from the Contractor by the Principal in an appropriate court.

**6.4 Suspension of Payments**

Should the Contractor refuse or neglect to carry out the instructions or requirements of the Principal in regard to any matter connected with this Agreement, the Principal may suspend all payments to the Contractor until such instructions or requirements have been complied with by the Contractor.

**7 Variations**

---

**7.1 Variations to Agreement**

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

**8 Provision of Services/Deliverables**

---

**8.1 Time of the Essence**

- 8.1.1 Subject to Clause 8.2, the Contractor acknowledges that time is of the essence in completing its obligations under this Agreement in accordance with the Term and the Program Delivery Plan.

**8.2 Extension of Time**

- 8.2.1 Where there is likely to be a delay in the Contractor discharging an obligation under this Agreement because of a Circumstances Beyond the Control of the Contractor (other than a circumstance arising out of any act or omission on the part of the Contractor), the Contractor will:
- (a) within 7 days of becoming aware of the possibility of such a delay, notify the Principal in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay and strategies proposed to manage the consequences of the delay; and
  - (b) request a reasonable extension of time.
- 8.2.2 The Principal may consent to a request for extension of time under this Clause 8.2 provided that:
- (a) the Contractor uses its best endeavours to minimise the delay and recover lost time; and
  - (b) where appropriate, the Contractor provides the Principal with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of the Circumstances Beyond the Control of the Contractor.
- 8.2.3 Except as provided for in Clause 8.2.4, the Contractor will not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.
- 8.2.4 The Contractor will not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay unless the delay has occurred solely because of the Principal's failure to perform its obligations in accordance with this Agreement. Where the delay is solely caused by the Principal's failure to perform its obligations, the Principal shall reimburse the Contractor its unavoidable reasonable costs directly incurred as a result of such delay.

**8.3 Rejection of Services/Deliverables**

- 8.3.1 The Principal may reject Services/Deliverables which are not in accordance with this Agreement.

- 8.3.2 Upon rejection of any Services/Deliverables the Principal shall notify the Contractor and may direct that the rejected Services/Deliverables be removed or stopped and replaced or rectified at the Contractor's risk and expense, and within such reasonable time as the Principal may direct.
- 8.3.3 If the Contractor fails to replace or rectify the rejected Services/Deliverables within the time directed, the Principal may have the rejected Services/Deliverables re-performed at the Contractor's risk and expense.
- 8.3.4 Where the Contractor fails to perform the Services/Deliverables within the Term, or such other time agreed by the Principal, or where Services/Deliverables are rejected and the Contractor fails to replace or rectify the rejected Services/Deliverables in conformity with the Agreement, the Principal may:
- (a) purchase from another supplier substitute Services/Deliverables of the kind and quality ordered; or
  - (b) where it is not possible or practicable to purchase from another supplier substitute Services/Deliverables of the kind or quality ordered, the Principal may purchase Services/Deliverables of a superior kind and quality to the Services/Deliverables under this Agreement.
- 8.3.5 In both cases listed in Clause 8.3.4, any extra cost or expense incurred over and above the Contract Price shall be a debt due and owing from the Contractor to the Principal.

## **9 Confidentiality**

---

### **9.1 Obligations of Parties**

- 9.1.1 Except to the extent necessary to comply with any statutory requirements or government policy relating to the public disclosure of Confidential Information, neither Party will make public, disclose or use any Confidential Information of the other Party except in accordance with this Agreement, unless the other Party gives its prior written consent.
- 9.1.2 Each Party may disclose Confidential Information to its officers, employees and sub-contractors where such disclosure is essential to carrying out their duties or in accordance with this Agreement.
- 9.1.3 Each Party must ensure the Confidential Information of the other Party is used solely in connection with, or for the purposes of fulfilling its obligations under, this Agreement.
- 9.1.4 The Principal may at any time require the Contractor to arrange for its Personnel engaged in the performance of this Agreement to execute without delay a Deed of Confidentiality, substantially in the form of Schedule 4.
- 9.1.5 This Clause will survive the termination of this Agreement.

## **10 Intellectual Property**

---

### **10.1 Ownership**

- 10.1.1 Intellectual Property created in relation to New Contract Material will be owned by the Principal upon its creation.
- 10.1.2 The Parties acknowledge and agree that the Parties or, where applicable, particular third parties, are the sole owners of their Intellectual Property rights in or in relation to the Existing Contract Material.
- 10.1.3 The Contractor must ensure all licence fees and/or consents required under law are paid and/or obtained as a result of any reproduction, adaptation or use of any Intellectual Property or Contract Material necessary for the provision of the Services/Deliverables.
- 10.1.4 Upon completion of the Agreement, or at such other time as the Agreement or the Principal may require, the Contractor must fully and promptly disclose to the Principal all New Contract Material created or developed under or in connection with this Agreement.

## **11 Specific Obligations of Contractor**

---

### **11.1 Licences and Approvals**

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

**11.2 Compliance with Laws and Standards and NSW Government Requirements**

11.2.1 The Contractor must, in carrying out this Agreement, comply with:

- (a) all applicable Statutory Requirements;
- (b) the NSW Government codes, policies, guidelines and Standards listed in item 4 of Schedule 1 or any other codes, policies, guidelines and Standards specified in writing by the Principal to the Contractor; and
- (c) a particular Standard which has been agreed between the Contractor and the Principal, and that Standard is revised, the Contractor must submit evidence of compliance with the revised Standard within a reasonable period of time.
- (d) the obligations imposed on the Principal by the Privacy and Personal Information Protection Act 1998 (NSW) in relation to Personal Information that is disclosed to, or acquired by, or in possession of the Contractor in accordance, or in connection, with the Contract. The Contractor must, and must ensure that its officers, employees, agents and sub-contractors, comply with the obligations imposed on the Principal by the Privacy and Personal Information Protection Act as though the Contractor were, as far as reasonably practicable, the Principal in relation to any such Personal Information. The Contractor will comply with any request of the Principal in relation to Personal Information and will not do anything that would cause the Principal to be in breach of its obligations under the Privacy and Personal Information Protection Act.

11.2.2 The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting its obligations under this Clause 11.2

**11.3 Access to Service Sites by the Contractor**

11.3.1 Access to Service Sites covered by this Agreement must be arranged with the Principal by the Contractor. In accessing Service Sites, the Contractor must comply with the Principal's policies and procedures as to their use, including access times.

**11.4 Plant and Equipment and Maintenance**

11.4.1 The Contractor is required to provide suitably maintained and operational plant and equipment to carry out the Services/Deliverables which must conform to applicable Standards.

**11.5 Support Centre (not used)**

**11.6 Minimum Insurance Requirements**

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

- (a) workers' compensation insurance in accordance with applicable legislation for all the Contractor's or, where applicable Contractor's Personnel's employees; and for at least the amount specified in Schedule 1 item 7(a) in respect of each claim; and
- (b) a broad form liability policy of insurance which includes public liability insurance for at least the amount specified in Schedule 1 item 7(b) in respect of each claim; and
- (c) professional indemnity insurance for at least the amount specified in item 7 (d); and
- (d) such other insurances as are specified in Schedule 1 item 7 of the Agreement Details.

11.6.2 All policies of insurance must be effected with an insurer rated A – or better by AM Best or an equivalent rating organisation.

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

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

11.6.5 The Contractor must, when requested in writing by the Principal, arrange for its insurer to complete a "Certificate of Currency of Insurance Obtained".

- 11.6.6 Where the Contractor is insured under its parent company's insurance policy, the parent company's insurance policy must clearly indicate that it applies and extends coverage to the Contractor.
- 11.6.7 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.
- 11.7 General Indemnity**
- 11.7.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Principal and its officers, employees and agents against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together "the loss") as a result of:
- a. any unlawful, negligent, reckless or deliberately wrongful act or omission of the Contractor (or its Personnel whether employees, agents or subcontractors or their employees) in the performance of this Agreement.
  - b. Any breach of this Agreement or the confidentiality deeds required by this Agreement.
- 11.7.2 The Contractor's liability in respect of, and indemnity given in, Clause 11.12.1 shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Principal, its officers, employees or agents caused or contributed to the loss.
- 11.8 Contractor's Warranties (General)**
- 11.8.1 The Contractor warrants:
- (a) that the Services/Deliverables do not infringe the Intellectual Property rights of a third party;
  - (b) the Services/Deliverables conform to any legally applicable Australian Standards;
  - (c) it has capacity to enter into this Agreement and perform the obligations imposed on the Contractor; and
  - (d) the Contractor has not entered into any arrangement, whether a trust arrangement or otherwise, that impedes or is likely to impede the performance of this Agreement by the Contractor.
- Third Party Warranties**
- 11.9.1 Where the Contractor supplies Services/Deliverables that have been procured from third parties, the Contractor agrees to assign to the Principal, to the extent permitted by law, the benefits of any warranties given by the third parties.
- 11.9.2 The parties agree that the assignment of any third party warranties is in addition to the warranties offered directly by the Contractor under this Agreement and does not relieve the Contractor from the obligation to comply with the Contractor's own warranties.
- 11.10 Mistakes in Information**
- 11.10.1 The Contractor must pay for any additional costs incurred by the Principal for errors or omissions in material or other Information supplied by it, even though that material or Information may have been approved by the Principal.
- 11.11 Notification of Change in Control or Transfer of Ownership**
- 11.11.1 During the Term, the Contractor must immediately notify the Principal under this Agreement in writing of any Change in Control or other action to restructure or amalgamate itself.
- 11.12 Notification of Contractor's Insolvency**
- 11.12.1 The Contractor must immediately notify the Principal in writing of the Contractor's Insolvency and disclose the details of any:
- (a) Action taken in relation to the Contractor's Insolvency in so far as it affects this Agreement.
  - (b) Existing orders which the Contractor has entered into under this Agreement.
- 11.13 Child Protection (not used)**
- 11.14 Other Obligations**
- 11.14.1 The Contractor is solely responsible for the performance of the Services/Deliverables:
- (a) in accordance with this Agreement and by the time specified in the Term;

- (b) performing all activities necessary for the completion of the Services/ Deliverables including without limitation, the engagement, supervision and direction of Approved Sub-Contractors and other Personnel of the Contractor, the detailed coordination of all activities and the supply of all necessary equipment and administrative requirements;
- (c) taking reasonable steps to ensure that the Services/Deliverables are executed to a high professional standard;
- (d) in accordance with all approvals and requirements of all Authorities relevant to the Services/Deliverables;
- (e) in accordance with the Contract Price in Schedule 3;
- (f) in compliance with the Program Delivery Plan in Schedule 8

11.14.2 The Contractor further agrees that:

- (a) it has specifically correlated all of its inspections and observations with the Agreement and is satisfied that none of the documents evidencing the Agreement are in conflict (except as expressly brought to the Principal's attention before it performed this Agreement);
- (b) that the Principal is relying on the Contractor's skill and judgement in the performance of the Services/Deliverables; and
- (c) that it will keep the Principal's Delegate fully and promptly informed of all industrial issues, matters and disputes which affect or are likely to affect the performance of the Services/Deliverables.

