

Summary File ONLY

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**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.



Request for Tender Document

for:

Development and delivery of a competency-based training course on
Occupational Health and Safety Management for Construction
Contractors

RFT / Contract No: 0701833

October 2007

Client:

Department of Commerce
Office of Public Works and Services

Issued: 16/10/2007

Closes: 9:30 am Thursday 8 November 2007 (or
as amended)

Submission details:

- For submission details, see [*Submission of Tender*](#).

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Conditions of Tendering

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

Description of the Services

Develop and deliver a competency based training program on Occupational Health and Safety Management for Construction Contractors. The program is to be consistent with BSB41604 Certificate IV in Occupational Health and Safety Management, and involve up to ten two-day courses delivered in regional New South Wales.

Contact person

Refer requests for information about the Tender to:

Name:	Paul Bradley
Position:	Senior Project Manager
Agency or firm:	NSW Department of Commerce
Telephone number:	02 9372 8868
Facsimile number:	02 9372 8866
e-mail address:	paul.bradley@commerce.nsw.gov.au

Goods and Services Tax

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

NSW Government Code of Practice for Procurement

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

http://www.treasury.nsw.gov.au/procurement/cpfp_ig

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

Submission of Tender

Documents to be submitted

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

- Tender Form

Submit all information called for in the tender documents.

Where applicable, refer to each Addendum and state that the Tender allows for the instructions given in the Addendum.

Submission procedure

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

- eTendering (preferred), or
- Physical Tender Box,

If more than one tender submission is made, mark each submission clearly as to whether it is a copy, an alternative tender, or whether the submission supersedes another submission. Submit when requested, by the date, time and method stipulated in the request, Tender Schedules marked "Submit when requested" and any other information required to allow further consideration of the Tender. Failure to meet this requirement may result in the Tender being rejected.

eTendering

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

Tenderers are encouraged to obtain RFT and submit tenders through the Commerce Tendering web site at: <https://tenders.nsw.gov.au/commerce>

Legal status

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

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

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

Electronic format for submissions

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

File compression

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

Change of Tender Form text

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

Tender Box/es

Tenders must be received by the closing date and time.

A quotation must be lodged into a designated secure Tender Box. It may be lodged at one of the locations below:

- a) Electronic lodgement to the **Electronic Tender Box** for this RFT through the NSW Department of Commerce tenders web site at:

<https://tenders.nsw.gov.au/commerce>

Login as a user, locate the web page for the RFT, then follow the on-screen instructions to lodge.

- b) 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

- i) The tender must be able to be lodged into the physical tender box deposit slot of 400mm by 90mm, and must be lodged during McKell Building opening hours of 7:30am to 6:30pm Monday to Friday (excluding Public Holidays). No receipt can be given however written acknowledgement of delivery of a container may be given by prior arrangement. Contact Tenders Office on (02) 9372 8900.
 - ii) 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) 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.
 - iii) Tenders must be clearly marked with the RFT number – “RFT 07001833 – OH&S Training”
- c) Lodgement to the **Facsimile Tender Box** at Ph: (02) 9372 8974.

Quotations which are sent by facsimile and which are not completely received at the specified location by the close of quotations may be excluded from consideration for acceptance even if transmission or receipt is delayed due to the receiving facsimile machine being engaged, faulty or otherwise inoperative.

If a tenderer intends to submit by facsimile or electronically, it must consider the following:

- a. The facsimile machine and Commerce eTendering system are at their peak on the morning when tenders and quotations close. Due to the volume received on those closing dates, the State Contracts Control Board (SCCB) cannot guarantee the level or speed of access to these facilities at that time and tenderers should consider lodging in good time.
- b. The facsimile machine and the Commerce eTendering website may experience difficulties in accepting large submissions. Therefore, tenderers may submit non-mandatory supporting documents such as statutory declarations, company brochures, and press clippings as hard copies. The complete response, including any designated supporting documents, must be submitted by closing date and time;
- c. It is recommended that electronic files be kept as small as practical, and the total lodgement below an optimum size of 7mb.

Late Tenders

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

Alternative Tenders

Submit a single Tender in full compliance with the work as specified without any conditions or qualifications.

