Project File No: **[## insert]**

Project ID: **[## insert]**

Engagement ID: **[## insert]**

Document ID: **[## insert]**

**[## Insert Project Name]**

**Request for Tender for use with [VPS Model AS4300-1995/AS2124-1992]**

[***Guidance Note: Note that a Tenderer will only be bound by the Conditions of Tendering upon submission of the Tender. If there is a previous stage in the procurement process (e.g., an EOI stage), Tenderers will often be asked to sign up to obligations of confidentiality, probity and non-reliance, and release the Principal from claims arising from the procurement process, as part of submitting an EOI. Where there is no preceding procurement stage, agencies should consider whether Tenderers should be asked to sign up to similar undertakings prior to receiving the RFT - for instance in a Deed of Confidentiality and Disclaimer****.*]

[***Guidance Note: If the requirements of an International Agreement apply to an Agency when undertaking Public Construction Procurement, the Agency must ensure that it complies with such requirements. Each agency is responsible for ensuring that it confirms whether the requirements of any International Agreements apply to the engagement of a supplier to perform Works. Refer to Instruction 2 for further details.***]

[***Guidance Notes (located throughout this document) and items that you need to complete are shown in yellow shading. Ensure you remove guidance notes before releasing a tender.]***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Revision:** | **Date:** | **Clause reference:** | **Details:** | **Endorsed by:** |
| June 2018 | 28 June 2018 | Not applicable | New document issued. | DTF |
| December 2018 | 24 December 2018 | 18 | DDR Arbitration clause added  | DTF |

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# PART A - Overview

# The Opportunity

The Principal invites the Tenderer to submit a Tender for the [***insert description of Project***].

***[Guidance Note: This section to be further developed by the Agency prior to RFT release. This section is an opportunity to describe any key priorities for the Principal, relevant policy background, unique aspects of the project and any other considerations aimed at focusing the response from the market. Note that this Part A (Overview) does not form part of the Conditions of Tendering and should not include tender conditions.]***

***[Guidance Note: The Conditions of Tendering does not deal with pre-qualification of Tenderers. Agencies to specify if pre-qualification is required for eligibility to submit a Tender.]***

# Purpose of this Request for Tender

The purpose of this RFT is to:

* + provide information to Tenderers about the [***insert Project name***];
	+ set out the Conditions of Tendering that will govern the Tender Process;
	+ invite each Tenderer to submit a fully costed and binding Tender for participation in the [***insert Project name***], which complies with the Conditions of Tendering; and
	+ inform Tenderers of the evaluation criteria that the Principal will use to evaluate Tenders.

# Timetable

The table below sets out a timetable of the key milestones for the Tender Process. The timetable is indicative only and may be subject to change as advised by the Principal.

| **Milestone** | **Indicative Date** |
| --- | --- |
| Release of RFT | [***insert***] |
| Receipt of completed RFT acknowledgement forms | [***insert***] |
| Closing Time for Tenders | [***insert***] |
| Decision on Tenders | [***insert***] |
| Execution/Award of Contract | [***insert***] |

# PART B - Conditions of Tendering

# Invitation to Tender

## Invitation

The Principal invites each Tenderer to submit a conforming tender in accordance with the RFT for the performance of the Works. This document is not an offer by the Principal to any Tenderer.

## Tenderer to notify Principal of intention not to tender

If a Tenderer does not intend to submit a Tender, it must within 14 days of receiving the Tender Documents, notify the Principal accordingly and, if required by the Principal, the Tenderer must return or destroy all Tender Documents and Information Documents in accordance with clause 2.6.

# Tender Documents and Information Documents

## Tender Documents comprise

The Tender Documents comprise the following:

### these Conditions of Tendering (including the Tender Particulars and Annexure B to Annexure E thereto);

### the Tender Form;

### the Tender Schedules;

### the Formal Instrument of Agreement; and

### the form of Contract (including any Annexures and exhibits).

## Ownership

The Information Documents, and the Intellectual Property Rights in them, are and remain the property of the Principal.

## Privacy

### The Tenderer agrees in respect of Personal Information held in connection with this Tender that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to doing any act or engaging in any practice for the purposes of lodging a Tender, in the same way and to the same extent as the Principal would have been bound by the Information Privacy Principles and any applicable Code of Practice in respect of that act or practice had it been directly done or engaged in by the Principal. The Tenderer agrees to immediately notify the Principal where it becomes aware of a breach of this Clause 2.3 by it or any of its agents or employees.

### This Clause 2.3 will continue to have effect after the Closing Time.

## Use and disclosure

### Subject to clause 2.4(b) and 2.4(c), the Tenderer must:

#### not use the Information Documents for any purpose whatsoever except for the Permitted Purpose; and

#### keep confidential and not copy or duplicate (or allow the copying or duplication of) any Information Documents.

### The Tenderer may disclose the Information Documents to its Associates if the disclosure is required solely for the Permitted Purpose and the Tenderer obtains a binding confidentiality undertaking from each such Associate in the same terms as this clause.

### The provisions of clauses 2.4(a)(ii) and 2.4(d) do not apply to:

#### the disclosure of Information Documents for which the Principal has given its prior written consent;

#### any Information Document after (but only to the extent that) it becomes generally available to the public other than because of a breach of any provision of these Conditions of Tendering; or

#### the disclosure of any Information Document to the extent necessary to comply with any applicable law or legally binding order of any governmental agency.

### The Tenderer must:

#### notify the Principal immediately if it becomes aware of any unauthorised disclosure, copying or use of any Information Document (suspected or actual);

#### immediately take all reasonable steps to prevent or stop any such suspected or actual unauthorised disclosure, copying or use of any Information Document (including complying with directions of the Principal in this regard); and

#### take all reasonable steps to recover any Information Document that has been disclosed, used or copied without the Principal’s consent under these Conditions of Tendering.

## No liability for Information Documents

Each Tenderer acknowledges that:

### the Information Documents have been provided to a Tenderer by the Principal for the information only of the Tenderer;

### an Information Document may be incorrect;

### the Principal requires each Tenderer to make its own enquiries to determine the accuracy and adequacy of any Information Document;

### if the Principal has not prepared and is not the author of an Information Document, the Principal does not adopt the Information Document and merely passes the Information Document on to a Tenderer;

### none of the Principal, the Tender Officer or any of their respective Associates makes any representation that all information in the Principal's or the Tender Officer's control or possession in relation to the Works has been provided to each Tenderer; and

### none of the Principal, the Tender Officer or any of their respective Associates, warrants, guarantees or makes any representation, or assumes any duty of care, or (to the extent permitted by law) accepts any liability, with respect to the completeness, accuracy, adequacy or correctness of any Information Document.

## Return of Information Documents

Each Tenderer must, if required by the Principal and at the Principal's election, destroy or return to the Principal all Information Documents other than Information Documents which:

### are required to be retained to in accordance with law or a binding requirement of a recognised stock exchange;

### form part of the minutes of, or papers to, a board of the Tenderer; and

### are retained as part of automatic information technology archiving or back-up procedures,

### provided that, in each case, the Information Documents are kept confidential and otherwise in accordance with the Conditions of Tendering.

## Data Room

### This clause 2.7 applies if indicated in Item 10.

### The Tenderer acknowledges and agrees that:

#### any Data Room may (either wholly or in part) take the form of a web-based portal or other online facility for gaining access to information (**Electronic Data Room**);

#### it is responsible for ensuring that it has all computer hardware and computer software required to gain access to any Electronic Data Room;

#### its computer hardware and computer software must comply with the requirements specified in Item 10 as updated from time to time as notified by the Principal;

#### it will comply with all directions issued by the Principal in writing from time to time regarding access to or the use of any Electronic Data Room;

#### the Principal and its Associates do not warrant, guarantee or make any representation (express or implied), or assume any duty of care, or accept any liability, with respect to the functionality, performance or availability of any Electronic Data Room, or whether any Electronic Data Room will be free of Disabling Code or will cause any Disabling Code to be introduced into any computer systems of the Tenderer or its Associates, and the Tenderer is not entitled to make any claim against the Principal for any liability incurred by them and indemnify the Principal and its Associates in respect of any claim brought by any of the Tenderer's Associates for liability incurred by them arising out of or in connection with the use, functionality, performance or availability of any Electronic Data Room or the introduction of any Disabling Code into any computer systems of the Tenderer or its Associates; and

#### agrees that the information in the Electronic Data Room is an Information Document.

# Tenderer to fully inform itself

## Tenderer to do

Without in any way limiting what a Tenderer does, a Tenderer must do all of the following prior to submitting its Tender:

### inform itself completely as to:

#### conditions at the Site;

#### the risks, contingencies and other circumstances which might have an effect on the execution of the Works or the cost of executing the Works;

#### the Works and the nature of the work and of the plant, equipment, materials and other items necessary for the execution of the Works, the means of access to and facilities and services at the Site and the means of transport, transport routes and facilities for making deliveries to and from the Site;

#### the availability and cost of labour, plant, equipment, materials and other items required (including all relevant industrial conditions) for the Works;

#### all applicable Legislative Requirements, taxes, duties, levies, charges, fees and insurance premiums (including compulsory insurance premiums);

#### all authority requirements relating to the Contract and the Works; and

#### all measures necessary to protect the environment from any adverse effect or damage arising from the execution of the Works or the existence or operation of the Works;

### prepare its Tender based on its own investigations, interpretations, deductions, information and determinations;

### make its own enquiries to determine the adequacy, accuracy, suitability and completeness of any Information Document;

### satisfy itself as to the correctness and sufficiency of its Tender and that the price offered in its Tender covers the cost of complying with all of its obligations under the Contract and of all matters and inputs necessary for the due and proper performance and completion of its obligations under the Contract; and

### obtain all appropriate professional, commercial and technical advice with respect to the matters referred to in clauses 3.1(a) to 3.1(d),

and any failure by a Tenderer to do any of those things will not relieve the Tenderer of its obligation to perform and complete the Works in accordance with the Contract should the Contract be awarded to it.