## 12 Performance Management

---

### 12.1 Service/Deliverables

- 12.1.1 The Contractor must provide the specified Services/Deliverables during the Term of this Agreement. Performance in providing these Services/Deliverables must be tracked by the Contractor and reported to the Principal's Delegate in accordance with the frequency and formats provided in Schedule 5.
- 12.1.2 Where the Contractor does not provide the Services/Deliverables as outlined in Schedule 5, the Principal may, at its discretion, take one or more of the following actions in relation to the Contractor:
  - (a) refuse to agree to all or a portion of the price variation requested by the Contractor under Clause 5.3.1;
  - (b) temporarily suspend the use of all or parts of this Agreement, for a period not exceeding 12 months; and
  - (c) require the Contractor to undertake more frequent performance reporting in addition to those specified in Schedule 5, to ensure performance is improved;

until such time as the Contractor has demonstrated its ability to provide the Services/Deliverables in accordance with Schedule 5.
- 12.1.3 The remedies in Clause 12.1.2 are in addition to any other provisions available to the Principal to deal with the inability of the Contractor to meet the terms of the obligations under this Agreement and at law.
- 12.1.4 The Services/Deliverables and time frames specified in Schedule 5 may be amended, added to, or deleted by agreement of the Principal and the Contractor in writing during the Term of this Agreement.

### 12.2 Principal's Delegate

- 12.2.1 The Principal has nominated the Principal's Delegate in Schedule 1 item 8 to oversee the performance of this Agreement. The Principal may, by notice in writing to the Contractor, nominate a replacement Principal's Delegate.

### 12.3 Contractor's Relationship Manager

- 12.3.1 For the purpose of ensuring an efficient relationship with the Principal the Contractor has appointed the Relationship Manager indicated in Schedule 1 item 5. The Relationship Manager must:
  - (a) act as the representative of the Contractor and have the legal power to bind the Contractor in all matters pertaining to this Agreement;

- (b) serve as the principal point of contact for the Contractor with respect to the overall administration of the Agreement;
- (c) have the authority to implement such actions (including issuing of directions through the Contractor's organisation) as may be required for the Contractor to comply with this Agreement;
- (d) meet with the Principal's Delegate at least once each month to provide information regarding the Contractor's performance under this Agreement, with particular reference to the Performance in Clause 12.1.1; and
- (e) answer the Principal's queries and work with the Principal to address issues relating to matters considered urgent by the Principal arising out of this Agreement.

12.3.2 The Relationship Manager must be available at all times during business hours and at all other times on reasonable notice by the Principal's Delegate to meet with the Principal's Delegate to discuss any queries, concerns or issues arising in connection with this Agreement.

#### **12.4 Innovation and Continuous Improvement (not used)**

#### **12.5 Exchange of Information Between Government Agencies**

12.5.1 The Contractor authorises the Principal and its employees and agents to make available to NSW Government departments or agencies Information concerning the Contractor, including any Information provided by the Contractor to the Principal and any Information relating to the Contractor's performance under the Agreement, or the Contractor's financial position.

12.5.2 The Contractor acknowledges that Information about the Contractor from any source including any substantiated reports of unsatisfactory performance, may be taken into account by NSW Government departments or agencies in considering whether or not to offer the Contractor future opportunities for NSW Government work.

12.5.3 The Principal regards that the provision of Information about the Contractor to any New South Wales Government department or agency as privileged within section 30 of the *Defamation Act 2005* (NSW).

12.5.4 The Contractor releases and indemnifies the Principal and the State of New South Wales from any claim in respect of any matter arising out of the provision of Information under this Clause 12.5. Without limiting the above, the Contractor releases the Principal and the State of New South Wales from any claim it may have for any loss to the Contractor arising out of the provision of Information relating to the use of such Information by the recipient of the Information under this Clause 12.5.

### **13 Personnel**

---

#### **13.1 The Contractor's Personnel**

13.1.1 The Contractor warrants that all Personnel engaged in the provision of the Services/Deliverables are appropriately qualified, competent and experienced including the Contractor's Relationship Manager and the Key Personnel nominated in Schedule 1 item 5.

13.1.2 The Contractor must:

- (a) employ only such persons as are careful, skilled and experienced in the provision of the Services/Deliverables or similar Services/Deliverables; and
- (b) (where applicable) hold, or ensure appropriate personnel hold, all necessary licences, permits and authorities.

13.1.3 The Principal may object to and direct the Contractor to remove any of its Personnel (including the Relationship Manager and Key Personnel) who in its opinion are incompetent, unsuitable, or who have been guilty of neglect, or other improper behaviour. Such named Personnel so removed may not be re-employed by the Contractor under this Agreement.

13.1.4 Any replacement Key Personnel provided by the Contractor must be approved by the Principal.

## **14 Conduct and Dispute Management**

---

### **14.1 Co-operation**

- 14.1.1 The Parties must do all they reasonably can to co-operate in matters relating to this Agreement, but their rights and responsibilities under this Agreement remain unchanged unless the Parties agree in writing to vary them.

### **14.2 Duty not to Hinder Performance**

- 14.2.1 Each Party must do all it reasonably can to avoid hindering the performance of the other under this Agreement.

### **14.3 General**

- 14.3.1 In order to resolve any conflicts or issues between the Parties promptly and to the satisfaction of the Parties, the issue resolution process stated below is to be followed:

- (a) Amicable Resolution (Clause 14.4.)
- (b) Expert Determination (Clause 14.5)

### **14.4 Amicable Resolution**

- 14.4.1 Either Party may give notice to the other Party of an issue, including a dispute or difference, ("the Issue Notice") about the meaning or effect of this Agreement, or about any matter arising under or out of this Agreement. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.
- 14.4.2 The Party submitting the Issue Notice must submit it to the other Party's authorised representative, which in the case of the Principal is the Principal's Delegate, and in the case of the Contractor is the Relationship Manager.
- 14.4.3 The Parties must follow the issue resolution process in this clause before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.
- 14.4.4 If a Party gives an Issue Notice under this clause, each Party will nominate in writing a senior executive who will promptly confer to resolve the issue.
- 14.4.5 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice to the person or persons specified.
- 14.4.6 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided ("the Referral Notice").
- 14.4.7 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Principal.
- 14.4.8 If the Party giving the Referral Notice is the Principal, it must give the Referral Notice to the Contractor.
- 14.4.9 If a Referral Notice has not been given to the person or persons specified within 28 days, then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

### **14.5 Expert Determination**

- 14.5.1 If a Referral Notice is given under clause 14.4, the expert is to be agreed between the Principal and the Contractor. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated by the Chief Executive Officer, Australian Commercial Disputes Centre, Sydney.
- 14.5.2 The expert nominated must be a lawyer unless otherwise agreed. The expert must not be:
- (a) an employee of the parties;
  - (b) a person who has been connected with the Agreement; or
  - (c) a person who the Parties have been unable to agree on.
- 14.5.3 When the person to be the expert has been agreed or nominated, the Principal, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
- (a) the issue referred to the expert for determination;

- (b) the expert's fees;
  - (c) the procedure for determination set out in Schedule 7; and
  - (d) any other matter which is relevant to the engagement.
- 14.5.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 14.5.5 If the expert determines that one Party must pay the other an amount exceeding the amount shown in Schedule 1 item 9 (calculating the amount without including interest on it, and after allowing for set offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 14.5.6 Unless a party has a right to commence litigation under clause 14.5.5:
- (a) the Parties must treat each determination of the expert as final and binding and give effect to it; and
  - (b) if the expert determines that one Party owes the other money, that Party must pay the money within 28 days.

## **15 Termination by the Principal**

---

### **15.1 Termination for Cause**

- 15.1.1 Without prejudice to its rights at common law, the Principal may immediately terminate this Agreement, in whole or in part, by written notice to the Contractor ("Notice of Termination for Cause"):
- (a) where the Contractor makes any statement, fact, information, representation or provides material in the Tender which is false, untrue, or incorrect in a way which materially affects the Agreement;
  - (b) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
  - (c) where the Contractor commits a Substantial Breach of the Agreement that is not capable of remedy;
  - (d) where the Contractor commits a Substantial Breach of the Agreement in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Principal requiring it to do so ("Notice of Breach"), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as the Principal may reasonably allow;
  - (e) where the Contractor assigns its rights and/or obligations, or novates this Agreement or subcontracts Agreement except in accordance with this Agreement;
  - (f) in the case of the Contractor's Insolvency; or
  - (g) if in the Principal's view a conflict of interest exists for the Contractor which prevents the proper performance of this Agreement.

### **15.2 Effect of Termination for Cause**

- 15.2.1 If the Principal terminates this Agreement for cause the Principal may:
- (a) contract with any other person to complete the provision of the Services/Deliverables including but not limited to any order remaining to be filled;
  - (b) deduct loss or damages arising from or in connection with the termination, including any loss or damages incurred by the Principal from any money due, or which may become due to the Contractor from the Financial Security (if any); and
  - (c) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and owing from the Contractor to the Principal.

### **15.3 Termination for the Principal's Convenience**

- 15.3.1 The Principal may terminate this Agreement in whole or in part for its convenience by giving 14 days written notice ("Notice of Termination for Convenience") with effect from the date stated in the notice and without the need to provide reasons.



**15.4 Effect of Termination for Convenience**

- 15.4.1 The Principal's termination under this clause will not affect any outstanding orders under this Agreement unless the context requires it.
- 15.4.2 The Principal shall reimburse the Contractor its unavoidable costs directly incurred as a result of termination provided that any claim by the Contractor:
- (a) will be supported by written evidence of the costs claimed; and
  - (b) will be in total satisfaction of the liability of the Principal to the Contractor in respect of this Agreement and its termination.
- 15.4.3 The Principal shall not in any circumstances be liable for any Consequential Loss or loss of profits suffered by the Contractor as a result of the termination of this Agreement by the Principal.

**16 General**

---

**16.1 No Assignment or Novation**

- 16.1.1 The Contractor must not assign or novate this Agreement without first obtaining the prior written consent of the Principal as applicable, which consent may be withheld at their absolute discretion.
- 16.1.2 The Contractor acknowledges that the Principal may make financial checks and due diligence checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment or novation.

**16.2 Conflicts of Interests**

- 16.2.1 The Contractor promises that, to the best of its knowledge, no conflict of interest of the Contractor, its Personnel, employees, agents or sub-contractors exists or is likely to arise in the performance of its obligations under the Agreement.
- 16.2.2 The Contractor must:
- (a) notify in writing, and consult with, the Principal immediately upon becoming aware of the existence, or possibility, of a conflict of interest; and
  - (b) comply with any direction given by the Principal in relation to those circumstances designed to manage that conflict of interest.
- 16.2.3 For the purposes of this clause, a "conflict of interest" includes engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Contractor of, or to restrict the Contractor in performing, its obligations under the Agreement.