Assessment and Acceptance of Tenders

The criteria for assessment of Tenders are:

- Price (weighting 60 %) Fee
- Non-price (weighting 40 %)
Previous experience in developing and delivery Occupational Health and Safety Management training courses that lead to the award of BSB41604 Certificate IV in Occupational Health and Safety Management or similar competency-based qualification

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

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

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

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

Acceptable Legal Entities

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

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

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

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

Disclosure of tendering and contract information

Details of this tender and contract awarded as a result of this tender process may be disclosed in accordance with the: *Freedom of Information (Open Government – Disclosure of contracts) Act 2006*, Premier's Memorandum 2007-01 and NSW Government Tendering Guidelines which may be obtained at: <https://tenders.nsw.gov.au/commerce/guidelines/>

Consultant Performance

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

Multiple Use of Contract Material

The contract material may be adapted or changed by the Principal for any purpose. Refer to Clause 7.3 of the Consultant Agreement.

Tender Schedules

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

- Tender Form
- 1. Schedule of Prices – Lump Sum
- 2. Tender Schedule – Experience and Qualifications

Tender Form

Tenderer's details

Name:
 (in block letters)
 ABN

 Address:

 Telephone number:
 Facsimile number:
 e-mail address:

hereby tender(s) to perform the services for

Tender details

Agreement name: Development and delivery of a competency-based training course on Occupational Health and Safety Management for Construction Contractors

Contract number: 0701833
 in accordance with the Tender Specification

For the Fee, being the lump sum of:

.....

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

Date:	
* Signed for the Tenderer by: (<i>Authorised Officer</i>)	
In the Office Bearer capacity of:	
Name (<i>in block letters</i>):	

1. Schedule of Prices - Lump Sum

(SUBMIT WITH TENDER FORM)

Insert the amount allowed for each of the following items.

This Schedule is for information only and does not form part of the Agreement. Its purpose is to assist in making valuations of services carried out but the Principal is not bound to use it.

All amounts must include an amount for GST.

Item No.	Description	Amount
1	Break-up of Lump Sum tendered:	
1.1	Development of training course, including all materials	\$
1.2	Delivery of ten two-day training courses (excluding travel and accommodation)	\$
1.3	Travel and accommodation	\$
Total of tendered Lump Sum		\$

Date:	
* Signed for the Tenderer by: <i>(Authorised Officer)</i>	
In the Office Bearer capacity of:	
Name <i>(in block letters)</i> :	

* not required for electronic lodgement

2. Tender Schedule – Experience and Qualifications

(SUBMIT WITH TENDER FORM)

Provide details as follows of previous experience in developing and delivery Occupational Health and Safety Management training courses that lead to the award of BSB41604 Certificate IV in Occupational Health and Safety Management or similar competency-based qualification

Consultants must demonstrate their ability to meet the following criteria for the engagement:

1. Is a Registered Training Organisation
2. Nomination of a Director /Senior Manager as single point of contact with Commerce for the engagement
3. Nomination of a project team who will develop and deliver the training, including details of qualifications and experience
4. Previous extensive experience in developing and delivering safety management training courses that lead to the award of BSB41604 Certificate IV in Occupational Health and Safety Management or similar competency-based qualification
5. Demonstrated extensive knowledge of the NSW Occupational Health and Safety (OHS) Act 2000, OHS Regulation 2001, and Codes of Practice that apply to the construction industry
6. Resourcing capability to develop training course (including all materials) by January 2008 for delivery of pilot in March 2008
7. Resourcing capability to deliver a training program of ten two-day training courses in regional NSW locations in April – June 2008.

Date:	
* Signed for the Tenderer by: <i>(Authorised Officer)</i>	
In the Office Bearer capacity of:	
Name <i>(in block letters)</i> :	

* not required for electronic lodgement

Outline Services Delivery Plan

Prepare an Outline Services Delivery Plan for the Services. The Outline Services Delivery Plan will be taken into account when assessing the Proposal. The Services Delivery Plan must be developed within the time specified in Item 4 of the Agreement Information.