## Site visit

This clause 3.2 applies if indicated in Item 11.

A Site visit will be carried out at the time and on the date stated in the Tender Particulars. The Tenderer must comply with any protocols, procedures or requirement notified by the Principal prior to any such Site visit.

If Item 11 indicates that the Site visit is mandatory, the Tenderer must visit and inspect the Site and its surroundings.

Tenderers are required to provide the names and contact details of its representatives that will attend the Site visit, at least 24 hours prior to time and date of the Site visit by contacting the Tender Officer.

Tenderers will only be permitted to have the maximum number of representatives set out in Item 11 attend any Site visit.

# Lodgement of Tender

## Requirement to lodge

The complete Tender must be lodged at the Place for Lodgement by no later than the Closing Time.

## Method of Tender submission

### Tenders must be lodged using the method indicated in Item 12.

### Where Item 12 indicates that the Tender is to be lodged by hand or by post:

#### the Tender must be lodged in a sealed package or packages and marked in accordance with the labelling requirements set out in Item 13;

#### the number of hard copies of the Tender set out in Item 13 must be lodged;

#### an electronic version of the Tender must be lodged in the electronic format(s) specified in Item 14; and

#### at all times and for all purposes, the hard copy (if any) of the Tender will take precedence over the electronic version of the Tender and any hard or other electronic copies generated from that electronic version.

### Where Item 12 indicates that Tender submissions are to be lodged electronically by uploading them to the Data Room, via an EPS or via email:

#### the Tender submission must contain the "file name(s)" or "subject" indicated in Item 13; and

#### the complete Tender submission must be lodged in the electronic format(s) specified in Item 14.

### Tender submissions lodged in an unspecified electronic format, or that become corrupt, illegible, inadequate or incomplete as a result of transmission or storage, may not be considered.

## Tenderer not present at opening

Tenderers will not be present at the opening of tenders.

## Acknowledgement of receipt of Tender

An acknowledgement by or on behalf of the Principal or the Tender Officer of receipt of a Tender does not mean or imply that the Tender is a conforming Tender.

## Acceptance of Conditions of Tendering

By lodging a Tender, a Tenderer confirms that it is bound by these Conditions of Tendering.

# Tender submission requirements

## Format

### The Tender must be compiled in sections and in the following order:

#### Section 1 - Completed Tender Form;

#### Section 2 - Completed Tender Schedule 1 (Contract Sum breakdown);

#### Section 3 - Completed Tender Schedule 8 (Contract); and

#### Section 4 - Remaining Completed Tender Schedules.

### Clauses 5.2 and 5.3 set out in more detail, the information to be provided with the Tender.

### The Tender and all documents forming part of the Tender submission must be in the English language and all measurements and quantities must be in units consistent with the provisions of the *National Measurement Act 1960* (Cth) and the International System of Units.

## Section 1 – Completed Tender Form

### A Tenderer must duly complete and submit the Tender Form included in the Tender Documents.

### The completed Tender Form must be signed by a duly authorised agent of each Tenderer.

### Where a Tenderer comprises 2 or more persons (whether a joint venture, consortium, partnership or any other unincorporated grouping of 2 or more persons):

#### the Tenderer must include in its Tender submission:

##### for each of the persons who comprise the Tenderer, all of those details about the Tenderer that are required by the Tender Documents; and

##### a copy of the agreement governing the arrangements between those persons (whether a joint venture agreement, consortium agreement, partnership agreement or otherwise); and

#### each of those persons is jointly and severally bound by the Tender and these Conditions of Tendering.

## Section 2 – Tender Schedule 1 (Contract Sum breakdown)

### Tenderers must duly complete and submit Tender Schedule 1 (Contract Sum breakdown).

### The completed Tender Schedule 1 (Contract Sum breakdown) must:

#### provide the information required in Tender Schedule 1 (Contract Sum breakdown);

#### be clearly marked-up using the track changes function in Microsoft Word to reflect any alterations to Tender Schedule 1 (Contract Sum breakdown) (other than the inclusion of the information required by Tender Schedule 1 (Contract Sum breakdown);

#### where Item 12 indicates that the Tender is to be lodged by hand or by post, be lodged in a separate, sealed envelope or sealed package and marked in accordance with the labelling requirements set out in Item 13;

#### where Item 12 indicates that the Tender is to be lodged by Data Room, EPS or email, be a separate file in a locked and password protected format. The Tenderer must provide the password to the Tender Officer at the date of submission; and

#### be signed by a duly authorised agent of the Tenderer.

## Section 3 – Tender Schedule 8 (Contract)

### Tenderers must duly complete and submit Tender Schedule 8 (Contract).

### The completed Tender Schedule 8 (Contract) must:

#### provide the information required in Tender Schedule 8 (Contract); and

#### be signed by a duly authorised agent of each Tenderer.

## Section 4 – Remaining Completed Tender Schedules

### Tenderers must duly complete and submit all of the remaining Tender Schedules that form part of the Tender Documents and provide all other information required by the Tender Schedules.

### Each completed Tender Schedule must be signed by a duly authorised agent of each Tenderer. Any alterations to the remaining Tender Schedules (other than the inclusion of the information required by the Tender Schedules) must be clearly marked-up using the track changes function in Microsoft Word.

## Evidence of agent’s authority

If requested to do so by the Tender Officer, a Tenderer must produce evidence of the authority of any agent who has signed any part of the Tender on behalf of the Tenderer.

# Tender validity period

### By submitting a Tender, a Tenderer agrees (without in any way limiting the operation of clause 10) pursuant to the Tender Form executed by the Tenderer:

#### that its Tender (including any Associated Tenders), will remain valid and irrevocable until the date the Tenderer gives written notice that the Tender has been withdrawn;

#### that it will not give a notice withdrawing its Tender (including any Associated Tenders) any earlier than the period of time set out in Item 17 after the Closing Time; and

#### that any notice withdrawing or purporting to withdraw its Tender (including any Associated Tenders) that is given prior to the expiry of the period of time mentioned in clause 6(a)(ii) will be ineffective.

### Nothing in clause 6(a) limits the operation of clause 11.4 in any way.

# Variations, late, non-conforming and alternative tenders

## Variations to tenders

A Tenderer may replace, amend or supplement its Tender only if invited to do so by the Principal. The Principal reserves the right to ask for replacement, amended or supplemental Tenders from one or more Tenderers but is under no obligation to do so. The Principal is entitled, in its absolute discretion, to consider and accept a replacement, amended or supplemental Tender from any Tenderer (whether requested by the Principal or not) and without reference to any other Tenderers.

## Rejection of late and non-conforming tenders

### A Tender:

#### that is not received at the Place for Lodgement by the Closing Time as required by clause 4.1;

#### that does not comply in every respect with the requirements of the Tender Documents (including these Conditions of Tendering); or

#### that seeks to include a Tenderer's own conditions of tendering or conditions of contract,

may be treated as non-conforming and rejected and/or not considered, regardless of the reason for the late lodgement or the non-conformance.

### Notwithstanding clause 7.2(a), the Principal may consider and accept any Tender (even one that is lodged late or one that might, pursuant to that clause, be liable to be treated as non‑conforming and rejected and/or not considered).

## Alternative tenders

### A Tenderer may submit one or more alternative tenders, provided it has also submitted a tender that complies with the requirements of the Tender Documents.

### Notwithstanding clause 7.3(a), the Principal may consider and accept an alternative tender even if the tender that it accompanies as per clause 7.3(a) does not comply with the requirements of the Tender Documents.

### Each alternative Tender (if any) must be marked as such (e.g. "Alternative No 1") and must be submitted as a separate Tender, on a separate Tender Form and with separate completed Tender Schedules. All departures from the Tender Documents and any claimed benefits to the Principal, must be clearly identified.

## Specified proprietary products

### This clause 7.4 applies if indicated in Item 18.

### Where trade names or brands or proprietary products or equipment are referred to in the Tender Documents and a Tenderer wishes to offer different products or equipment, it must clearly and fully describe any proposed departures from the Tender Documents, the reason for the departure and the effect on the price offered in its Tender, performance requirements and completion dates.

### Tenderers must not offer any items on the basis that they will supply a "similar" or "equivalent" item (or words to like effect).

# Tender evaluation

## Information requests

### After a Tender has been lodged, the Tender Officer may require a Tenderer to submit further information. Tenderers must respond promptly to all such requests. All responses must be sent to the Tender Officer in the manner stated in clause 9.1.