**16.3 Records and Access to Records**

- 16.3.1 The Contractor must keep, and ensure that any sub contractor of the Contractor keeps, proper accounts and records in accordance with the accounting principles generally applied in commercial practice and also in accordance with the Australian Quality Training Framework 2007.
- 16.3.2 During the Term, the Contractor must, within a reasonable time of a request from the Principal, give the Principal access to, and copies of, any material relevant to the performance of the Contractor's obligations under this Agreement, and any financial information, that the Principal reasonably requires including where any such material is in the control or possession of any of the Contractor's Personnel.

**16.4 Waiver**

- 16.4.1 A waiver in respect of a breach of a term of this Agreement by the other Party shall not be taken to be a waiver in respect of any other breach. The failure of either Party to enforce a term of this Agreement will not be interpreted as a waiver of that term.

**16.5 Severability**

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

**16.6 Notices**

- 16.6.1 Notices must be sent to the other Party at the address shown in Schedule 1 items 10 and 11, or the address last notified to the other Party in writing, or in the case of the Contractor, at the Contractor's registered office.

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

16.6.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

**16.7 Counterparts**

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

**16.8 Applicable Law**

16.8.1 This Agreement is governed by the laws of the State of New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales.

**16.9 No agency/no employment/no partnership**

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

**16.10 Disengagement Period**

16.10.1 For 6 months following the expiry or termination of this Agreement (or part thereof) the Contractor will provide such assistance as is reasonably requested by the Principal for the supply of the Services/Deliverables to continue without interruption to facilitate an orderly, prompt and efficient transition to an alternative service provider to the Principal. Such assistance includes (without limitation):

- (a) providing reasonable co-operation with a third party supplier nominated by the Principal, and
- (b) providing the Principal's data, information and materials that may be required to enable transacting with a new provider as requested by the Principal.

**16.11 Pricing Information**

The Contractor agrees that, subject to Clause 9 (Confidentiality), product pricing information (including discounts, commissions and rebates as appropriate) may be disclosed to any person by the Board at its sole discretion in the form of a User Guide or in any medium of communication it deems appropriate.

## Schedule 1 Agreement Details

<b>Item 1</b>	<b>Contractor's Name</b>
<b>Item 2</b>	<b>Term:</b> (Clause 2.1.1) Commencement Date: Expiry Date:  <b>Period of extended term</b> (if any): (Clause 2.2.1) Commencement Date: Expiry Date:
<b>Item 3</b>	<b>Benchmark</b> (Clause 5.4) <b>(not used)</b>  Name:  Address:  Telephone: Facsimile  Hourly Rate:
<b>Item 4</b>	<b>NSW and Commonwealth Government Laws, Codes and Standards</b> (Clause 11.2)  1. Code of Practice for Procurement 2. Implementation Guidelines NSW Government Procurement 1999 3. Environmental Management Systems Guidelines 4. Occupational Health and Safety Management Systems Guidelines 5. Australian Quality Training Framework 2007
<b>Item 5</b>	<b>Key Personnel</b> (Clause 13.1.1)  Relationship Manager (Clause 12.3.1)  Name:  Address:  Position:  Telephone: Facsimile
<b>Item 6</b>	<b>Financial Security (Not used)</b>  <b>Amount: Not Used</b> <b>Form: Not Used</b>
<b>Item 7</b>	<b>Insurances</b> (Clause 11.6) a) Workers Compensation Insurance Limit of Indemnity: \$AUS 10M b) Public Liability Insurance Limit of Indemnity: \$AUS 10M c) Professional Indemnity Insurance Limit of Indemnity \$AUS 10M

<b>Item 8</b>	<b>Principal's Delegate</b> (Clause 12.2) NSW Department of Commerce <b>Name:</b> Susan Hungar <b>Address:</b> Level 22 McKell Building 2 – 24 Rawson Place Sydney NSW 2000 <b>Position:</b> Organisational Development Consultant <b>Telephone:</b> (02) 9372 8841 <b>Facsimile:</b> (02) 9372 8640
<b>Item 9</b>	<b>Expert Determination Amount</b> (Clause 14.5.5): <b>AUD:</b> \$100,000
<b>Item 10</b>	<b>Notices to:</b> (Clause 16.6)  The Contractor's contact name and address:  Name:  Address:  Position:  Telephone: Facsimile:
<b>Item 11</b>	<b>Notices to:</b> (Clause 16.6)  The Principal's contact name and address  Name: Susan Hungar Address: Level 22 McKell Building 2 – 24 Rawson Place Sydney NSW 2000  Telephone: (02) 9372 8841 Facsimile: (02) 9372 8640

## Schedule 2 Statement of Requirements

### 1. Project Scope

#### 1.1 Overview

Organisational Development (OD) within the NSW Department of Commerce (Commerce) is seeking service providers to develop and submit proposals for the delivery, assessment and evaluation of the Business Managers Leadership Development Program.

The Diploma of Management (BSB 51107) qualification is a cornerstone of the Business Managers Program within Commerce's Leadership Development Program as it provides a significant level of professional development for many of Commerce's existing managers.

These Statement of Requirements are provided in order assist tenderers to prepare a comprehensive response to the tender.

### 2. Specific Requirements for Program/Project Delivery

The table below identifies the specific requirements for delivery of the Business Managers Leadership Development Program (the Project) by the successful tenderer. The Deed of Agreement (Part D of this RFT) contains the deliverables that the successful tenderer will be required to provide for the agreed price and according to the agreed payment arrangements.

The Specific Requirements for Program/Project delivery are divided into the following categories, based on the time frame for delivery.

Category	Timing
Pre-program requirements	By 1 July 2009
Pre-course requirements	Prior to the commencement of each course (first course to commence by 1 July 2009)
During course requirements	During delivery of each course (first course to commence by 1 July 2009)
Post-course requirements	Within three months of completion of each course
Ongoing program requirements	Annual program evaluation reports for duration of Deed of Agreement – on anniversary of commencement of Deed of Agreement

### Pre-program requirements to be provided by the successful tenderer by 1 July 2009

- Current Registered Training Organisation status with the NSW Vocational Education and Training Accreditation Board (VETAB) and presence on the National Training Information System (NTIS) with the Diploma of Management (BSB 51107) on scope. **(Evidence to be provided in Part C1, Clause 3.2).**
- Establishment of a joint project management team with representatives of the successful tenderer and Commerce Organisational Development.
- A review by the successful tenderer of internal Commerce documents including organisational culture surveys and human resource metrics to provide a historical organisational context for the program. Organisational Development will provide this material to the program provider.
- Provision of a **Final Program Delivery Plan** (refer to **Part C1, Clause 4.1**) including session content, learning activities, assessment activities, number, timing and length of sessions for relevant delivery pattern identified by Commerce (half-day fortnightly; full-day monthly; multi-day workshops) and process for involving participants' line managers throughout the program.
- All sessions, learning and assessment activities in the program delivery plan must incorporate the principles of adult learning theory as articulated below (<http://en.wikipedia.org/wiki/Andragogy> accessed 29/01/09)
  - Adults need to be involved in the *planning* and *evaluation* of their instruction (Self-concept and *Motivation* to learn).
  - *Experience* (including *mistakes*) provides the basis for learning activities (Experience).
  - Adults are most interested in learning subjects that have immediate *relevance* to their job or personal life (Readiness to learn).
  - Adult learning is *problem*-centered rather than content-oriented (Orientation to learning).
- Where possible and appropriate, learning and assessment activities in the program delivery plan should reflect the environment and context of the NSW Public Service generally, and the Department of Commerce specifically
- All sessions, learning and assessment activities in the program delivery plan must reflect a learner-centred, as opposed to facilitator-centred methodology.
- Experiential learning opportunities must be incorporated into the program delivery plan through such activities as case study analysis and simulations.
- Where possible and appropriate, assessment events identified in the program delivery plan should be integrated and holistic. Integrated assessment activities are those that reflect the participants' workplace environment and job role. Holistic assessment activities are those that assess elements from two or more units of competency.
- Program delivery plan must incorporate structured involvement of line managers of participants.
- Program delivery plan must identify points of integration of Commerce-based case studies and Commerce guest speakers into the program.

**Pre-program requirements to be provided by the successful tenderer by 1 July 2009, continued**

- Provision of **Final Program Evaluation Strategy** (refer to **Part C1, Clause 4.5**) incorporating data collection instruments to be used, and data analysis and reporting processes which will provide information on the participants' attendance and completion rates and the identified levels of the Kirkpatrick Model of Evaluation. Data collection/analysis instruments may include:
  - (i) Session feedback tools to determine participant reactions to learning resources and activities.
  - (ii) Pre-course assessment event(s) to provide evidence of baseline management/leadership knowledge, skills, attitudes and behaviours of participants.
  - (iii) Post-course assessment event(s) to provide evidence of changes to baseline measurements.
  - (iv) Pre- and post-course assessments that include self assessment as well as feedback from line managers and direct reports of participants.
  - (v) Methodology for calculating Return on Investment.

**Pre-course requirements that must be provided prior to the commencement of each course (first course to commence 1 July 2009)**

- Commencement of first program no later than 1 July 2009
- Provision of the pre course introduction, overview and assessment session.
- Involvement of participants' line managers in pre-course introduction, overview and assessment session.

**During-course components that must be delivered  
by the successful tenderer during each course**

- Delivery and assessment of Diploma of Management (BSB 51107) and identified units of competency (refer to **Part F, Clause 3.1**) via face-to-face learning using Commerce-endorsed facilitators/ presenters/coaches.
- Provision of all professionally-produced, multi-sensory learning materials/resources both electronically/online (audio/visual) and as a text copy (visual). Audio/visual material must be able to be downloaded onto Personal Computers (PCs), MP3 players and Personal Digital Assistants (PDAs) such as Blackberries. Where possible/appropriate, learning materials/resources should incorporate Commerce and LDP logos.
- Learning materials/resources must reflect adult learning principles articulated above and address different learning styles including auditory, visual and kinaesthetic learning styles.
- Provision and completion of Myers Briggs Type Indicator (MBTI) instrument to participants and full analysis/debrief of process including using knowledge to Myers Briggs Typology to support team communication strategies.
- Structured involvement in the program of line managers of participants.
- Provision of a minimum of three coaching/review sessions with the participant, the participant's line manager and the program facilitator (beginning, middle and end of program).
- Provision of learning support mechanisms, value-adding activities and strategies for maximising participants' completion of the program, including telephone, email and face-to-face discussions with participants, line managers of participants and Department of Commerce program administrators; site visits; participation in client research activities and support for individual/group projects.
- Provision of a mid-course review session (may be combined with mid-course individual coaching/review sessions).
- Provision of assessment events to be able to make professional judgements about participants' competence in all units of competence.
- All assessment events must have the option of being able to be accessed online/electronically, and lodged online/electronically. Assessment events must also be able to be provided to, and collected from, participants during face-to-face training sessions.
- All units of competency must be assessed and outcomes of the assessment process must be able to be recorded on Statements of Attainment as either Competent or Not Yet Competent.
- Ongoing provision of support, information and feedback to program coordinator by Key Contact/Relationship Manager.
- Provision of graduation and project presentation session.
- Administration of session feedback and program evaluation instruments.
- Fortnightly, monthly or as needed reports on attendance, withdrawals, deferments, and any feedback from participants at identified levels of the Kirkpatrick Evaluation Model.
- Head count of participants in the week before a progress payment falls due.