The Outline Services Delivery Plan must include, as a minimum:

- .1 An outline program for the Services showing key activities, the time allowed for each key activity, and milestones or points at which reviews of the work are planned.
- .2 Information on the proposed Consultant's key personnel, including:
 - .1 name and title;
 - .2 role in performing the Services;
 - .3 qualifications and recent relevant experience; and
 - .4 expected timing and duration of involvement in the Services.
- .3 An outline of the expected inputs to be supplied by the Principal.
- .4 Fee component for each key activity and phase of work (adding items to the break-up on the Fee tender form as required).

Conditions of Agreement

Operative Clauses

1 DEFINITIONS

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

Agreement Documents means:

- .1 Conditions of Agreement;
- .2 Agreement Information;
- .3 The Services;
- .4 Appendices;
- .5 Drawings and documents;
- .6 Letter of Award and any other documents listed therein.

Business Day means any day other than a Saturday, Sunday, public holiday or 27, 28, 29, 30 or 31 December.

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

Date of Agreement means the date of the Letter of Award.

Fee means the fee described in Clause 5.

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

Letter of Award means a letter from the Principal to the Consultant awarding the contract to the Consultant.

Services means the services described in The Services.

Principal means the entity named in Item 1 of the Agreement Information.

Consultant means the entity named in Item 2 of the Agreement Information.

2 ENGAGEMENT

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

3 CONSULTANT'S OBLIGATIONS

Professional Standard of Care

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

Knowledge of Requirements of the Principal

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

Personnel

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

Discrepancies In Information

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

Program or Plan

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

Timely Provision of Services

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

Change of Scope or Timing

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

Alterations to Approved Documents

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

Principal's Materials

- .10 The Consultant must protect and keep safe and secure all materials and documentation provided by the Principal to the Consultant.

- .11 Upon discharge of this Agreement by performance or termination, the Consultant must promptly return to the Principal those materials and documentation.

Co-operation by the Consultant

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

Obtain All Necessary Approvals

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

Consultant's Relationship with the Principal

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

Confidentiality

- .15 The Consultant and its employees or agents must not without the prior written consent of the Principal disclose any information in connection with the Services or this Agreement to any person not a party to this Agreement other than:

- .1 as necessary to perform the Services; or
- .2 with respect to any matter already within public knowledge.

Consultant's Representative

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

Additional Services

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

Subcontracting and Assignment

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

Statutory Requirements

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

Conflict of Interest

- .21 The Consultant warrants that it has no conflict of interest at the date of this Agreement.
- .22 The Consultant must immediately inform the Principal in writing upon becoming aware of the existence, or possibility, of a conflict of interest.

Security of Premises

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

Access to Consultant's Premises

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

Insurances

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

4 PRINCIPAL'S OBLIGATIONS**Provide Information**

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

Appoint a Representative

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

5 PAYMENT**Payment**

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

Right of Set-Off

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

Effect of Payment of the Fee

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

Reimbursable Expenses

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

Timing of Payment

- .5 At the times specified in Item 11 of the Agreement Information, and upon Termination pursuant to Clause 11, the Consultant must lodge with the Principal a payment claim for the

Services performed (and for approved reimbursable expenses, if any, incurred) during that period.

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

Conditions Precedent

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

Recipient Created Tax Invoices

- .10 The Principal will issue payment schedules in the form of Recipient Created Tax Invoices. The Consultant must not issue Tax Invoices in respect of the Agreement.
- .11 Each party warrants it is registered for GST at the time of entering into the Agreement, and must notify the other party if it ceases to be registered for GST or to satisfy any requirements for the issue of Recipient Created Tax Invoices.
- .12 The Principal will issue Adjustment Notes in respect of adjustment events known to the Principal. The Consultant must notify the Principal of details of any adjustment event not known to the Principal if it ceases to satisfy any requirements for the issue of Recipient Created Tax Invoices.

Pay as You Go

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

6 VARIATIONS

Proposed Variation

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

Valuation

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

7 COPYRIGHT AND INTELLECTUAL PROPERTY

Vesting

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

the use by the Principal of the Contract Material for any purpose reasonably contemplated under the agreement.