### Additional information may be requested via a tender information request form. The form will have separate sections for the Principal's/ Tender Officer's request, the Tenderer's response, a record of any subsequent discussion at a tender interview (if applicable), any final resolution and the signature of the Tenderer's authorised agent.

### Completed and resolved tender information request forms will be taken to form part of the Tender. However, any provision in a tender information request form which is not in full conformance with the Tender Documents will have no force or effect unless the particular provision is specifically noted in the tender information request form as a departure from the Tender Documents.

## Interview and meetings

### The Principal may, in its discretion, interview or meet with any one or more of the Tenderers.

### If a Tenderer is called to such an interview or meeting, the Tenderer must be represented at the interview by an authorised person (or persons) who is conversant with all technical, financial and contractual details of the Tender.

## Evaluation criteria

### Without in any way limiting the operation of clause 11 or 12(f)(ii), the Principal will evaluate tenders by taking into account the evaluation criteria identified in Annexure B (not necessarily in order of priority or weighting).

# Process matters

## Questions and requests for clarification

### If the Tenderer has a question or request for clarification (**Enquiry**), the Enquiry must be directed to the Tender Officer:

#### by email at the address set out in Item 3;

#### if clause 2.7 applies as indicated in Item 10, through the Q&A function of the Data Room; or

#### if an EPS is used as indicated in Item 12, through any Q&A function of the EPS.

### Where an Enquiry has been made by the Tenderer under clause 9.1(a):

#### the Tenderer must ensure that each Enquiry is marked either 'Confidential' (if the Tenderer is of the view that the Enquiry relates to proprietary aspects of the Tender or is commercial-in-confidence) or 'Non-confidential';

#### Enquiries and the Principal's responses will be provided to all Tenderers except where:

##### the Enquiry relates to proprietary information relevant to the Tender of the Tenderer making the Enquiry, or is commercial-in-confidence, and the Tenderer has also identified its Enquiry as such in accordance with clause 9.1(b)(i); or

##### the Principal, in its absolute discretion, is of the opinion that the Enquiry and the Principal's response will materially impact the integrity or the competitiveness of the Tender Process;

#### if the Principal, in its absolute discretion, is of the opinion that the Enquiry is not proprietary in nature or commercial-in-confidence, the Principal will advise the Tenderer that the Enquiry and the Principal's response will be provided to all Tenderers and that the Tenderer has the opportunity to withdraw the Enquiry. If the Tenderer then reaffirms its request for a response to the Enquiry, the Enquiry and the Principal's response may be provided to all Tenderers; and

#### the Tenderer must ensure that Enquiries are submitted within the enquiry period set out in Item 19.

## Addenda

### At any time prior to the formation of a Contract for the performance of the Works, the Principal or the Tender Officer may (but without being obliged to do so), for any reason, clarify, add to, modify or otherwise amend the Tender Documents by issuing an Addendum.

### Each Addendum will be issued to all Tenderers, save that:

#### where, after the Closing Time, some but not all Tenderers are short listed, further Addenda might only be sent to the short listed Tenderers; and

#### where, after the Closing Time, a preferred Tenderer is identified, further Addenda might only be sent to the preferred Tenderer.

### An Addendum may include the text of the request for clarification or other question or matter which led to the Addendum being issued, but will not identify the Tenderer who sought the clarification or raised the question.

## Contact with the Principal

### Subject to clause 9.3(b), the Tenderer acknowledges and agrees that it will not, and it will ensure that its Associates do not, make contact with:

#### any governmental agency or officer;

#### the Principal or any of its Associates;

#### members of Parliament or their staff;

#### any Project Stakeholders; or

#### the Tender Officer (other than pursuant to the process in clause 9.1),

to discuss any aspect of the Project or any matter relating to or arising out of its Tender, except as provided for in these Conditions of Tendering.

### The Tenderer may contact Project Stakeholders in relation to the Project and matters relating to or arising out of its Tender if it obtains the Principal's prior written consent and provided that: ***[Guidance Note: Circumstances may arise where consent should not be granted for Tenderers to communicate with the Associates (Councils etc)]***

#### the Tenderer gives the Tender Officer at least 3 Business Days written notice of matters which it wishes to discuss at the meeting, including a detailed agenda clearly identifying the purpose of such a meeting;

#### the Principal may, by written request, require the audio of the meeting to be recorded; and

#### the Principal may have a representative attend the meeting if it chooses.

### The Tenderer acknowledges and agrees that it will not offer any inducement, fee or reward to the Principal or any of its Associates.

## Material Changes

### The Tenderer must notify the Principal promptly in writing of any:

#### material change to any:

##### information contained in its Tender;

##### additional information submitted to the Principal pursuant to this RFT; or

##### information submitted to the Principal in any interview, meeting or workshop conducted pursuant to the RFT;

#### event which may affect or have an impact on the financial position or capacity of the Tenderer or the ability of the Tenderer to continue to participate in the Tender Process or comply with these Conditions of Tendering; or

#### circumstances which may affect the truth, completeness or accuracy of any of the information provided in, or in connection with, the Tender.

### Upon receipt of any written notification pursuant to clause 9.4(a), the Principal reserves the right to:

#### assess the change and terminate the Tenderer's further participation in the Tender Process; or

#### invite the Tenderer to amend its Tender accordingly.

## Complaints

### Should a Tenderer have a complaint of any nature in connection with the Tender Process, the Tenderer must in the first instance notify the Tender Officer providing adequate details of the complaint.

### The Tender Officer, within 14 days of receipt of the complaint, must respond to the Tenderer in writing addressing the complaint.

### Should the Tenderer be dissatisfied with the Tender Officer's response to its complaint, the Tenderer must, within 14 days of receipt of that response, request in writing to the Tender Officer, a conferral with the Principal to be held within 28 days of receipt of the complaint.

### A Tenderer failing to adhere to the notice requirements in clause 9.5(a) and 9.5(c) will relinquish its rights to claim against the Principal arising out of, or in any way in connection with, the Tender Process, except in circumstances of fraud or illegality by the Principal.

## No requirements to return

The Tenderer agrees that the Principal will not be required to return the Tender or any documents, materials, articles and information lodged by the Tenderer as part of, or in support of, its Tender.

## Debrief

The Principal will offer unsuccessful Tenderers the opportunity to participate in a debrief session following the conclusion of the Tender Process. These sessions will take place no later than two months after the conclusion of the Tender Process. Tenderers wishing to participate in a debrief session must submit a request in writing to the Tender Officer.

# Tenderer’s warranty and acknowledgement

## Tenderer’s warranty

By submitting a Tender:

### a Tenderer will be taken to represent and warrant that:

#### it has done all of the things mentioned in clause 3.1;

#### it prepared its Tender based on its own investigations, interpretations, deductions, information and determinations;

#### it did not place any reliance upon the completeness, accuracy, adequacy or correctness of any of the documents, information or other things mentioned in clause 2.5; and

#### its Tender is accurate and complies in all respects with the Tender Documents and the requirements of all applicable Legislative Requirements; and

### a Tenderer will be taken to have acknowledged and agreed (to the extent permitted by law) that neither the Principal or the Tender Officer, nor any of their respective Associates, has any liability to the Tenderer (whether in contract, in tort, under statute (to the extent permitted by law) or on any other basis) with respect to or as a result of or arising from:

#### any incompleteness or inadequacy of, or any inaccuracy or error in, or omission from; or

#### any use of or reliance by the Tenderer upon,

any of the Tender Documents, any other Information Documents, information or any oral information provided.

## Tenderer’s acknowledgement

By submitting a Tender, a Tenderer will also be taken to have acknowledged and agreed that:

### in considering its Tender and in entering into any contract with the Tenderer (should that happen), the Principal will be relying upon the representations and warranties given by the Tenderer in the Tender Form and in these Conditions of Tendering; and

### the successful Tenderer will be subject to the Shared Reporting Process set out in the Contract, under which details of the successful Tenderer's performance under the Contract may be made available by the Principal to other government departments or agencies or municipal, public or statutory authorities.

## Proprietary Information

### The Tenderer warrants that it has the authority to grant the rights granted to the Principal under clause 10.3(c) and that exercise of those rights by the Principal or any person authorised by the Principal in accordance with, or as contemplated by, these Conditions of Tendering will not infringe the Intellectual Property Rights or other rights of any person.

### The Tenderer must indemnify the Principal against any liability or claim arising from any breach of the warranties set out in clause 10.3(a).

### The Tenderer grants, and will procure that each of its Associates with a relevant interest grants, to the Principal and its Associates an irrevocable, perpetual, non-exclusive, transferable, free of charge licence to use, reproduce, develop, communicate or modify or sub-licence the whole or any part of any Tender for the purposes of the Tender Process provided that, subject to these Conditions of Tendering and the Tender Documents, the Principal may not (other than pursuant to clause 13.2(a)) provide the whole or any part of any Tender to a competing Tenderer.

### Without limiting the application of clause 10.3(c), if the Tenderer has been nominated as the preferred Tenderer, the Tenderer also licenses the Principal and its Associates to make publicly available:

#### the broad concept plan, design documents and any other fly through sketches or drawings of any element of the Project;

#### the key functional and operational characteristics;

#### the aggregate capital and/or operating cost;

#### the proposed risk allocation; and

#### other high level commercial or technical information,

in relation to that Tenderer's Tender.