**Post-course components that must be delivered  
within three months of the completion of each course**

- Post course evaluation and review session (may be combined with post-course individual coaching/review sessions).
- Re-focus session (two months after course completion).
- Provision of a Statement of Units Attained to all participants and the Diploma of Management (BSB 51107) qualification awarded to all eligible participants.
- Report on completion rates of course participants and analysis of data collected and feedback from participants at identified levels of the Kirkpatrick Evaluation Model.

**Ongoing program deliverables to be provided as required and on the anniversary of the  
commencement of the Deed of Agreement for the duration of the Deed of Agreement.**

- Provision of a report to Organisational Development on results of the Program Evaluation Strategy, outcomes of the program and analysis of the evaluation processes for the four levels of the Kirkpatrick evaluation model:
  - Level 1** Overall reaction of participants to learning resources, process, structure and content.
  - Level 2** Amount of learning that has occurred in participants as a result of the program.
  - Level 3** Behaviour change/ application of learning by participants in the workplace as a result of the program.
  - Level 4** Return on Investment to Commerce and participants of the program.

### 3. Program Content and Structure

#### 3.1 Program Content

The program must include the following sessions and units of competency (refer to **Part C1, Clause 4.1**). Please note that the program for the Department of Commerce includes five electives rather than the three electives required to achieve the Diploma of Management (BSB 51107).

Session Purpose	Session Timing
Pre-program overview	Prior to program commencement (may be combined with Myers Briggs Type Indicator Delivery and Debrief).
Individual coaching/review sessions	A minimum of three sessions are required – one at the beginning, one in the middle and one at the end of the program. Participants in these sessions will include the participant, the participant's line manager and the program facilitator. It is preferred that these sessions be conducted face-to-face; however, telephone teleconference sessions are acceptable where face-to-face sessions are unable to be scheduled.
Mid course review session	Halfway through the program (may be combined with individual mid-course coaching/review session).
Graduation/project presentation	Two weeks after final face-to-face session.
Post-course review meeting	Two weeks after graduation/presentation (may be combined with post-course individual coaching/review session).
Re-focus meeting	Two months after post-course review meeting.

Core Units of Competency/Activities	
Unit Code	Unit Name
BSB LED 501A	Develop a workplace learning environment
BSB MGT 502A	Manage people performance
BSB MGT 515A	Manage operational plan
BSB MGT 516A	Facilitate continuous improvement
N/A	Completion of Myers Briggs Type Indicator Instrument for all course participants and provision of debrief session

Elective Units of Competency	
Unit Code	Unit Name
BSB CUS 501A	Manage quality customer service
BSB INN 601A	Manage organisational change
BSB PMG 510A	Manage projects
BSB WOR 501A	Manage personal work priorities and professional development
BSB WOR 502A	Ensure team effectiveness

### 3.2 Program Structure

#### 3.2.1 Preferred delivery patterns.

Option	Format	Number of sessions	Total program duration
Option 1	Half-day session once per fortnight	18 - 24	12 months
Option 2	Full-day session once per month	9 - 12	12 months
Option 3	2 – 3 day residential workshops	3 - 5	12 months

Option 1 is preferred for programs that are offered in the Sydney metropolitan area for participants who live and work in Sydney. Options 2 and 3 will be considered for programs that are offered in the Sydney metropolitan area or major regional centres for participants who live in regional areas and are unable to attend a local program. However, the Department of Commerce reserves the right to request delivery of any option for any program.

#### 3.2.2 Participant numbers/group size

The minimum number of participants per course will be 15 and the maximum number of participants per group will be 20. Groups will continue to run until participant numbers drop below 12. Therefore, tenderers should use 12 participants as the minimum viable number for ongoing delivery in their calculations of the per-head price for the program.

However, tenderers also need to be aware that should the number of participants drop below 12 at any point in a course, the future viability of that course for that class group will need to be negotiated. While every effort will be made to select participants who will be able to complete the full course with their intake group, circumstances may arise that make withdrawal or postponement of participation unavoidable.

The Deed of Agreement (**Part D of this RFT**) between the successful tenderer and the Department of Commerce will articulate the payment arrangements to be followed in the case of a participant's withdrawal from or deferment of a class group.

**If and when the situation arises that participants either withdraw from the course or defer their participation in the course, the following arrangements are proposed. These arrangements may be subject to negotiation with the successful tenderer when the Deed of Agreement is finalised.**

Reason for withdrawal/deferment	Time frame for withdrawal/deferment	Payment outcome of withdrawal/deferment	Program outcome
Any reason	Prior to course Commencement.	<ul style="list-style-type: none"> <li>No payment required for that individual.</li> <li>The Department of Commerce will endeavour to find a replacement. In-house courses with less than 15 participants will not commence, and will need to be postponed or cancelled, subject to negotiation between the Department of Commerce and the successful tenderer.</li> </ul>	<ul style="list-style-type: none"> <li>Nil impact on course apart from possible delay in commencement date.</li> </ul>

Reason for withdrawal/deferment	Time frame for withdrawal/deferment	Payment outcome of withdrawal/deferment	Program outcome
Change in personal or workplace circumstances of individual participant.	After commencement of course and prior to second progress payment.	<ul style="list-style-type: none"> <li>• First progress payment of 50% of total course price to be paid for that participant.</li> <li>• No further progress payments to be made for that person, unless the withdrawal/deferment results in there being less than 12 participants in the group. If the numbers drop below 12, negotiation will need to occur to determine the ongoing viability of the group.</li> <li>• If the participant's place in the course is deferred, the first progress payment in the deferred course will be waived, except for the cost incurred to provide replacement/updated resource materials and any required up-front overview/coaching sessions.</li> </ul>	<ul style="list-style-type: none"> <li>• If participant has completed at least one unit of competency, he/she will receive a Statement of Attainment.</li> <li>• If possible and appropriate, the participant will be offered a place on a subsequent program.</li> </ul>
Change in personal or workplace circumstances of individual participant.	After second progress payment and prior to third progress payment.	<ul style="list-style-type: none"> <li>• Second progress payment of 25% of total course price to be paid for that participant.</li> <li>• No further progress payments to be made for that person, unless the withdrawal/deferment results in there being less than 12 participants in the group. If the numbers drop below 12, negotiation will need to occur to determine the ongoing viability of the group.</li> <li>• If the participant's place in the course is deferred, the first and second progress payments in the deferred course will be waived, except for the cost incurred to provide replacement/updated resource materials and any required review/coaching sessions.</li> </ul>	<ul style="list-style-type: none"> <li>• If participant has completed at least one unit of competency, he/she will receive a Statement of Attainment.</li> <li>• If possible and appropriate, the participant will be offered a place on a subsequent course.</li> </ul>

Reason for withdrawal/deferment	Time frame for withdrawal/deferment	Payment outcome of withdrawal/deferment	Program outcome
Change in personal or workplace circumstances of individual participant.	After third progress payment and prior to final progress payment.	<ul style="list-style-type: none"> <li>• Third progress payment of 15% of total course price to be paid for that participant.</li> <li>• No further progress payments to be made for that person, unless withdrawal results in there being less than 12 participants in the group. If the numbers drop below 12, negotiation will need to occur to determine the ongoing viability of the group.</li> <li>• If participant's place in the course is deferred, the first, second and third progress payments in the deferred course will be waived, except for the cost incurred to provide replacement/ updated resource materials and any required review/ coaching sessions.</li> </ul>	<ul style="list-style-type: none"> <li>• If participant has completed at least one unit of competency, he/she will receive a Statement of Attainment.</li> <li>• If possible and appropriate, the participant will be offered a place on a subsequent program.</li> </ul>

### 3.3 Value added services

Tenderers should consider whether they are able to provide additional services beyond the delivery, assessment and evaluation of training, but within the tendered price. If tenderers are able to provide additional services within the delivery price, these additional services should be identified in **Part C1, Clause 5.8**.

Examples of additional services could include:

- Involvement of program participants in research relating to management and leadership topics.
- Provision of research reports on management and leadership topics based on client/participant surveys or other research activities conducted by the tendering organisation.
- Online magazines, blogs or meeting spaces within a dedicated website space for program participants.
- Opportunities to participate in webinars, conferences or other seminar formats with international management/ leadership experts.
- Advice and support in the process of applying for any relevant funding grants for elearning initiatives.
- Ability to offer dual qualifications in Diploma of Government (Management) (PSP 51104).

## 4. Program Evaluation Strategy

### 4.1 Kirkpatrick Model of Evaluation

Since Dr Donald Kirkpatrick first published several articles on evaluation in the *US Training and Development Journal* (now called *T+D*) in 1959, his four-level model of evaluation has become the industry standard. The four levels are:

- Reaction of the participant - what they thought and felt about the training.
- Learning - the increase in knowledge or capability of the participant as a result of the training.
- Behaviour – the extent of behaviour and capability improvement and implementation/application on the part of the participant as a result of the training.
- Results - the impact on the business or environment, including Return on Investment (ROI) resulting from the learner's performance after receiving the training.

The Department of Commerce expects the successful tenderer to be able to provide data collection tools for each of these four levels of evaluation. In addition, the Department of Commerce expects the successful tenderer to collect relevant data from participants, their line managers, and other relevant stakeholders before each course starts, during each course, and at the end of each course. The successful tenderer will then collate and analyse the results for the data collection processes, and provide regular reports to the Department of Commerce on the outcomes of training at each level of the Kirkpatrick Evaluation Model.

### 4.2 Department of Commerce Role in Program Evaluation

The Leadership Development Program is expected to deliver increased performance outcomes across the Department of Commerce as measured by standard Human Resource metrics and indicators of organisational health.

These standard metrics include, but are not limited to:

- Results of staff satisfaction/engagement surveys
- Results of new employee entrance surveys and employee exit surveys
- Results of 360° feedback processes
- Attendance and leave records
- Staff separation rates
- Internal promotion rates

It will be the responsibility of the Department of Commerce to analyse these metrics on a regular basis and to assess the impact of the Leadership Development Program on the organisation as evinced by changes over time to these metrics.

### 4.3 Successful Tenderer's Role in Program Evaluation

The performance of the successful tenderer in delivering Business Manager Leadership Development Programs will be assessed to ensure that the program offers value for money. The successful tenderer will be expected to collect a range of data at various points in the program in order to inform the program evaluation process. That data will then be collated and analysed by the successful tenderer and provided in a report to the Department of Commerce at the relevant points as indicated in the table below.