Delivery

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

Limitations

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

8 INDEMNITY – PEOPLE AND PROPERTY

- .1 The Consultant indemnifies the Principal from and against all actions, claims, costs, expenses and damages (including the costs of defending or settling any action or claim) in respect of:
- .1 loss of or damage to property of the Principal; or
 - .2 personal injury (including death) to any person or loss of or damage to any property, arising out of or by reason of anything done or omitted intentionally or negligently by the Consultant in respect of the Services.
- .2 The Consultant's liability to indemnify the Principal is reduced proportionally to the extent that an act or omission of the Principal or employees or agents (other than the Consultant) of the Principal may have contributed to the injury, damage or loss.
- .3 The liability of the Consultant under Clause 8 may be limited if the Consultant is a member of an occupational association with an approved Scheme under the *Professional Standards Act, 1994* (NSW).

9 INSURANCE**Professional Indemnity Insurance**

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

Workers' Compensation

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

Public Liability

- .3 The Consultant must obtain and maintain a public liability policy of insurance to cover loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Services.
- .4 The policy must be:
- .1 with an insurer and under conditions approved by the Principal (which approval will not be unreasonably withheld);
 - .2 obtained prior to commencing the carrying out of the Services;
 - .3 maintained for the duration of the Agreement; and

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

10 INSPECTION OF RECORDS

Records

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

Access

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

11 TERMINATION

Termination by the Principal other than for Default by the Consultant

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

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

Termination by the Principal for Default by the Consultant**.4 If the Consultant:**

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

Termination by the Consultant

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

Consultant's Continuing Liability

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

Effect of Termination

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

Adjustment of the Fee on Termination

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

12 DISPUTE RESOLUTION

Nomination

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

Submissions

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

Procedure

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

Determination

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

Liability

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

Costs

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

Continuing Performance

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

13 NOTICES

- .1 Any notice given under this Agreement:
 - .1 must be in writing addressed to the intended recipient at the address shown in Item 17 of the Agreement Information or the address last notified by the intended recipient to the sender;

- .2 must be signed by an authorised officer of the sender; and
- .3 will be taken to have been given or made (in the case of delivery in person or by fax, cable or post) when delivered, received or left at the specified address.

14 COMMUNICATION

- .1 The parties agree and consent that notices and communications may be by electronic communication in accordance with the *Electronic Transactions Act 2000* (NSW).

Agreement Information

Item 1 - The Principal: (Cl. 1)	Minister for Commerce for the State of NSW
Item 2 - The Consultant: (Cl. 1).	As nominated in the Consultant's Tender and accepted by the Principal if applicable.
Item 3 - Capacity in which the Consultant is engaged: (Cl. 2).	OHS Management Training Consultant
Item 4 - Time by which Consultant must provide program or plan: (Cl. 3.6)	7 days
Item 5 - Time to complete Services: (Cl. 3.6) (<i>Refer The Services</i>)	<p>Submit to Principal completed training course (including all materials) by January 2008 for delivery of pilot in March 2008</p> <p>Deliver a training program of ten two-day training courses in regional NSW locations in April – June 2008.</p> <p>Forty (40) weeks from date of letter of award.</p>
Item 6 - Approvals obtained by Principal: (Cl 3.13)	Nil
Item 7 - Consultant's Representative: (Cl. 3.16)	As nominated in the Project Manager's Tender and accepted by the Principal.
Item 8 - Principal's Representative: (Cl. 4.2)	Paul Bradley
Item 9 - the Fee: (Cl. 5.1)	The Fee shall be a lump sum as accepted by the Principal.
Item 10 - Reimbursable Expenses: (Cl. 5.4)	Not applicable
Item 11 - Claim timetable: (Cl. 5.5)	Monthly
Item 12 - Payment timetable: (Cl. 5.6, 5.7 and 5.8)	Payment will be made within 20 Business Days subject to Clause 10.2.

Item 13 - Intellectual property not vesting in the Principal: (Cl. 7.1)	Nil
Item 14 - Quantum of professional indemnity insurance: (Cl. 9.1)	\$ 250,000
Item 15 - Quantum of public liability insurance: (Cl. 9.5.4)	\$5,000,000
Item 16 - Percentage on termination: (Cl. 11.8 and 11.10)	Nil
Item 17 - Notices: (Cl. 13)	
For notices to the Principal, the address of the intended recipient is;	Name: Paul Bradley Address: Level 17 McKell Building 2-24 Rawson Place Sydney 2000» Facsimile: 02 9372 8866
For notices to the Consultant, the address of the intended recipient is;	Name: As nominated in the Consultant's Tender and accepted by the Principal. Address: As nominated in the Consultant's Tender and accepted by the Principal. Facsimile: As nominated in the Consultant's Tender and accepted by the Principal.