# No contract and no obligation to consider or accept any tender

## No Contract

### Subject to clause 11.1(b), by submitting a Tender, a Tenderer acknowledges that:

#### no contract exists or will arise between the Principal and a Tenderer in respect of the Works, performance of the work under the Contract or any part thereof or the Tender Process unless and until the Principal and the successful Tenderer enter into a Contract for the performance of the Works;

#### the rights, powers and discretions given to the Principal and the Tender Officer in these Conditions of Tendering are not pursuant to any contract between the Principal or Tender Officer and the Tenderer but rather are rights, powers and discretions that the Principal and the Tender Officer have as part of the Tender Process;

#### before any Contract for the performance of work under the Contract is entered into, the Principal may require that a conformed contract document be prepared that takes into account any changes to the Tender Documents and the outcomes of any negotiations during the Tender Process; and

#### no other document issued and no other representation made or conduct engaged in, by or on behalf of the Principal (other than as set out in clause 11.1(a)(i) will be deemed to be acceptance of a Tenderer's Tender or to create any contractual or other legal relationship between the Principal and a Tenderer or otherwise oblige the Principal to enter into a Contract with the Tenderer.

### Despite clause 11.1(a), by submitting a Tender a Tenderer is bound by the terms of the Tender Form.

## No obligation

### Without limiting a Tenderer's obligations under clauses 6 and 8, the Principal and the Tender Officer have no contractual or other legal obligation to a Tenderer arising out of RFT with respect to:

#### the consideration, evaluation, acceptance or rejection of any Tender; or

#### the failure to consider, evaluate or accept any Tender.

### In particular, the Principal and the Tender Officer are under no obligation to:

#### receive, consider or evaluate any Tender;

#### receive, consider or evaluate any Tender in any particular way or within any particular time;

#### accept the lowest Tender or any Tender; or

#### give any reasons for any decision they make in respect of the Tender Process.

## Principal not liable

### Without limiting clauses 11.2 or 17.1, in no circumstances will the Principal or the Tender Officer or any of their respective Associates be liable to a Tenderer (whether a Tenderer is successful or unsuccessful) whether in contract, tort (including negligence or misrepresentation), under statute (to the extent permitted by law) or otherwise, for any costs, losses, expenses, liabilities or damages incurred or suffered by any Tenderer:

#### in responding to the RFT, and in submitting any Tender or in otherwise acting in reliance upon these Conditions of Tendering;

#### arising out of or in connection with:

##### any Tenderer's participation in or response to any discussions, negotiations, interviews, enquiries or requests for details or information whether before or after the Closing Time; or

##### any Tenderer's participation in the Tender Process generally; or

#### arising out of or in connection with the exercise, or failure to exercise, by the Principal or the Tender Officer of any of their rights, powers and discretions under these Conditions of Tendering, including rights under clause 11.4.

### Without limiting clause 11.3(a), any Tenderer that is not selected as the successful Tenderer will have no recourse against the Principal or the Tender Officer or their respective Associates, in relation to any decisions of the Principal or the Tender Officer:

#### to select another Tenderer as the successful Tenderer;

#### to not select any of the Tenderers as the successful Tenderer; or

#### to not proceed with the Works.

## Discretion of Principal

### The Principal (either itself or through the Tender Officer) reserves the right in its absolute discretion, and without limiting any other rights which the Principal may have whether under these Conditions of Tendering or otherwise, to do any one or more of the following without giving reasons:

#### withdraw any RFT;

#### amend these Conditions of Tendering, any other Tender Documents, the scope of the Works and/or the scope of work under the Contract;

#### vary, suspend or terminate the Tender Process;

#### extend the Closing Time;

#### change the Place for Lodgement;

#### reject or refuse to consider or evaluate any Tender or all Tenders;

#### terminate at any time the further participation in the Tender Process by any Tenderer;

#### reject or accept any Tender notwithstanding whether such Tender is the lower priced. higher ranked, or otherwise;

#### award the Project to any Tenderer, including a Tenderer which did not have the highest ranked Tender as against the RFT evaluation criteria or other relevant evaluation criteria;

#### accept or reject the whole of any part of any Tender to the extent, in the case of part-acceptance, that part of the Tender is capable of such partial acceptance (whether a conforming Tender or an Associated Tender);

#### consider and accept a Tender regardless of whether:

##### any Tenderer or any of its Associates has breached these Conditions of Tendering; or

##### any member of a competing Tenderer has breached these Conditions of Tendering;

#### at any time, vary or alter any process or procedure regarding the consideration or the evaluation of any Tender or Tenders (including the evaluation criteria);

#### adopt different approaches with different Tenderers;

#### require additional information or further offers from any one or more Tenderer;

#### negotiate on any aspect of a Tender before accepting or rejecting any Tender;

#### invite best and final offers from any one or more Tenderers;

#### invite further or other persons to tender for the performance of the Works;

#### select a Tenderer as a preferred Tenderer, or elect not to select any Tenderer as a preferred Tenderer, or having selected a Tenderer as a preferred Tenderer, terminate that selection and select one or more other Tenderers as preferred Tenderer or preferred Tenderers;

#### negotiate with one or more Tenderers and enter into the Contract without prior notice to any other Tenderer;

#### not proceed with the Works;

#### proceed with the Works on the basis of a different scope of work or on terms different from those stated in the Tender Documents or change the procurement method of the Project (including public sector delivery or any part of the Project in any way it sees fit;

#### negotiate with and enter into a contract with any person (including someone other than a Tenderer) for the performance of work under the Contract and/or any other work without prior notice to the Tenderer;

#### allow any Tenderer to clarify, alter, amend, add to or change its Tender or Associates after the Closing Time, without notifying or offering the same opportunity to others;

#### in evaluating any Tender or selecting a preferred Tenderer, have regard to:

##### the Principal’s and its Associates’ knowledge and previous experience and dealings with any Tenderer or any its Associates; or

##### information concerning a Tenderer or any of its Associates which is in the public domain or which is obtained by the Principal or its Associates through its or their own investigations;

#### hold discussions, interviews, meetings or workshops with any one or more Tenderers at any time during the Tender Process;

#### issue Addenda or Information Documents;

#### suspend or terminate the Tenderer’s participation in the Tender Process if the Principal forms the view that the Tenderer or any of their respective Associates has breached these Conditions of Tendering;

#### waive any requirement or obligation under these Conditions of Tendering; and

#### take such other action as it considers, in its absolute discretion, appropriate in relation to the Tender Process.

### No Tenderer is entitled to enquire into the basis of the Principal's decisions under clause 11.4(a).

### To the extent permitted by law, Tenderers will have no claim against the Principal or the Tender Officer arising out of the Principal's or the Tender Officer's exercise, or failure to exercise, any rights or discretions under these Conditions of Tendering.

# Probity and competitiveness

### By submitting a Tender, the Tenderer warrants that:

#### the Tenderer and each of its Associates are not a member of, or otherwise involved with, a competing Tenderer in respect of the Project;

#### as at the Closing Time, no actual, potential or perceived probity issues (including any actual, potential or perceived conflicts of interest) exist or are likely to arise in respect of the Tenderer or its involvement in the Project, including any relationships between the Tenderer and a competing Tenderer (including the existence of related parties, common directors, advisers or employees), other than those probity issues disclosed and described in its Tender; and

#### it will not place itself, and will procure that its Associates do not place themselves, in a position that may or does give rise to an actual, potential or perceived probity issue at any time during the Tender Process.

### If any actual, potential or perceived probity issue arises, or appears likely to arise, including after lodgement of its Tender, the Tenderer must:

#### immediately notify the Principal in writing as soon as such actual, potential or perceived probity issue becomes apparent to the Tenderer and provide details of such probity issue; and

#### if the actual, potential or perceived probity issue arises prior to the lodgement of its Tender, fully disclose and describe such probity issue in its Tender.

### If a notice is given under clause 12(b)(i), the Principal will, in its absolute discretion, decide on the appropriate course of action. The Tenderer must take all steps required by the Principal to prevent, end, avoid, mitigate, resolve or otherwise manage the actual, potential or perceived probity issue.

### The Principal may conduct checks and investigations to satisfy itself that there are no actual, potential or perceived probity issues which may preclude a person from becoming a Tenderer or a preferred Tenderer (**Probity Check**).

### The Tenderer consents to such Probity Checks and investigations, agrees to procure the consents of its directors and to procure the consents of such Associates as are requested by the Principal, and as are required by law to be obtained in connection with such Probity Checks and investigations. Such Probity Checks and investigations may include:

#### investigations into commercial structure, business and credit history;

#### prior contract compliance and performance;

#### any criminal records or pending charges;

#### interviews with any referees nominated; and

#### research into any relevant activity that is or might reasonably be expected to be the subject of regulatory investigation.

### The Tenderer acknowledges and agrees that the Principal:

#### is not under any obligation to provide to the Tenderer the results of any Probity Checks or investigations;

#### may take into account any matters revealed by any Probity Checks and investigations in evaluating any Tender; and

#### may reject any Tender, suspend or terminate the Tenderer's participation in the Tender or take such other action as it considers appropriate, in its absolute discretion, in light of matters revealed by any Probity Checks and investigations.