The following table summarises the performance evaluation inputs, outcomes and reporting time frames that will be required of the successful tenderer.

Type of data to be collected	Data collection tool/source of information	Timing of data collection	Reporting parameters	Reporting time frame
Attendance by participants.	Participant head count.	Each workshop/session.	In writing to program coordinator.	Fortnightly or monthly depending on frequency of workshops/sessions.
Number of participants in the program.	Participant head count.	Week prior to progress payment falling due.	In writing to program coordinator.	Week prior to progress payment falling due.
Number of participants achieving Diploma of Management (BSB 51107).	Results achieved in units of competency.	Three months after completion of the program.	Provision of Statements of Attainment and Diplomas to program coordinator for distribution at graduation or subsequent to graduation.	Week prior to graduation ceremony and/or within three months of each course completion.
Completion rate.	Number achieving qualification divided by number of participants who commenced the course x 100.	Three months after completion of the program.	In writing to program coordinator.	Three months after completion of each course and included in yearly report for the program as a whole.
<b>Results</b> - feedback from participants on program experience.	A wide variety of feedback collection tools could be used. The tools are to be provided by successful tenderer in consultation with Commerce.	Minimum at midpoint and end of program; more often if required.	In writing to program coordinator - report on outcomes at Kirkpatrick Level One – overall satisfaction with program by participants.	Midpoint and end of each course and included in yearly report for the program as a whole.

Type of data to be collected	Data collection tool/source of information	Timing of data collection	Reporting parameters	Reporting time frame
<p><b>Learning</b> - level of knowledge of participants at beginning of the course, level of knowledge of participants at end of course.</p>	<p>Diagnostic tool(s) to assess knowledge level at beginning and end of course.</p> <p>Data to be analysed to identify quantitative and qualitative changes in level of knowledge on the part of participants</p> <p>A wide variety of diagnostic tools could be used for this purpose.</p> <p>Tool(s) to be provided by successful tenderer in consultation with Department of Commerce.</p>	<p>Minimum at beginning and end of program; more often if required.</p>	<p>In writing to program coordinator – report on outcomes at Kirkpatrick Level Two – amount of learning achieved through the program.</p>	<p>Three months after completion of each course and included in yearly report for the program as whole.</p>



Type of data to be collected	Data collection tool/source of information	Timing of data collection	Reporting parameters	Reporting time frame
<p><b>Behaviour/application</b> - evidence of behaviour change/application of learning achieved</p>	<p>Application of a data collection tool to identify attitudes/ behaviours of participants at beginning and end of the program.</p> <p>Analysis of data to determine quantitative and qualitative change in attitudes/behaviours.</p> <p>Sample tools could be 180° or 360° surveys which participants, their line managers and other relevant parties would participate in.</p> <p>Survey/ tool to be provided by the successful tenderer in consultation with Department of Commerce.</p>	<p>Minimum at beginning and end of program; more often if required.</p>	<p>In writing to program coordinator – report on outcomes at Kirkpatrick Level Three – evidence of behaviour change/application of learning.</p>	<p>Three months after completion of each course and included in yearly report of the program as a whole.</p>

Type of data to be collected	Data collection tool/source of information	Timing of data collection	Reporting parameters	Reporting time frame
<b>Results</b> - evidence of Return on Training Investment to Individual and/or Department of Commerce	A range of tools and formulae could be used to collect and analyse data on the Return on Investment of training.  The tool(s)/formulae to be used are to be provided by the successful tenderer in consultation with Commerce.	Minimum at midpoint and end of program; more often if required.	In writing to program coordinator – report on outcomes at Kirkpatrick Level Four – Return on Investment.	Three months after completion of each course and included in the yearly report of the program as a whole.

Tenderers should submit their Proposed Program Evaluation Strategy covering the points described above using the templates provided in **Part C1, Clause 4.5**.

## **Schedule 3      Pricing and Price Variation Mechanism**

---

### **Pricing and List of Services/Deliverables**

### **Price Variation Mechanism**

If Price variation is based on CPI, the following formula will apply:

#### **CPI Option**

$$RP = OP * \frac{L}{Lo}$$

(Note: \* = means multiplication)

Where:

RP =	Revised Contract Price.
OP =	Original Contract Prices.
L =	CPI at price variation date.
Lo =	CPI at the Base Date.

## Schedule 4 Deed of Confidentiality

---

THIS DEED DATED THE \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_

**BETWEEN** [Name and address of Principal] ("the Principal")

**AND** [Name and address of Contractor] ("the Contractor ")

### RECITALS:

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

### OPERATIVE PROVISIONS:

#### 1. Recitals

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

#### 2. Interpretation

##### 2.1 Definitions

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

**"Agreement"** means the Agreement between the Principal and the Contractor dated [insert date] for the supply of the Services/Deliverables.

**"Confidential Information"** means information that:

- (a) is by its nature confidential;
  - (b) is designated by the Principal as confidential; or
  - (c) the Contractor knows or ought to know is confidential;
- and includes but is in no way limited to:
- (d) the Contract Material;

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

**"Contractor"** means *[insert name of Contractor]*

**"Contract Material"** means:

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

**"Express Purpose"** means the Contractor performing the obligations under the Agreement.

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

**"Notice"** means notice in writing given in accordance with this Deed; and

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

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

## 2.2 General

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

2.2.2 A reference to:

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

- (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
- (d) anything (including a right, obligation or concept) includes each part of it.

- 2.2.3 If this Agreement expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.
- 2.2.4 A singular word includes the plural, and vice versa.
- 2.2.5 A word which suggests one gender includes the other genders.
- 2.2.6 If a word is defined, another part of speech of that word has a corresponding meaning.

**3. Non disclosure**

- 3.1.1 The Contractor must not disclose the Confidential Information to any person without the prior written consent of the Principal.
- 3.1.2 The Principal may grant or withhold its consent in its discretion.
- 3.1.3 If the Principal grants its consent, it may impose conditions on that consent, including a condition that the Contractor procure the execution of a Deed in these terms by the person to whom the Contractor proposes to disclose the Confidential Information.
- 3.1.4 If the Principal grants consent subject to conditions, the Contractor must comply with those conditions.
- 3.1.5 Despite Clause 3.1.1, the Contractor may disclose the Confidential Information to its directors, officers, employees, and contractors ("permitted recipients") where such disclosure is essential to carrying out their duties owed to the Contractor or in accordance with this Deed.
- 3.1.6 Before disclosing the Confidential Information to a permitted recipient, the Contractor will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 3.1.7 The Confidential Information must not be copied or reproduced by the Confidant or the permitted recipients without the express prior written permission of the Disclosing Party, except as for such copies as may be reasonably required for the purposes of this Deed.
- 3.1.8 The Disclosing Party may at any time require the Contractor to promptly arrange for the permitted recipients to execute a Deed of Confidentiality substantially in the form of this Deed.
- 3.1.9 If any person being any director, officer, contractor or employee of the Contractor, who has had access to the Confidential Information in accordance with this clause leaves the service or employ of the Contractor then the Contractor will ensure that that person does not do or permit to be done anything which, if done or permitted to be

done by the Contractor, would be a breach of the obligations of the Contractor under this Deed.

- 3.1.10 The requirements of this Deed do not affect the obligation of the Contractor to disclose any Confidential Information where it is required to be disclosed at law.

**4. Restriction on use**

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

**5. Survival**

This Deed will survive the termination or expiry of the Agreement for so long as the Confidential Information remains confidential.

**6. Rights of the Disclosing Party**

**6.1 Production of Documents**

- 6.1.1 The Disclosing Party may demand the delivery up to the Disclosing Party of all documents in the possession or control of the Contractor containing the Confidential Information.
- 6.1.2 The Contractor must immediately comply with a demand under this Clause 6.
- 6.1.3 If the Principal makes a demand under this Clause 6, and the Contractor has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Contractor must provide full particulars of the whereabouts of

the documents containing the Confidential Information, and the identity of the person in whose possession or control they lie.

- 6.1.4 In this Clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

**6.2 Legal Proceedings**

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

**7. Indemnity and release**

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

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

**8. No exclusion of law or equity**

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

**9. Waiver**

- 9.1 No waiver by the Principal of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of any other obligation or provision of this Deed.
- 9.2 None of the provisions of this Deed will be taken to have been varied, waived, discharged or released by the Principal unless by its express consent in writing.

**10. Remedies Cumulative**

**10.1 Cumulative**

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

**10.2 Other Instruments**

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

**11. Variations and amendments**

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



**12. Applicable law**

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

**13. Notices**

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

**Executed as a Deed**

**SIGNED, SEALED AND DELIVERED**

by [***name and position of person signing***]  
for and on behalf of the Principal  
for and on behalf of the Crown in right of  
the State of New South Wales but not so  
as to incur any personal liability in the  
presence of:

\_\_\_\_\_  
[insert name of Witness]

\_\_\_\_\_  
(signature of Witness)

**SIGNED, SEALED AND DELIVERED**

by \_\_\_\_\_  
[insert name of Contractor]

\_\_\_\_\_  
(signature of Contractor)

in the presence of \_\_\_\_\_  
[insert name of Witness]

\_\_\_\_\_  
(signature of Witness)

## Schedule 5 Performance Management

Service/Deliverable to be provided	Performance Indicator	Time Frame
Establishment of a joint project management team with representatives of both parties.	<p>Project team established and confirmed by both parties.</p> <p>Ongoing telephone/email support and information for the Principal's Delegate or other designated Commerce project coordinator.</p>	Relationship Manager and Key Personnel identified by tender closing date. Principal's Delegate identified in tender documents. Any additional members of joint project management team to be identified by 1 July 2009, subject to approval of Principal.
Review by the successful tenderer of internal Commerce documents including organisational culture surveys and human resource metrics to provide a historical organisational context for the program. Organisational Development will provide this material to the program provider.	<p>Proposed Program Delivery Plan provided in tender process is modified by provider to ensure case studies, MBTI feedback, guest speakers and other session materials incorporated within the program reflect Commerce environment.</p> <p>Documents to be provided in software applications compatible with Microsoft Office 2003.</p>	By July 1 2009 and/or before relevant program session date as identified in the Final Program Delivery Plan.
Final Program Delivery Plan including session content, learning approaches/ theoretical models, learning/delivery methodologies, number, timing and length of sessions and identified points of integration of Commerce-based case studies and Commerce guest speakers into the program.	<p>Proposed Program Delivery Plan to be submitted with tender documents.</p> <p>Final Program Delivery Plan provided to the Department of Commerce.</p> <p>Documents to be provided in software applications compatible with Microsoft Office 2003.</p>	<p>Proposed Program Delivery Plan to be provided by closing date of tender.</p> <p>Final Program Delivery Plan to be provided by 1 July 2009.</p> <p>Final Program Delivery Plan will reflect any required/negotiated modifications to Proposed Program Delivery Plan identified during contract negotiation process. Additional/ongoing changes to Final Program Delivery Plan are subject to negotiations between the parties during the Term of Agreement.</p>