The Services

1. DESCRIPTION OF SERVICES

OCCUPATIONAL HEALTH AND SAFETY MANAGEMENT TRAINING COURSES NSW REGIONAL CONSTRUCTION CONTRACTORS - WATER PROJECTS

Summary

Development and delivery of a competency based training program on Occupational Health and Safety Management for Construction Contractors.

The program is to be consistent with BSB41604 Certificate IV in Occupational Health and Safety Management, and involve up to ten two-day courses delivered in regional New South Wales.

The training provider must be a Registered Training Organisation.

The completed training materials should be delivered during January 2008.

A pilot training course should be delivered in March 2008, with the remaining courses during April – June 2008.

Indicative Locations:

Pilot March 2008 - Lismore

Wagga Wagga

Griffith / Deniliquin / Hay or other south western NSW location

Dubbo

Grafton / Coffs Harbour

Lismore / Tweed

Ulladulla

Queanbeyan

Tamworth

Wyong

BACKGROUND

Commerce is seeking a consultant who is capable of developing and delivering an educational program on safety management for construction contractors who are based in regional New South Wales and mainly undertake work on water and wastewater infrastructure projects for a range of clients, not exclusively Commerce. This initiative is designed to provide benefits to construction contractors, their workforces, clients and the community by improving the contractors' safety management capability. It is an initiative that applies broadly to an important sector of the construction industry.

The Safety Training Program is directed at an area of regional safety, namely water and wastewater projects, that will continue to grow in significance due to the national importance of better water management. Building the capability of contractors and subcontractors, who often work in small teams on pipelines and other water projects outside the Sydney metropolitan area, raises issues of communication and access to resources given the often remote nature of the work.

The objective of the Safety Training Program is to increase the safety management capability of regionally-based construction contractors undertaking work on water and wastewater projects in New South Wales.

'Regionally-based contractors' means contractors and subcontractors operating outside the Sydney metropolitan area.

The construction of water and wastewater assets is an important sector of the Engineering Construction industry in NSW, with the Australian Bureau of Statistics in its most recent report stating the value of work commenced in 2005/06 was \$911.8M, and in 2006 \$1145.6m (which is

approximately 10% of all engineering construction work in NSW.)¹ Due to the current national interest in water management, this amount of work will significantly increase.

The construction of water and wastewater assets and facilities in regional NSW is the responsibility of a range of organisations – state and local government and water authorities. Commerce is a service provider to these diverse group of funders and owners of water and waste water construction projects. It provides project management, design and contract administration services to these organisations. Some of these organisations use Commerce, others contract directly with large, medium and small contractors with a range of managerial capabilities. These principal contractors also use the regionally-based subcontractors to carry-out these works.

The engagement is for a Registered Training Organisation to develop and implement a competency-based training program as per the attached Course Outline in regional centres for construction contractors and subcontractors who carry out water and wastewater projects, including pipelaying, water and wastewater treatment plants and reservoirs and other water storage facilities.

The training program would be for up to 300 participants (2-3 senior representatives from each company) with 30 for each of the ten two-day courses. This would reach up to 150 companies undertaking water and wastewater projects in regional NSW.

The program will be developed with the local government authorities, other state government agencies and with interested employer organisations, such as the Civil Contractors Federation, and the construction unions.

WorkCover will be briefed by Commerce at the WorkCover-Commerce bimonthly meeting and consulted throughout the development and implementation of this project to ensure the project's objectives are achieved.