### Nothing in this clause 12 detracts from or limits the Tenderer's obligations or responsibilities for complying with all probity requirements which relate to the Tender Process.

### The Tenderer must ensure that each of its Associates complies with the requirements of this clause 12 as though it were a Tenderer.

# Disclosure by the Principal

## Disclosure by the Principal

The Tenderer acknowledges and agrees that the Principal or any of its Associates may publish or disclose (on the internet or otherwise), and consents to such publication or disclosure, details of:

### the Tenderers (including any of their Associates);

### the identity of any preferred Tenderer(s) (including any of their Associates);

### the status of the Tender Process at any time; and

### the value of the Contract.

## Public Disclosure and Freedom of Information

### The Tenderer acknowledges and agrees that disclosure by either of the Principal or any of its Associates of any information provided by the Tenderer or any of its Associates may be required and consents to such disclosure:

#### under any current legislation including;

##### the *Freedom of Information Act 1982* (Vic);

##### the *Ombudsman Act 1973* (Vic); and

##### the *Audit Act 1994* (Vic);

#### under any future legislation;

#### in the course of the official duties of a relevant Minister or Department, the Principal or the Victorian government;

#### to satisfy requirements of parliamentary accountability;

#### in annual reports of the Principal;

#### pursuant to policies of the Victorian government; or

#### to satisfy any other recognised public requirement,

(each a **Public Disclosure Obligation**).

### The Tenderer must use all reasonable endeavours to assist the Principal and its Associates in meeting their Public Disclosure Obligations.

# Major Projects Skills Guarantee

### The provisions set out in Annexure D apply if so indicated in Item 20.

# Local Jobs First - Victorian Industry Participation Policy

### This clause 15 applies if indicated in Item 21.

### If this clause 15 applies, the alternative indicated in Item 22 and the relevant section of Annexure C applies.

# Building Code

### The provisions set out in Annexure E apply if so indicated in Item 23.

[***Drafting Note: The Building Code will apply:***

* + ***to building work undertaken for, or on behalf of, the Commonwealth; or***
	+ ***to building work that is indirectly funded by the Commonwealth grant or program for which the value of the Commonwealth's contribution is at least $5 million and represents at least 50% of the total construction value; or***
	+ ***where the Commonwealth's contribution is at least $10 million.***

***Item 23 to be marked accordingly.]***

# Miscellaneous

## Tenderer bears costs

All costs of tendering are to be borne by the Tenderer.

## Publicity

Except to the extent it is not possible to comply with this clause 17.2 while complying with the law or the binding requirement of a recognised stock exchange, the Tenderer must not make, and must procure that none of its respective Associates make, a media release or other public announcement or statement in relation to the Project without the prior written consent of the Principal.

## Notices

### Subject to clause 17.3(b), all communications (including notices, demands, consents, approvals or requests) under or in connection with these Conditions of Tender (**Notice**):

#### must be, in writing and signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, and on behalf of, that party; and

#### must be:

##### delivered or posted by prepaid express post to the address, of the addressee, specified in the Tender Documents (in the case of the Principal), and the Tender (in the case of the Tenderer); or

##### sent by email to the email address specified in the Tender Documents (in the case of the Principal), and the Tender (in the case of the Tenderer),

##### or to the address, or email address (as the case may be) last notified by the intended recipient to the sender.

***[Drafting Note: If an Agency wishes to serve Notices via another means (e.g. via publication for an open tender process or via an EPS), this should be added to this paragraph and in paragraph (b) below in relation to when the Notice will be treated as given and received.]***

### A Notice given to a person in accordance with clause 17.3(a) is treated as having been given and received by the addressee:

#### in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia;

#### in the case of delivery by hand, on delivery at the address of the addressee as provided in the Tender Documents (in the case of the Principal), and the Tender (in the case of the Tenderer), or to such other address last notified by the intended recipient to the sender, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

#### in the case of delivery by email, the first to occur of:

##### receipt by the sender of any email acknowledgement from the intended recipient’s information system showing that the Notice has been delivered to the email address of that recipient;

##### the time that the Notice enters an information system which is under the control of the intended recipient; and

##### the time that the Notice is first opened or read by an employee or officer of the intended recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or after Business Hours, the Notice will be taken to have been duly given or made at the start of business on the next Business Day.

## Goods and services tax

A Tenderer must quote all prices exclusive of GST as well as providing a breakdown of the prices and rates to show the GST applicable to all prices and rates.

## Governing law and jurisdiction

### These Conditions of Tendering and a Tenderer’s agreement to be bound by them, are governed by and are to be construed according to the laws of Victoria.

### Each Tenderer will irrevocably and unconditionally submits to the non‑exclusive jurisdiction of the courts of Victoria (and the courts to which appeals from those courts may be made) and waives any right to object to any proceedings being brought in those courts.

# DDR Arbitration

## Application of this clause

This clause applies only:

### if this RFT is a covered procurement; and

### to suppliers (as defined in [sub-clause/condition] 1.2 following) with their principal place of business in relevant jurisdictions:

## Definitions

For the purpose of this clause:

the following terms have the meaning attributed to them in Chapter 15 of the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (TPP-11) (Chapter 15):

covered procurement;

supplier;

### “measures” means the Victorian Government’s measures to implement the procurement requirements of international agreements, a list of which is published at *<https://www.buyingfor.vic.gov.au>*;

### “public interest certificate” means a certificate issued on behalf of the Principal stating that it is not in the public interest for this RFT to be suspended while a complaint by a supplier is being managed in accordance with this clause; and

### “relevant jurisdictions” means those jurisdictions to which the measures apply, a list of which is published at *https://www.buyingfor.vic.gov.au*, as at the date this RFT is issued.

## Resolution procedure

Any complaint or challenge by a supplier that there has been a failure of the procuring entity to comply with one or more measures **(complaint)** shall be resolved in accordance with this clause.

## Notice of complaint

A supplier who has a complaint may deliver to the Principal a notice of complaint which must include:

### a demand that the complaint be reviewed and resolved in accordance with this clause; and

### a description of the nature and circumstances of the complaint and a statement of the relief sought and, if compensation is claimed, the amount claimed from the Principal.

**(notice of complaint).**

## Negotiation

A representative of each of the supplier and the Principal, each having authority to resolve the complaint, must, within 21 days of delivery of the notice of complaint, meet and negotiate in good faith to resolve the complaint.

## Mediation

### If the complaint is not resolved within 42 days of delivery of the complaint, either the supplier or the Principal may by written notice to the other party refer the complaint for mediation under the ACICA Mediation Rules **(mediation notice)**.

### The mediation will take place in Melbourne, Australia.

### The mediator will be selected from the list of mediators established by the Victorian Government for the purposes of this clause and published at *<https://buyingfor.vic.gov.au>.*

## Arbitration

### If the complaint is not finally resolved by mediation in accordance with clause 18.5 within 28 days of delivery of the mediation notice, the supplier may request that the complaint be determined by arbitration in accordance with the ACICA Arbitration Rules in force at the time subject to the provisions of this clause.

### The tribunal shall comprise one arbitrator.

### The arbitrator must be selected from the list of arbitrators established by the Victorian Government to hear complaints under this clause and published at *<https://www.buyingfor.vic.gov.au>.*

### The language of the arbitration shall be English.

### The place of arbitration shall be Melbourne, Australia.

### There shall be no hearing in any arbitration commenced pursuant to this clause unless there are exceptional circumstances (as determined by the arbitrator) or either the arbitrator or the parties require a hearing to take place.

### The powers of the tribunal constituted in accordance with this clause include the power:

to take into account, when resolving a complaint and determining whether relief ought to be awarded to the supplier, any overriding adverse consequences for the interests concerned, including the public interest;

subject to (h), on application of the supplier to award compensation or make any other award which is within the lawful power of the tribunal **(corrective action)**, however any compensation awarded to the supplier must not exceed

***[select only one of the following:]***

***the costs reasonably incurred by the supplier in the preparation of the tender giving rise to the complaint; [OR]***

***the costs reasonably incurred by the supplier in bringing the complaint****;*and

on application of the Principal, to award compensation for the costs reasonably incurred by the Principal in defending the complaint;

### If:

a public interest certificate has been issued in respect of this RFT; and

this RFT has not reached the stage where a contract has been entered into with a supplier,

then:

the tribunal must consider whether the award of corrective action would result in significant delay to this RFT, and if so, whether awarding compensation would be a more appropriate remedy than an award of corrective action; and

if the tribunal is satisfied that an award of corrective action would result in a significant delay to this RFT and that awarding compensation is a more appropriate remedy, then the tribunal may refuse to award corrective action.

### Any award rendered in arbitration proceedings conducted in accordance with this clause may, no earlier than 90 days after the date of the award, be provided by the Principal to a supplier (other than the supplier to whom the award relates) in a sanitised form if requested in writing by the supplier.

### The Principal is not obliged to disclose the award if the award is subject to judicial challenge or otherwise the subject of court proceedings.

### Where an arbitration conducted pursuant to this clause is subject to the *Commercial Arbitration Act 2011 (Vic)*, the parties agree that an appeal may be made under section 34A of that Act.