Service/Deliverable to be provided	Performance Indicator	Time Frame
<p>Final Program Evaluation Strategy and final versions of all relevant evaluation tools.</p>	<p>Proposed Program Evaluation Strategy submitted with tender documents.</p> <p>Documents to be provided in software applications compatible with Microsoft Office 2003.</p> <p>Ongoing discussions with Commerce staff to ensure evaluation tools will be endorsed by the Department.</p>	<p>By 1 July 2009.</p> <p>Modifications to Final Program Evaluation Strategy can be made as required by negotiations between the parties during the Term of Agreement.</p>
<p>Provision of all learning materials in audio, visual and downloadable modes, incorporating Commerce and LDP logos where appropriate.</p>	<p>Principal's Delegate provided with a full set/access to all learning materials/resources.</p> <p>Program Participants provided with all learning material/resources in audio, visual and downloadable modes.</p> <p>Participants' Line Managers provided with relevant materials/resources.</p> <p>Adult learning principles incorporated throughout learning materials/resources.</p> <p>Learning materials/resources reflect NSW Public Service context generally, and NSW Department of Commerce specifically.</p>	<p>By 1 July 2009 and/or upon commencement of the course or relevant session.</p>

Service/Deliverable to be provided	Performance Indicator	Time Frame
<p>Delivery and assessment of all sessions according to Final Program Delivery Plan.</p>	<p>All sessions, (including overview/introduction sessions, face-to-face training sessions, coaching/review sessions, mid course review sessions, graduation/presentation sessions, end of course review sessions, re-focus sessions) delivered according to Final Program Delivery Plan and subject to any negotiated changes to the Plan.</p> <p>Structured involvement of line managers in the program as per Final Program Delivery Plan.</p> <p>Adult learning principles incorporated throughout delivery and assessment processes.</p> <p>Workshops/sessions are learner-centred, not facilitator-centred.</p> <p>Assessment events are integrated and holistic where possible.</p> <p>Assessment events are able to be lodged electronically and/or online as well as face-to-face.</p> <p>All units are assessed and outcomes of assessment process are able to be recorded on Statements of Attainment as either Competent or Not Yet Competent.</p> <p>Delivery and assessment of sessions reflect NSW Public Service context generally, and NSW Department of Commerce specifically.</p> <p>Myers-Briggs Type Indicator forms provided.</p> <p>All participants complete Myers-Briggs Type Indicator.</p> <p>80% of participants' line managers attend and participate in overview/introduction session, program evaluation activities, coaching sessions, graduation sessions and other sessions as appropriate.</p> <p>Feedback provided by participants and/or line managers and/or Principal's Delegate in regard to individual sessions is responded to by successful tenderer.</p>	<p>As per Final Program Delivery Plan for Term of Agreement.</p> <p>Feedback responded to within 48 hours of receiving feedback.</p>

Service/Deliverable to be provided	Performance Indicator	Time Frame
Delivery and assessment of all sessions according to Final Program Delivery Plan, continued.	80% of participants attend each face-to-face training session.	As above.
Provision of learning support mechanisms, value-adding activities and strategies for maximising participants' completion of the program, including telephone, email and face-to-face discussions with participants, line managers of participants and Department of Commerce program administrators; site visits; participation in client research activities and support for individual/group projects.	Program completion rate of 80% or higher. Satisfaction with course reported on course evaluation forms (Reaction level).	Term of Agreement.
Implementation of Final Program Evaluation Strategy.	Session feedback and program evaluation tools administered with an 80% completion rate of feedback and evaluation tools.	Term of Agreement and reflecting reporting time frames identified in Final Program Evaluation Strategy.
Provision of up to 150 places in Diploma of Management (BSB 51107) courses.	Provision of up to 150 places in Diploma of Management (BSB 51107) courses. In metropolitan areas, these will generally be fully customised, in-house courses for Commerce-only groups. In regional areas, face-to-face courses may involve participants from both Commerce as well as other organisations. These courses may take place in the following areas:  Sydney CBD Parramatta Baulkham Hills Lismore Newcastle Queanbeyan Wollongong	Term of Agreement

**Part D – Deed of Agreement**

Service/Deliverable to be provided	Performance Indicator	Time Frame
Provision of Statement of Units Attained and Diploma of Management (BSB 51107) Qualification awarded to all eligible participants.	All eligible participants receive Diploma of Management (BSB 51107) Qualification and/or Statement of Attainment. At least 80% of participants achieve Diploma of Management (BSB 51107) qualification.	Within three months of graduation/presentation session for each cohort.
Provision of report on the results of the Final Program Evaluation Strategy.	All components of the Program Evaluation Strategy addressed in the report.	Within three months of graduation/presentation session for each cohort.  Annually on the anniversary of the signing of the Term of Agreement for the program as a whole.

## **Schedule 6 List of Approved Sub-Contractors**

---

## **Schedule 7      Expert Determination Procedure**

---

### **1.      Questions to be determined by the Expert**

- 1.1      The Expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
- 1.1.1      Is there an event, act or omission which gives the claimant a right to compensation under the Agreement:
- (a)      for damages for breach of the Agreement, or
- (b)      otherwise in law?
- 1.1.2      If so, what is the event, act or omission?
- (a)      on what date did the event, act or omission occur?
- (b)      what is the legal right which gives rise to the liability to compensation?
- (c)      is that right extinguished, barred or reduced by any provision of the Agreement, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
- 1.1.3      In the light of the answers to Clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:
- (a)      What compensation, if any, is due from one Party to the other and when did it fall due?
- (b)      What interest, if any, is due when the expert determines that compensation?
- 1.2      The Expert must determine for each issue any other questions required by the parties, having regard to the nature of the issue.

### **2.      Submissions**

- 2.1      The procedure for submissions to the Expert is as follows:
- 2.2      The Party to the Agreement which has referred the issue to Expert Determination must make a submission in respect of the issue, within 15 business days after the date of the letter of engagement referred to in Clause 14.5.3 of the Agreement. This submission must address the questions to be determined by the Expert under Clause 1.1 of this Schedule 7.
- 2.3      The other party must respond within 15 business days after receiving a copy of that submission. That response may include cross-claims.
- 2.4      The Party referred to in Clause 2.2 may reply to the response, but must do so within 10 business days after receiving the response, and must not raise new matters.
- 2.5      The other Party may comment on the reply, but must do so within 10 business days after receiving the reply, and must not raise new matters.
- 2.6      The Expert must ignore any submission, response, reply, or comment not made within the time given in Clauses 2.2 to 2.5 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.
- 2.7      The Expert may request further information from either Party. The request must be in writing, with a time limit for the response. The Expert must send a copy of the response to the other Party, and give the other Party a reasonable opportunity to comment on the response.



- 2.8 All submissions, responses, replies, requests and comments must be in writing. If a Party to the Agreement gives information to the Expert, it must at the same time give a copy to the other Party.

**3. Conference**

- 3.1 The Expert may request a conference with both Parties to the Agreement. The request must be in writing, setting out the matters to be discussed.
- 3.2 The Parties agree that such a conference is considered not to be a hearing which would give anything under this Expert Determination Procedure the character of an arbitration.

**4. Role of Expert**

4.1 The Expert:

- 4.1.1 acts as an expert and not as an arbitrator;
- 4.1.2 must make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the expert's own expertise; and
- 4.1.3 must issue a certificate in a form the Expert considers appropriate, stating the Expert's determination and giving reasons, within 12 weeks after the date of the letter of engagement referred to in Clause 15.5.3 of the Agreement.
- 4.1.4 If a certificate issued by the Expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the certificate.

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

## Schedule 8

## Program Delivery Plan

Tenderers will submit a Draft Program Delivery Plan as part of their tender response. After selection of the successful tenderer, parties to the Deed of Agreement will discuss the Draft Program Delivery Plan and a Final Program Delivery Plan will be prepared by the tenderer for inclusion in Schedule 8 of the Deed of Agreement.

Date/Time	Deliverables
	Establishment of a joint project management team with representatives of the successful tenderer and Commerce Organisational Development.
	Review by the successful tenderer of internal Commerce documents including organisational culture surveys and human resource metrics to provide a historical organisational context for the program. (Organisational Development will provide this material to the program provider.)
	Provision of a <b>Final Program Delivery Plan</b> including session content, learning activities, assessment activities, number, timing and length of sessions for relevant delivery pattern identified by Commerce (half-day fortnightly; full-day monthly; multi-day workshops) and process for involving participants' line managers throughout the program.
	Provision of <b>Final Program Evaluation Strategy</b> incorporating data collection instruments to be used, and data analysis and reporting processes which will provide information on the participants' attendance and completion rates and the four levels of the Kirkpatrick Model of Evaluation.
	Commencement of first course.
	Provision of pre course introduction, overview and assessment session including involvement of line managers for each course.

Date/Time	Deliverables
	Provision and completion of Myers Briggs Type Indicator (MBTI) instrument to participants and full analysis/debrief of process for each course group. Debrief to include using knowledge to Myers Briggs Typology to support team communication strategies. Also provision to Commerce Program Coordinator of summary of Myers-Briggs types in each group.
	For each course group, delivery and assessment of identified units of competency leading to achievement of Diploma of Management (BSB 51107) including face-to-face training, provision of participant learning materials/resources, knowledge/skill/behaviour assessment, session evaluation activities.
	Provision of 1 <sup>st</sup> , 2 <sup>nd</sup> and 3 <sup>rd</sup> Coaching/Review Sessions (with participant and line manager) for each course group.
	For each course group, provision of learning support mechanisms, value-adding activities and strategies for maximising participants' completion of the program, including telephone, email and face-to-face discussions with participants, line managers of participants and Department of Commerce program administrators; site visits; participation in client research activities and support for individual/group projects.
	Ongoing provision of support, information and feedback to program coordinator by Key Contact/Relationship Manager.
	Ongoing administration, collection and reporting of evaluation data according to Program Evaluation Strategy.
	For each course, provision of reports on attendance, withdrawals, deferments, and any feedback from participants at identified levels of the Kirkpatrick Evaluation Model.

Date/Time	Deliverables
	Head count of participants in the week before a progress payment falls due.
	Facilitation of mid-course review session.
	Facilitation of graduation/presentation session.
	Facilitation of post-course review session.
	Facilitation of re-focus session.
	Provision of a Statement of Units Attained to all participants and the Diploma of Management (BSB 51107) qualification awarded to all eligible participants.
	For each course, report on completion rates of course participants and analysis of data collected and feedback from participants at identified levels of the Kirkpatrick Evaluation Model.
	On an annual basis, provision of a report to Organisational Development on results of the Program Evaluation Strategy, outcomes of the program and analysis of the evaluation processes for the four levels of the Kirkpatrick evaluation model.