In addition to WorkCover, Commerce is identifying other partners for the Program, including:

State and Regional Development

Hunter Water, North Coast Water, Central Coast Water, and similar water authorities

Department of Water and Energy / Department of Climate Change – Murray-Darling projects

Local Government and Shires Association

Sydney Water, Sydney Catchment Authority –in particular South Coast projects

Civil Contractors Federation,

Larger Regional Councils – Shoalhaven, Eurobodalla

¹ Australian Bureau of Statistics (ABS) *Engineering Construction Activity Australia* December Quarter 2006 8762.0 p28. The term 'water and wastewater assets' encompasses the works categorised by ABS under 'Water storage and supply, sewerage and drainage' and is defined by the ABS as: 'Water storage and supply': dams; weirs; reservoirs; embankments for water diversion; water pipelines; mains and treatment plants; flood prevention and erosion; aqueducts; water conduits; systems conveying water to residences, commercial and industrial establishments, and 'Sewerage and drainage': sanitary and storm sewers; sewage treatment plants; stormwater drains; drainage systems and,

[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/773F17972531E555CA2572C0001D7B02/\\$File/87620_dec%202006.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/773F17972531E555CA2572C0001D7B02/$File/87620_dec%202006.pdf)

COURSE OUTLINE -OCCUPATIONAL HEALTH AND SAFETY TRAINING PROGRAM - NSW REGIONAL CONSTRUCTION CONTRACTORS - WATER PROJECTS

Objective

To increase the safety management capability of regionally-based construction contractors undertaking work on water and wastewater projects in New South Wales for all clients, not exclusively Commerce.

Intended Outcome

Contractors and subcontractors in NSW regional centres will be able to understand, develop and implement their own safety management system, based on a consistent and practical understanding of safety management issues on water and wastewater projects.

Program

Develop and implement a competency-based training program in regional centres for construction contractors who carry out water and wastewater projects, including pipelaying, water and wastewater treatment plants and reservoirs and other water storage facilities.

The training program would be for up to 300 participants (2-3 senior representatives from each company) with 30 for each of the ten two-day courses. This would reach up to 150 companies undertaking water and wastewater projects in regional NSW. Commerce would identify contractors and subcontractors who should be invited to attend as well as advertise in regional media.

Timetable

Submit to Principal completed training course (including all materials) by January 2008 for delivery of pilot in March 2008

Deliver a training program of ten two-day training courses in regional NSW locations in April – June 2008.

Participants who successfully complete the training will be awarded certification indicating they have completed Course Units

BSBOHS403A Identify Hazards and assess OHS risks

BSBOHS404A Contribute to the implementation of strategies to control OHS Risk

of BSB41604 Certificate IV in Occupational Health and Safety Management

Outline – 2 day competency – based training course

1. **NSW Government *OHS Management System Guidelines* 4th Edition**
2. **Preparing and implementing Safety Management Plans and Safe Work Method Statements**
3. **Safety Culture and Leadership – (James Reason *Managing the Risk of Organisation Accidents*)**
4. **Management of subcontractors**
5. **Safe Design**
6. **Major Risks and relevant WorkCover *Codes of Practice***
 - a. **Construction Work under OHS Regulation 2001**
 - b. **Moving Plant on Construction Sites and work near traffic**
 - c. **Excavations**
 - d. **Work Near Overhead Power Lines**
 - e. **Work Near Underground Services**
 - f. **Electrical Practices on Construction Projects**
 - g. **Formwork**
 - h. **Safe Work at Heights**
 - i. **Work in Confined Spaces**
7. **Exercises:**
 - a. **Preparing a Safe Work Method Statement – Pipelaying**
 - b. **Demonstrating Safety Leadership**
 - c. **Incident investigation**

Consultants must demonstrate in their response to Tender Schedule 2 their ability to meet the following criteria for the engagement:

1. Is a Registered Training Organisation
2. Nomination of a Director /Senior Manager as single point of contact with Commerce for the engagement
3. Nomination of a project team who will develop and deliver the training, including details of qualifications and experience
4. Previous extensive experience in developing and delivering safety management training courses that lead to the award of BSB41604 Certificate IV in Occupational Health and Safety Management or similar competency-based qualification
5. Demonstrated extensive knowledge of the NSW Occupational Health and Safety (OHS) Act 2000, OHS Regulation 2001, and Codes of Practice that apply to the construction industry
6. Resourcing capability to develop training course (including all materials) by January 2008 for delivery of pilot in March 2008
7. Resourcing capability to deliver a training program of ten two-day training courses in regional NSW locations in April – June 2008.

2. Occupational Health and Safety

Occupational Health and Safety management

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

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

The Consultant must submit the Consultant’s Safe Work Method Statements to the Principal before one week prior to the relevant work being carried out on the work site. Submit revisions to the Safe Work Method Statements to the Principal.