# Definitions and interpretation

## Definitions

In these Conditions of Tendering unless separately defined below, or the context indicates otherwise, capitalised terms used in these Conditions of Tendering have the same meaning given to those terms in the Contract (notwithstanding that in the Contract they may appear italicised and not capitalised) and the following terms have the meaning assigned to them below:

1. **Addendum** means an addendum issued by the Principal or the Tender Officer under clause 9.2.
2. **Associated Tender** means any alternative, non-conforming, consolidated, replaced, amended or supplemental tender.
3. **Associate** means any officer, employee, agent, consultant, contractor, nominee, licensee, or advisor and:
	1. in the case of a Tenderer, includes [#] [***Drafting Note: Insert project-specific associates.***] but excludes the Principal and its Associates; and
	2. in the case of the Principal includes:
		1. [#] [***Drafting Note: Insert project-specific associates.***];
		2. any government or any governmental, semi-governmental or local government authority, local council, department, commission, public authority, agency, minister statutory corporation or instrumentality,

but excludes the Tenderer and its Associates.

1. **Building Code** means the *Code for the Tendering and Performance of Building Work 2016* in force pursuant to section 34 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).
2. **Business Day** means a day in Melbourne that is not a Saturday, Sunday or a public holiday gazetted in the *Public Holidays Act 1994* (Vic).
3. **Business Hours** means between 9:00am and 5:00pm on a Business Day.
4. **Cladding Guideline** means the guideline titled "Minister’s Guideline MG-14: Issue of building permits where building work involves the use of certain cladding products" issued pursuant to section 188(1)(c) of the *Building Act 1993* (Vic) on 13 March 2018, as amended or replaced from time to time.
5. **Closing Time** means the closing time and date identified in Item 1, or such later closing time or date as the Principal or the Tender Officer may notify in writing.
6. **Code of Practice** means a code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014* (Vic).
7. **Conditions of Contract** means the conditions of contract, including any general and special conditions of contract, identified in Item 2.
8. **Contestable Items** has the meaning given in clause 16.
9. **Contract** means a contract for the performance of the Works.
10. **Data Room** means any data room operated by or on behalf of the Principal containing information relevant to the Project and includes any Electronic Data Room. This definition applies if clause 2.7 applies as indicated in Item 10.
11. **Disabling Code** means any computer software known as a back door, time bomb, logic bomb, trojan horse, worm, drop dead device, virus, or any other computer software or configuration intended or designed to:
	1. permit access to or use of the computer systems or associated data of a Tenderer other than as expressly authorised by the Tenderer; or
	2. disable, damage, corrupt or erase, or disrupt or impair the normal operation of, computer systems or associated data of a Tenderer.

This definition applies if clause 2.7 applies as indicated in the Tender Particulars.

1. **Electronic Data Room** has the meaning given in clause 2.7(b)(i). This definition applies if clause 2.7 applies as indicated in the Tender Particulars.
2. **Electronic Procurement System** or **EPS** means any electronic procurement system being used by the Principal for the Tender Process identified in Item 9.
3. **Enquiry** has the meaning given in clause 9.1(a).
4. **Formal Instrument of Agreement** means the formal instrument of agreement which forms part of the Tender Documents.
5. **ICN** means the Industry Capability Network (Victoria) Ltd.
6. **Information Document** means any document, data or information (whatever its form including electronic, oral or all material contained in any Data Room (if applicable)) given to or made available to a Tenderer during the Tender Process (including at any on Site meeting or Site visit) in connection with:
	1. the invitation to submit a tender and the Tender Documents;
	2. the Works or the work under the Contract;
	3. any oral or written advice, representations or information given by or on behalf of the Principal during the Tender Process; and
	4. all material contained in any Data Room (if applicable),

including any document, data or information marked "for tenderer's information only", "for information only" or similar.

1. **Information Privacy Principles** means the principles so identified and set out in the *Privacy and Data Protection Act 2014* (Vic).
2. **Item** means an item in the Tender Particulars.
3. **Major Projects Skills Guarantee** means the Victorian Government policy of that name which is located at http://economicdevelopment.vic.gov.au/about-us/strategies-and-initiatives/major-projects-skills-guarantee.
4. **Major Projects Skills Guarantee Compliance Plan** means the plan to be provided by the Tenderers as part of their Tenders.
5. **Ministerial Direction** means the direction titled "Ministerial Direction No 1 - tendering provisions for public construction" issued pursuant to Part 4 of the *Project Development and Construction Management Act 1994* (Vic) on 1 December 2016, as amended or replaced from time to time.
6. **Notices** has the meaning given in clause 17.3(a).
7. **Permitted Purpose** means to:
	1. submit a Tender (or consider and determine whether or not to submit a Tender) in accordance with these Conditions of Tendering; or
	2. comply with an obligation under the RFT.
8. **Personal Information** means information or an opinion (including information or an opinion forming part of a database) that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
9. **Principal** means the person identified as the Principal in Item 4.
10. **Probity Checks** has the meaning given in clause 12(d).
11. **Project** means the project described in Item 6.
12. **Place for Lodgement** means the place for lodgement stated in Item 5.
13. **Project Stakeholders** means:
	1. the stakeholders listed in Item 8;
	2. any government or any governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister statutory corporation or instrumentality having jurisdiction over or involvement in any part of the Project; and
	3. any person notified by the Principal to a Tenderer to be a Project Stakeholder to the extent they have jurisdiction over or involvement in any part of the Project.
14. **Public Disclosure Obligation** has the meaning given in clause 13.2(a).
15. **Request for Tender** or **RFT** means the documentation issued to a Tenderer in relation to which it may submit a Tender for delivery of the Project.
16. **Tender** means any tender lodged in response to the invitation to submit a tender, whether a conforming Tender or an Associated Tender.
17. **Tender Documents** means the documents listed in clause 2.1 and any other document issued to a Tenderer by the Principal or the Tender Officer after the issue of the Tender Documents by way of an Addendum and expressly stated to be a Tender Document.
18. **Tender Form** means the tender form which forms part of the Tender Documents.
19. **Tender Officer** means the person so identified in Item 3, or any other person from time to time appointed as notified by the Principal to be the Tender Officer for the purposes of these Conditions of Tendering.
20. **Tender Particulars** means the particulars set out in Annexure A to these Conditions of Tendering.
21. **Tender Process** means the procurement process for the Project, including the RFT phase.
22. **Tender Schedules** means the tender schedules referred to in clause 2.1(c) which form part of the Tender Documents.
23. **Tenderer** means a person invited to lodge a tender for the performance of the Works described in the Tender Documents.
24. **work under the Contract** means the work which the Tenderer is or may be required to execute under the Contract.
25. **Works** means the physical works which are to be the subject of the Contract and as described in general terms in Item 7 (and more particularly described in the Tender Documents).

## Interpretation

In these Conditions of Tendering:

### headings are for convenience only and do not affect interpretation,

and unless the context indicates a contrary intention:

### an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

### if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

### a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

### "**person**" includes an individual, the estate of an individual, a corporation, a Government, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

### a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and in the case of a trustee, includes a substituted or an additional trustee;

### a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure in these Conditions of Tendering;

### a reference to a document (including the Tender Documents or any one of them) is to that document as varied, novated, ratified or replaced from time to time;

### a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

### "**includes**" in any form is not a word of limitation;

### the meaning of "**or**" will be that of the inclusive, being one, some or all of a number of possibilities;

### a reference to "**$**" or "**dollar**" is to Australian currency; and

### the term **"may"** when used in the context of a power, right or remedy exercisable by the Principal means that the Principal can each exercise that power, right or remedy in their absolute and unfettered discretion and the Principal has no obligation to do so.