---

**People, Workplace and Planning is a Business Unit  
of the NSW Department of Commerce**

---

**People, Workplace and Planning invites this tender for  
and on behalf of the NSW Department of Commerce**

**Request for Tender  
RFT Id: 0900489**

**Business Managers  
Leadership Development Program**

## Table of Contents

1.	Project Scope .....	3
2.	Specific Requirements for Program/Project Delivery .....	3
3.	Program Content and Structure .....	8
4.	Program Evaluation Strategy .....	12

# Tenderers are to indicate their compliance or otherwise to this Statement of Requirements in Part C2 of the Tender Response

## 1. *Project Scope*

### 1.1 Overview

Organisational Development (OD) within the NSW Department of Commerce (Commerce) is seeking service providers to develop and submit proposals for the delivery, assessment and evaluation of the Business Managers Leadership Development Program.

The Diploma of Management (BSB 51107) qualification is a cornerstone of the Business Managers Program within Commerce's Leadership Development Program as it provides a significant level of professional development for many of Commerce's existing managers.

These Statement of Requirements are provided in order assist tenderers to prepare a comprehensive response to the tender.

## 2. *Specific Requirements for Program/Project Delivery*

The table below identifies the specific requirements for delivery of the Business Managers Leadership Development Program (the Project) by the successful tenderer. The Deed of Agreement (Part D of this RFT) contains the deliverables that the successful tenderer will be required to provide for the agreed price and according to the agreed payment arrangements.

The Specific Requirements for Program/Project delivery are divided into the following categories, based on the time frame for delivery.

Category	Timing
Pre-program requirements	By 1 July 2009
Pre-course requirements	Prior to the commencement of each course (first course to commence by 1 July 2009)
During course requirements	During delivery of each course (first course to commence by 1 July 2009)
Post-course requirements	Within three months of completion of each course
Ongoing program requirements	Annual program evaluation reports for duration of Deed of Agreement – on anniversary of commencement of Deed of Agreement

### Pre-program requirements to be provided by the successful tenderer by 1 July 2009

- Current Registered Training Organisation status with the NSW Vocational Education and Training Accreditation Board (VETAB) and presence on the National Training Information System (NTIS) with the Diploma of Management (BSB 51107) on scope. **(Evidence to be provided in Part C1, Clause 3.2).**
- Establishment of a joint project management team with representatives of the successful tenderer and Commerce Organisational Development.
- A review by the successful tenderer of internal Commerce documents including organisational culture surveys and human resource metrics to provide a historical organisational context for the program. Organisational Development will provide this material to the program provider.
- Provision of a **Final Program Delivery Plan** (refer to **Part C1, Clause 4.1**) including session content, learning activities, assessment activities, number, timing and length of sessions for relevant delivery pattern identified by Commerce (half-day fortnightly; full-day monthly; multi-day workshops) and process for involving participants' line managers throughout the program.
- All sessions, learning and assessment activities in the program delivery plan must incorporate the principles of adult learning theory as articulated below (<http://en.wikipedia.org/wiki/Andragogy> accessed 29/01/09)
  - Adults need to be involved in the *planning* and *evaluation* of their instruction (Self-concept and *Motivation* to learn).
  - *Experience* (including *mistakes*) provides the basis for learning activities (Experience).
  - Adults are most interested in learning subjects that have immediate *relevance* to their job or personal life (Readiness to learn).
  - Adult learning is *problem*-centered rather than content-oriented (Orientation to learning).
- Where possible and appropriate, learning and assessment activities in the program delivery plan should reflect the environment and context of the NSW Public Service generally, and the Department of Commerce specifically
- All sessions, learning and assessment activities in the program delivery plan must reflect a learner-centred, as opposed to facilitator-centred methodology.
- Experiential learning opportunities must be incorporated into the program delivery plan through such activities as case study analysis and simulations.
- Where possible and appropriate, assessment events identified in the program delivery plan should be integrated and holistic. Integrated assessment activities are those that reflect the participants' workplace environment and job role. Holistic assessment activities are those that assess elements from two or more units of competency.
- Program delivery plan must incorporate structured involvement of line managers of participants.
- Program delivery plan must identify points of integration of Commerce-based case studies and Commerce guest speakers into the program.



**Pre-program requirements to be provided by the successful tenderer by 1 July 2009, continued**

- Provision of **Final Program Evaluation Strategy** (refer to **Part C1, Clause 4.5**) incorporating data collection instruments to be used, and data analysis and reporting processes which will provide information on the participants' attendance and completion rates and the identified levels of the Kirkpatrick Model of Evaluation. Data collection/analysis instruments may include:
  - (i) Session feedback tools to determine participant reactions to learning resources and activities.
  - (ii) Pre-course assessment event(s) to provide evidence of baseline management/leadership knowledge, skills, attitudes and behaviours of participants.
  - (iii) Post-course assessment event(s) to provide evidence of changes to baseline measurements.
  - (iv) Pre- and post-course assessments that include self assessment as well as feedback from line managers and direct reports of participants.
  - (v) Methodology for calculating Return on Investment.

**Pre-course requirements that must be provided prior to the commencement of each course (first course to commence 1 July 2009)**

- Commencement of first program no later than 1 July 2009.
- Provision of the pre course introduction, overview and assessment session.
- Involvement of participants' line managers in pre-course introduction, overview and assessment session.

**During-course components that must be delivered  
by the successful tenderer during each course**

- Delivery and assessment of Diploma of Management (BSB 51107) and identified units of competency (refer to **Part F, Clause 3.1**) via face-to-face learning using Commerce-endorsed facilitators/ presenters/coaches.
- Provision of all professionally-produced, multi-sensory learning materials/resources both electronically/online (audio/visual) and as a text copy (visual). Audio/visual material must be able to be downloaded onto Personal Computers (PCs), MP3 players and Personal Digital Assistants (PDAs) such as Blackberries. Where possible/appropriate, learning materials/resources should incorporate Commerce and LDP logos.
- Learning materials/resources must reflect adult learning principles articulated above and address different learning styles including auditory, visual and kinaesthetic learning styles.
- Provision and completion of Myers Briggs Type Indicator (MBTI) instrument to participants and full analysis/debrief of process including using knowledge to Myers Briggs Typology to support team communication strategies. Also provision to Commerce Program Coordinator of a summary of Myers-Briggs types in cohort.
- Structured involvement in the program of line managers of participants.
- Provision of a minimum of three coaching/review sessions with the participant, the participant's line manager and the program facilitator (beginning, middle and end of program).
- Provision of learning support mechanisms, value-adding activities and strategies for maximising participants' completion of the program, including telephone, email and face-to-face discussions with participants, line managers of participants and Department of Commerce program administrators; site visits; participation in client research activities and support for individual/group projects.
- Provision of a mid-course review session (may be combined with mid-course individual coaching/review sessions).
- Provision of assessment events to be able to make professional judgements about participants' competence in all units of competence.
- All assessment events must have the option of being able to be accessed online/electronically, and lodged online/electronically. Assessment events must also be able to be provided to, and collected from, participants during face-to-face training sessions.
- All units of competency must be assessed and outcomes of the assessment process must be able to be recorded on Statements of Attainment as either Competent or Not Yet Competent.
- Ongoing provision of support, information and feedback to program coordinator by Key Contact/Relationship Manager.
- Provision of graduation and project presentation session.
- Administration of session feedback and program evaluation instruments.
- Fortnightly, monthly or as needed reports on attendance, withdrawals, deferments, and any feedback from participants at identified levels of the Kirkpatrick Evaluation Model.
- Head count of participants in the week before a progress payment falls due.

**Post-course components that must be delivered  
within three months of the completion of each course**

- Post course evaluation and review session (may be combined with post-course individual coaching/review sessions).
- Re-focus session (two months after course completion).
- Provision of a Statement of Units Attained to all participants and the Diploma of Management (BSB 51107) qualification awarded to all eligible participants.
- Report on completion rates of course participants and analysis of data collected and feedback from participants at identified levels of the Kirkpatrick Evaluation Model.

**Ongoing program deliverables to be provided as required and on the anniversary of the  
commencement of the Deed of Agreement for the duration of the Deed of Agreement.**

- Provision of a report to Organisational Development on results of the Program Evaluation Strategy, outcomes of the program and analysis of the evaluation processes for the identified levels of the Kirkpatrick evaluation model:
  - Level 1** Overall reaction of participants to learning resources, process, structure and content.
  - Level 2** Amount of learning that has occurred in participants as a result of the program.
  - Level 3** Behaviour change/ application of learning by participants in the workplace as a result of the program.
  - Level 4** - Return on Investment to Commerce and participants of the program.

### 3. Program Content and Structure

#### 3.1 Program Content

The program must include the following sessions and units of competency (refer to **Part C1, Clause 4.1**). Please note that the program for the Department of Commerce includes five electives rather than the three electives required to achieve the Diploma of Management (BSB 51107).

Session Purpose	Session Timing
Pre-program overview	Prior to program commencement (may be combined with Myers Briggs Type Indicator Delivery and Debrief).
Individual coaching/review sessions	A minimum of three sessions are required – one at the beginning, one in the middle and one at the end of the program. Participants in these sessions will include the participant, the participant's line manager and the program facilitator. It is preferred that these sessions be conducted face-to-face; however, telephone teleconference sessions are acceptable where face-to-face sessions are unable to be scheduled.
Mid course review session	Halfway through the program (may be combined with individual mid-course coaching/review session).
Graduation/project presentation	Two weeks after final face-to-face session.
Post-course review meeting	Two weeks after graduation/presentation (may be combined with post-course individual coaching/review session).
Re-focus meeting	Two months after post-course review meeting.

Core Units of Competency/Activities	
Unit Code	Unit Name
BSB LED 501A	Develop a workplace learning environment
BSB MGT 502A	Manage people performance
BSB MGT 515A	Manage operational plan
BSB MGT 516A	Facilitate continuous improvement
N/A	Completion of Myers Briggs Type Indicator Instrument for all course participants and provision of debrief session

Elective Units of Competency	
Unit Code	Unit Name
BSB CUS 501A	Manage quality customer service
BSB INN 601A	Manage organisational change
BSB PMG 510A	Manage projects
BSB WOR 501A	Manage personal work priorities and professional development
BSB WOR 502A	Ensure team effectiveness

## 3.2 Program Structure

### 3.2.1 Preferred delivery patterns.

Option	Format	Number of sessions	Total program duration
Option 1	Half-day session once per fortnight	18 - 24	12 months
Option 2	Full-day session once per month	9 - 12	12 months
Option 3	2 – 3 day residential workshops	3 - 5	12 months

Option 1 is preferred for programs that are offered in the Sydney metropolitan area for participants who live and work in Sydney. Options 2 and 3 will be considered for programs that are offered in the Sydney metropolitan area or major regional centres for participants who live in regional areas and are unable to attend a local program. However, the Department of Commerce reserves the right to request delivery of any option for any program.

### 3.2.2 Participant numbers/group size

The minimum number of participants per course will be 15 and the maximum number of participants per group will be 20. Groups will continue to run until participant numbers drop below 12. Therefore, tenderers should use 12 participants as the minimum viable number for ongoing delivery in their calculations of the per-head price for the program.

However, tenderers also need to be aware that should the number of participants drop below 12 at any point in a course, the future viability of that course for that class group will need to be negotiated. While every effort will be made to select participants who will be able to complete the full course with their intake group, circumstances may arise that make withdrawal or postponement of participation unavoidable.

The Deed of Agreement (**Part D of this RFT**) between the successful tenderer and the Department of Commerce will articulate the payment arrangements to be followed in the case of a participant's withdrawal from or deferment of a class group.

**If and when the situation arises that participants either withdraw from the course or defer their participation in the course, the following arrangements are proposed. These arrangements may be subject to negotiation with the successful tenderer when the Deed of Agreement is finalised.**

Reason for withdrawal/deferment	Time frame for withdrawal/deferment	Payment outcome of withdrawal/deferment	Program outcome
Any reason	Prior to course Commencement.	<ul style="list-style-type: none"> <li>No payment required for that individual.</li> <li>The Department of Commerce will endeavour to find a replacement. In-house courses with less than 15 participants will not commence, and will need to be postponed or cancelled, subject to negotiation between the Department of Commerce and the successful tenderer.</li> </ul>	<ul style="list-style-type: none"> <li>Nil impact on course apart from possible delay in commencement date.</li> </ul>

Reason for withdrawal/deferment	Time frame for withdrawal/deferment	Payment outcome of withdrawal/deferment	Program outcome
Change in personal or workplace circumstances of individual participant.	After commencement of course and prior to second progress payment.	<ul style="list-style-type: none"> <li>• First progress payment of 50% of total course price to be paid for that participant.</li> <li>• No further progress payments to be made for that person, unless the withdrawal/deferment results in there being less than 12 participants in the group. If the numbers drop below 12, negotiation will need to occur to determine the ongoing viability of the group.</li> <li>• If the participant's place in the course is deferred, the first progress payment in the deferred course will be waived, except for the cost incurred to provide replacement/updated resource materials and any required up-front overview/coaching sessions.</li> </ul>	<ul style="list-style-type: none"> <li>• If participant has completed at least one unit of competency, he/she will receive a Statement of Attainment.</li> <li>• If possible and appropriate, the participant will be offered a place on a subsequent program.</li> </ul>
Change in personal or workplace circumstances of individual participant.	After second progress payment and prior to third progress payment.	<ul style="list-style-type: none"> <li>• Second progress payment of 25% of total course price to be paid for that participant.</li> <li>• No further progress payments to be made for that person, unless the withdrawal/deferment results in there being less than 12 participants in the group. If the numbers drop below 12, negotiation will need to occur to determine the ongoing viability of the group.</li> <li>• If the participant's place in the course is deferred, the first and second progress payments in the deferred course will be waived, except for the cost incurred to provide replacement/updated resource materials and any required review/coaching sessions.</li> </ul>	<ul style="list-style-type: none"> <li>• If participant has completed at least one unit of competency, he/she will receive a Statement of Attainment.</li> <li>• If possible and appropriate, the participant will be offered a place on a subsequent course.</li> </ul>

Reason for withdrawal/deferment	Time frame for withdrawal/deferment	Payment outcome of withdrawal/deferment	Program outcome
Change in personal or workplace circumstances of individual participant.	After third progress payment and prior to final progress payment.	<ul style="list-style-type: none"> <li>• Third progress payment of 15% of total course price to be paid for that participant.</li> <li>• No further progress payments to be made for that person, unless withdrawal results in there being less than 12 participants in the group. If the numbers drop below 12, negotiation will need to occur to determine the ongoing viability of the group.</li> <li>• If participant's place in the course is deferred, the first, second and third progress payments in the deferred course will be waived, except for the cost incurred to provide replacement/ updated resource materials and any required review/ coaching sessions.</li> </ul>	<ul style="list-style-type: none"> <li>• If participant has completed at least one unit of competency, he/she will receive a Statement of Attainment.</li> <li>• If possible and appropriate, the participant will be offered a place on a subsequent program.</li> </ul>

### 3.3 Value added services

Tenderers should consider whether they are able to provide additional services beyond the delivery, assessment and evaluation of training, but within the tendered price. If tenderers are able to provide additional services within the delivery price, these additional services should be identified in **Part C1, Clause 5.8**.

Examples of additional services could include:

- Involvement of program participants in research relating to management and leadership topics.
- Provision of research reports on management and leadership topics based on client/participant surveys or other research activities conducted by the tendering organisation.
- Online magazines, blogs or meeting spaces within a dedicated website space for program participants.
- Opportunities to participate in webinars, conferences or other seminar formats with international management/ leadership experts.
- Advice and support in the process of applying for any relevant funding grants for elearning initiatives.
- Ability to offer dual qualifications in Diploma of Government (Management) (PSP 51104).

## 4. Program Evaluation Strategy

### 4.1 Kirkpatrick Model of Evaluation

Since Dr Donald Kirkpatrick first published several articles on evaluation in the *US Training and Development Journal* (now called *T+D*) in 1959, his four-level model of evaluation has become the industry standard. The four levels are:

- Reaction of the participant - what they thought and felt about the training.
- Learning - the increase in knowledge or capability of the participant as a result of the training.
- Behaviour – the extent of behaviour and capability improvement and implementation/application on the part of the participant as a result of the training.
- Results - the impact on the business or environment, including Return on Investment (ROI) resulting from the learner's performance after receiving the training.

The Department of Commerce expects the successful tenderer to be able to provide data collection tools for each of these four levels of evaluation. In addition, the Department of Commerce expects the successful tenderer to collect relevant data from participants, their line managers, and other relevant stakeholders before each course starts, during each course, and at the end of each course. The successful tenderer will then collate and analyse the results for the data collection processes, and provide regular reports to the Department of Commerce on the outcomes of training at each level of the Kirkpatrick Evaluation Model.

### 4.2 Department of Commerce Role in Program Evaluation

The Leadership Development Program is expected to deliver increased performance outcomes across the Department of Commerce as measured by standard Human Resource metrics and indicators of organisational health.

These standard metrics include, but are not limited to:

- Results of staff satisfaction/engagement surveys
- Results of new employee entrance surveys and employee exit surveys
- Results of 360° feedback processes
- Attendance and leave records
- Staff separation rates
- Internal promotion rates

It will be the responsibility of the Department of Commerce to analyse these metrics on a regular basis and to assess the impact of the Leadership Development Program on the organisation as evinced by changes over time to these metrics.

### 4.3 Successful Tenderer's Role in Program Evaluation

The performance of the successful tenderer in delivering Business Manager Leadership Development Programs will also be measured to ensure that the program offers value for money. The successful tenderer will be expected to collect a range of data at various points in the program in order to inform the program evaluation process. That data will then be collated and analysed by the successful tenderer and provided in a report to the Department of Commerce at the relevant points as indicated in the table below.

The following table summarises the performance evaluation inputs, outcomes and reporting time frames that will be required of the successful tenderer.



Type of data to be collected	Data collection tool/source of information	Timing of data collection	Reporting parameters	Reporting time frame
Attendance by participants.	Participant head count.	Each workshop/session.	In writing to program coordinator.	Fortnightly or monthly depending on frequency of workshops/sessions.
Number of participants in the program.	Participant head count.	Week prior to progress payment falling due.	In writing to program coordinator.	Week prior to progress payment falling due.
Number of participants achieving Diploma of Management (BSB 51107).	Results achieved in units of competency.	Three months after completion of the program.	Provision of Statements of Attainment and Diplomas to program coordinator for distribution at graduation or subsequent to graduation.	Week prior to graduation ceremony and/or within three months of each course completion.
Completion rate.	Number achieving qualification divided by number of participants who commenced the course x 100.	Three months after completion of the program.	In writing to program coordinator.	Three months after completion of each course and included in yearly report for the program as a whole.
<b>Reaction</b> - Feedback from participants on program experience.	A wide variety of feedback collection tools could be used. The tools are to be provided by successful tenderer in consultation with Commerce.	Minimum at midpoint and end of program; more often if required.	In writing to program coordinator - report on outcomes at Kirkpatrick Level One – overall satisfaction with program by participants.	Midpoint and end of each course and included in yearly report for the program as a whole.

Type of data to be collected	Data collection tool/source of information	Timing of data collection	Reporting parameters	Reporting time frame
<p><b>Learning</b> - level of knowledge of participants at beginning of the course, level of knowledge of participants at end of course.</p>	<p>Diagnostic tool(s) to assess knowledge level at beginning and end of course.</p> <p>Data to be analysed to identify quantitative and qualitative changes in level of knowledge on the part of participants</p> <p>A wide variety of diagnostic tools could be used for this purpose.</p> <p>Tool(s) to be provided by successful tenderer in consultation with Department of Commerce.</p>	<p>Minimum at beginning and end of program; more often if required.</p>	<p>In writing to program coordinator – report on outcomes at Kirkpatrick Level Two – amount of learning achieved through the program.</p>	<p>Three months after completion of each course and included in yearly report for the program as whole.</p>

Type of data to be collected	Data collection tool/source of information	Timing of data collection	Reporting parameters	Reporting time frame
<p><b>Behaviour/application</b> - Evidence of behaviour change/application of learning achieved.</p>	<p>Application of a data collection tool to identify attitudes/ behaviours of participants at beginning and end of the program.</p> <p>Analysis of data to determine quantitative and qualitative change in attitudes/behaviours.</p> <p>Sample tools could be 180° or 360° surveys which participants, their line managers and other relevant parties would participate in.</p> <p>Survey/ tool to be provided by the successful tenderer in consultation with Department of Commerce.</p>	<p>Minimum at beginning and end of program; more often if required.</p>	<p>In writing to program coordinator – report on outcomes at Kirkpatrick Level Three – evidence of behaviour change/application of learning.</p>	<p>Three months after completion of each course and included in yearly report of the program as a whole.</p>

Type of data to be collected	Data collection tool/source of information	Timing of data collection	Reporting parameters	Reporting time frame
<b>Results</b> - evidence of Return on Training Investment to Individual and/or Department of Commerce.	A range of tools and formulae could be used to collect and analyse data on the Return on Investment of training.  The tool(s)/formulae to be used are to be provided by the successful tenderer in consultation with Commerce.	Minimum at midpoint and end of program; more often if required.	In writing to program coordinator – report on outcomes at Kirkpatrick Level Four – Return on Investment.	Three months after completion of each course and included in the yearly report of the program as a whole.

Tenderers should submit their Proposed Program Evaluation Strategy covering the points described above using the templates provided in **Part C1, Clause 4.5**.