1. - Tender Particulars

| **TENDER PARTICULARS** |
| --- |
| **Item No** | **Tender Particulars** |  |
| 1.
 | **Closing Time**(Clause 18.1) | **Closing Time: *[Insert time]* (Australian Eastern Standard Time unless otherwise stated)****Closing Date: *[Insert date]*** |
| 1.
 | **Conditions of Contract**(Clause 18.1) | ***[Insert Details of the Conditions of Contract]*** |
| 1.
 | **Tender Officer (and contact details)** (Clauses 9.1 and 18.1) | **Name: *[Insert name]*****Telephone: *[Insert number]*****Facsimile: *[Insert number]*****Email: *[Insert email address]*** |
| 1.
 | **Principal**(Clause 18.1) | ***[Insert name and ABN]*** |
| 1.
 | **Place for Lodgement** (Clause 18.1) | ***[Insert precise address which may be the location of any tender box, the postal address, any particular portal within the Data Room or EPS]*** |
| 1.
 | **Project**(Clause 18.1) | **[*Insert Details of the project*]** |
| 1.
 | **Works**(Clause 18.1) | ***[Insert a brief description of the Works]*** |
| 1.
 | **Project Stakeholders**(Clause 18.1) | ***[Insert name and ABN]*** |
| 1.
 | **Electronic Procurement System - Does an EPS apply?**(Clause 18.1) | [ ]  Yes [ ]  No(*if nothing stated, No*)**EPS Details:*****[Insert name of electronic procurement system and any relevant details]*** |
| 1.
 | **Data Room- Does clause 2.7 apply?**(Clause 2.7)\* | [ ]  Yes [ ]  No(*if nothing stated, Yes*)**Required computer hardware and software:*****[Insert required computer hardware and software]*** |
| 1.
 | **Site visit - Does clause 3.2 apply?**(Clause 3.2)\* | [ ]  Yes [ ]  No(*if nothing stated, Yes*)**Details of Site visit****Site: *[Insert]*****Date and time: *[Insert]*****Maximum number of representatives: *[Insert]*****Mandatory?** [ ]  Yes [ ]  No |
| 1.
 | **Method of Tender submission** (Clauses 4.2(a)) | By hand [ ] By post [ ] Data Room [ ] EPS [ ] Email [ ] *(if nothing stated, by hand)****[Guidance Note: If email is selected, the Agency must ensure that that the email account has sufficient capacity to handle the submissions. If this cannot be guaranteed, an alternative method of submission should be selected]*** |
| 1.
 | **Labelling and copy requirements for Tender Submissions**(Clause 4.2) | **For Tenders lodged by hand or post:**The Tender package or packages must be marked:Private and ConfidentialTender for: *[Insert Project name]*Tenderer: *[Insert Tenderer's name]*Closing Time: *[Insert Closing Time]*Number of hard copies: *[insert]***For Tenders lodged electronically via the Data Room, EPS or email:*****[Insert file name/subject requirements]*** |
| 1.
 | **Electronic formats** (Clauses 4.2(b)(iii) and 4.2(c)(ii)) | ***[Insert Software details]*** |
| 1.
 | **Are departures from the Contract applicable?**(Clause 5.4 and Tender Schedule 8) | [ ]  Yes [ ]  No(*if nothing stated, No*) |
| 1.
 | **Parent Company Guarantee**(Tender Schedule 14) | **Is / Is not required****(A parent company guarantee is required if no selection is made.)** |
| 1.
 | **Validity Period of Tender**(Clause 6(a)) | ***[Insert period in calendar days]*** |
| 1.
 | **Specified proprietary products- Does clause 7.4 apply?**(Clause 7.4)\* | [ ]  Yes [ ]  No(*if nothing stated, Yes*) |
| 1.
 | **Enquiry period**(Clause 9.1(b)(iv)) | At least [5] Business Days prior to the Closing Time |
| 1.
 | **Major Projects Skills Guarantee**(Clause 14) | [ ]  Yes [ ]  No(*if nothing stated, Yes*) |
| 1.
 | **Does VIPP apply to this Tender?**(Clause 15) | [ ]  Yes [ ]  No(*if nothing stated, Yes*) |
| 1.
 | **VIPP requirements:**(Clause 15 and Annexure C) | Alternative 1: Standard Projects [ ] *(Section 1 of Annexure C applies)*Alternative 2: Strategic Projects [ ] *(Section 2 of Annexure C applies)*Alternative 3: Design Contracts [ ] *(Section 3 of Annexure C applies)**Tick Alternative 1 for Standard Projects, 2 for Strategic Projects and 3 for Design Contracts. If no alternative is ticked the alternative is ‘Alternative 1’.* |
| 1.
 | **Does the Building Code apply to this Tender?**(Clause 16 and Annexure D) | [ ]  Yes [ ]  No(*if nothing stated, Yes*) |
|  | **Industrial Relations Management Plan** | **Is / Is not required**(*if nothing stated, "Is not required"*) |
|  | **Workplace Relations Management Plan**(Annexure D) | **Is / Is not required**(*if nothing stated, "Is not required"*) |

1. - Evaluation Criteria

### ***[Insert evaluation criteria on a project specific basis. Evaluation criteria should be linked to the project’s objectives to enable the Agency to evaluate which tender represents the best value for money. The information requested in the Tender Schedules should be relevant to and align with the evaluation criteria. Any mandatory criteria must be identified.]***

### If Item 21 indicates that clause 15 applies, the content of the bidder's VIPP or LIDP Plan (as applicable), which will be allocated a minimum [10] % weighting.

[***Drafting Notes:***

* ***If a figure greater than 10% is to be allocated for the VIPP or LIDP component of the Tender evaluation process, this figure should be inserted into the clause.***
* ***Agencies preparing RTF documents for construction contracts should refer to*** [***http://www.dtf.vic.gov.au/Infrastructure-Delivery/Public-construction-policy-and-resources/Practitioners-Toolkit***](http://www.dtf.vic.gov.au/Infrastructure-Delivery/Public-construction-policy-and-resources/Practitioners-Toolkit) ***for other requirements or selection criteria that may apply.***
* ***The manner in which the 10 % local content weighting can be applied and practical examples are set out in the Victorian Industry Participation Policy Agency Guidelines available at*** [***www.economicdevelopment.vic.gov.au/victorian-industry-participation-policy***](http://www.economicdevelopment.vic.gov.au/victorian-industry-participation-policy)***.***
* ***Agencies are to refer to Public Construction – Instruction 3.7 (Evaluation criteria) issued by the Secretary of the Department supporting the Minister responsible for Part 4 of the Project Development and Construction Management Act 1994 (Vic) in preparing the evaluation criteria.***
* ***Agencies to note that if the requirements of an International Agreement apply to an Agency when undertaking Public Construction Procurement, there may be requirements applicable in relation to the evaluation criteria.]***
1. - Victorian Industry Participation Policy
	1. Alternative 1: Standard Projects
		1. Local Jobs First - Victorian Industry Participation Policy
			1. The Local Jobs First - Victorian Industry Participation Policy (**VIPP**) seeks to maximise opportunities for Australian, New Zealand and Victorian suppliers (**Local Suppliers**) to compete for government business on the basis of best value for money over the life of the goods or services. The VIPP is implemented by Victorian Government departments and agencies to help drive local industry development.
			2. The Standard VIPP applies to Government procurement activities, construction activities, major projects, major events, public private partnerships and investment support, business development and community infrastructure grants above the threshold values of $3 million or more in Metropolitan Melbourne and $1 million or more in Regional Victoria.
		2. Contestable items
			1. Contestable items are goods or services within a procurement activity for which there are competitive international suppliers and Local Suppliers. The VIPP requires that government agencies consider local content commitments, particularly in respect of 'contestable items', as a key criterion in tender evaluation and other relevant procurement processes.
			2. The contestable items within the scope of this Request for Tender are:
				1. [XXX]
				2. [XXX]

#### ***[Drafting Notes:***

#### ***the 'Contestable Items' to be listed should reflect the advice provided by the Industry Capability Network which will be given to the Principal after registering the project on the VIPP Management Centre website (***[***www.icnvic.org.au/vipp***](http://www.icnvic.org.au/vipp)***).***

#### ***if there are several pages of contestable items, consider relocating to an Attachment.]***

* + 1. VIPP Plan
			1. *Option 1:* All bidders must prepare a VIPP Plan.
			2. *Option 2:* All shortlisted bidders, when advised by the Principal that they have been shortlisted, must prepare a VIPP Plan. While shortlisted bidders should not submit a VIPP Plan unless and until requested to do so by the Principal, they are encouraged to engage with Industry Capability Network Victoria (**ICN**) early in the tender preparation process to avoid undue delays in preparing a VIPP Plan should they be requested to do so. Contact details for ICN are provided below.

***[Drafting Note: Select Option 1 or Option 2 above, deleting the inapplicable option.]***

* + - 1. The VIPP Plan must be submitted electronically via the VIPP Management Centre website ([www.icnvic.org.au/vipp](http://www.icnvic.org.au/vipp)). Bidders will be asked for the following information:

|  |  |
| --- | --- |
| **Key VIPP Criteria** | **Description** |
| Local Value-added Activity | Specify the level of Victorian, Australian and New Zealand value-added activity, expressed as a percentage of the overall bid price for each item |
| Employment created or retained | Provide details of employment opportunities that will be created or retained in Australia and New Zealand as a result of the contract |
| Apprentices/trainees created and existing positions to be utilised on the contract | The number of apprentice/trainee positions that will be created in Australia and New Zealand and existing apprentices/trainees utilised as a result of the contract. |
| Implementation & Monitoring | Provide details of the methods and processes to be adopted in identifying local suppliers, assessing and comparing suppliers and products, and monitoring and reporting the local content. |

* + - 1. To demonstrate that the VIPP Plan provided is completed correctly and includes all required information, bidders must obtain certification for their VIPP Plan from ICN. Please see below for contact details of ICN and details of the support services available.
		1. Use of the VIPP Plan
			1. Any post-tender changes in a bidder’s VIPP Plan commitments will require further ICN assessment and certification.
			2. The contents of a successful bidder’s final VIPP Plan will be included in the agreement to be entered into between that bidder and the Agency. Further, the successful bidder’s VIPP information will be recorded centrally for ICN verification of the VIPP outcomes reported.
		2. Local Content Evaluation Criteria - Weighting
			1. The Government has introduced a minimum 10% formal weighting for local content, as outlined in VIPP or LIDP plans, in the evaluation of VIPP applicable projects, effective from 1 September 2016.
			2. Agencies are required to disclose Local Content as a weighted tender evaluation criterion and the weighted percentage in the RFT documents. The weighting applies to all types of VIPP applicable projects where a VIPP plan or Local Industry Development Plan (**LIDP**) is required.
			3. Principals will be required to report on the application of the weighted Local Content criterion, including the percentage applied, on VIPP applicable projects as part of the Agency’s annual reporting requirements as per the Department of Treasury and Finance - *Financial Reporting Directive (FRD25C).*
		3. Further information and assistance
			1. The Department of Economic Development, Jobs, Transport and Resources (**DEDJTR**) has prepared guidelines for Suppliers on the application of VIPP to procurement in 'Implementing the VIPP - Supplier Guidelines' (**Guidelines**). A copy of the Guidelines and further information about VIPP as well as useful templates are available on the DEDJTR website at [www.economicdevelopment.vic.gov.au/victorian-industry-participation-policy](http://www.economicdevelopment.vic.gov.au/victorian-industry-participation-policy)
			2. ICN provides free services to assist bidders in identifying and developing the above information. ICN's services are available during the tendering process.
			3. Bidders are advised that ICN will be available to assist them in implementing the VIPP.
			4. For further information or assistance, bidders can contact ICN on (03) 9864 6700 or visit [www.icnvic.org.au/vipp](http://www.icnvic.org.au/vipp)
	1. Alternative 2: Strategic Projects
		1. Local Jobs First - Victorian Industry Participation Policy
			1. The Victorian Industry Participation Policy (**VIPP**) seeks to maximise opportunities for Australian, New Zealand and Victorian suppliers (**Local Suppliers**) to compete for government business on the basis of best value for money over the life of the goods or services. The VIPP is implemented by Victorian Government Agencies to help drive local industry development.
			2. Strategic Projects are projects with a total project value of $50 million or more, excluding maintenance and operational costs.
			3. Strategic Projects are subject to mandated minimum local content requirements and other conditions to help drive additional economic activity and jobs. This Request for Tender is for a Strategic Project.
		2. Contestable items
			1. Contestable items are goods or services within a procurement activity for which there are competitive international suppliers and Local Suppliers. The VIPP requires that government agencies consider local content in respect of 'contestable items' as a key criterion in tender evaluation and other relevant procurement processes.
			2. The contestable items within the scope of this Request for Tender are:
				1. [XXX]
				2. [XXX]

#### ***[Drafting Notes:***

#### ***Principal to enter contestable items here as per ICN advice.***

* + 1. Local content requirements
			1. The local content requirements for this tender are:
				1. [XXX]

***[Drafting Note: Set out here the specific VIPP requirements for this tender, which may include achieving a minimum local content percentage, weighting of local content criterion in tender evaluation, requirements to demonstrate other industry outcomes such as skills development, etc.]***

* + 1. Local Industry Development Plan
			1. The tender assessment will consider whether and how bidders comply with the VIPP. This is done through assessment of bidders' Local Industry Development Plans (**LIDP**).
			2. All shortlisted bidders, when advised by the Agency that they have been shortlisted, must prepare a LIDP.
			3. In developing the LIDP, bidders must consult in good faith with Industry Capability Network Victoria (**ICN**).
			4. The LIDP template at Tender Schedule 10 must be completed and uploaded to the VIPP Management Centre at [www.icnvic.org.au/vipp](http://www.icnvic.org.au/vipp). The LIDP template must include the following information:

|  |  |
| --- | --- |
| **Key VIPP Criteria** | **Description** |
| Local Value-added Activity | Specify the level of Australian and New Zealand (**ANZ**) value-added local content, expressed as a percentage of the overall bid price |
| Employment created or retained | Provide details of employment levels for new and retained full-time equivalent employment opportunities (jobs) to be created in ANZ as a result of the contract |
| Apprentices/trainees created and existing positions to be utilised on the contract | The expected number of new and retained apprentice/ trainee positions created in ANZ as a result of the contract |
| Project-specific Conditions | Any additional VIPP conditions required for the specific strategic project, such as procurement plans for key strategic items |
| Detailed Implementation Plan | Provide comprehensive information on the methods and processes to be adopted in achieving, monitoring and reporting the local content, employment and skills/technology transfer outcomes estimated above. |

* + - 1. To demonstrate that the LIDP provided is completed correctly and includes all required information, bidders must obtain certification for their LIDP from ICN. Contact details for ICN are provided below.
		1. Use of the Local Industry Development Plan
			1. Any post-tender changes in a bidder’s LIDP commitments will require further ICN assessment and certification.
			2. The contents of a successful bidder’s final LIDP will be included in the agreement to be entered into between that bidder and the Principal. Further, the bidder’s LIDP information will be recorded centrally for ICN certification of the LIDP outcomes reported.
		2. Local Content Evaluation Criteria - Weighting
			1. The Government has introduced a minimum 10% formal weighting for local content, as outlined in VIPP or LIDP plans, in the evaluation of VIPP applicable projects, effective from 1 September 2016.
			2. Principals are required to disclose Local Content as a weighted tender evaluation criterion and the weighted percentage in the RFT documents. The weighting applies to all types of VIPP applicable projects where a VIPP plan or LIDP is required.
			3. Principals will be required to report on the application of the weighted Local Content criterion, including the percentage applied, on VIPP applicable projects as part of the Agency’s annual reporting requirements as per the Department of Treasury and Finance - Financial Reporting Directive (FRD25C).
		3. Further information and assistance
			1. The Department of Economic Development, Jobs, Transport and Resources has prepared guidelines for Suppliers on the application of VIPP to procurement in 'Implementing the VIPP - Suppliers Guidelines' (**Guidelines**), available at [www.economicdevelopment.vic.gov.au/victorian-industry-participation-policy](http://www.economicdevelopment.vic.gov.au/victorian-industry-participation-policy)
			2. ICN provides free services to assist bidders in identifying and developing the above information. Bidders are advised that ICN will be available to assist them in implementing the VIPP. For further information or assistance, bidders can contact ICN on (03) 9864 6700 or visit [www.icnvic.org.au/vipp](http://www.icnvic.org.au/vipp).
	1. Alternative 3: Design Contracts
		1. Local Jobs First - Victorian Industry Participation Policy
			1. The Local Jobs First - Victorian Industry Participation Policy (**VIPP**) seeks to maximise opportunities for Australian, New Zealand and Victorian suppliers (**Local Suppliers**) to compete for government business on the basis of best value for money over the life of the goods or services. The VIPP is implemented by Victorian Government departments and agencies to help drive local industry development.
			2. The VIPP applies to Government procurement activities, construction activities, major projects, major events, Public Private Partnerships and investment support, business development and community infrastructure grants above the threshold values of $3 million or more in Metropolitan Melbourne and $1 million or more in Regional Victoria.
			3. VIPP also has a Strategic Project Framework that applies to procurement activities valued at $50 million or more, excluding maintenance and operational costs.
		2. Contestable items

Contestable items are goods or services within a procurement activity for which there are competitive international suppliers and Local Suppliers. The VIPP requires that government agencies consider local content, particularly in respect of 'contestable items' as a key criterion in tender evaluation and other relevant procurement processes.

* + 1. Consultation with Industry Capability Network (ICN) Victoria
			1. To increase opportunities for local businesses within their project, design contractors (**Service Providers**) are required to consult with ICN regarding opportunities for local businesses, particularly in respect of Contestable Items. This is to better target the application of VIPP towards areas of contestable procurement.
			2. Consultants are required to consult with ICN after the design contract has been executed. Payment of monies under the design contract is based upon consultants' compliance with the consultation requirement.
			3. The consultation process involves the following steps:
				1. Consultants must register online with ICN when requested to do so by the Tender Officer. At this stage, the bidder will submit an Interaction Reference Number Form (**IRN Form**) setting out details of the project and likely goods and/or services to be required.
				2. ICN will review the consultant's IRN Form and contact the bidder to discuss opportunities for local industry.
				3. Consultants must negotiate with ICN to determine how opportunities for local SMEs or contestable items will be provided for in the project. This may involve ICN contributing to or reviewing draft designs or participating in particular project meetings.
				4. Consultation with ICN can take between 30 minutes and a few hours, depending upon the nature of the Contestable Items in the procurement activity.
				5. Once consultation is complete, ICN will issue the consultant with an Interaction Reference Number (**IRN**) and a reference letter. The reference letter will set out any agreements reached between ICN and the bidder during consultation.
				6. The consultant will submit their IRN to the Tender Officer to demonstrate that they have consulted with ICN, and that ICN is satisfied local industry will be considered in the design of the project.

***[Drafting notes:***

***Where a VIPP Plan is required:***

* ***If a VIPP Plan or LIDP plan is required for the design contract in question, the relevant RFT Model Clauses should be used.***

***Where a VIPP Plan is not required***

* ***If a VIPP Plan is not required, the following clauses should be inserted in the Request for Tender documentation or other documentation associated with the particular contract available and its related application process.***
* ***Clause numbering should be amended subject to the position where the clauses will be inserted within the RFT or other documentation.]***
	+ 1. Local Content Evaluation Criteria - Weighting
			1. The Government has introduced a minimum 10% formal weighting for local content, as outlined in VIPP or Local Industry Development Plan (**LIDP**) plans, in the evaluation of VIPP applicable projects, effective from 1 September 2016.
			2. Principals are required to disclose Local Content as a weighted tender evaluation criterion and the weighted percentage in the RFT documents. The weighting applies to all types of VIPP applicable projects where a VIPP plan or LIDP is required.
			3. Principals will be required to report on the application of the weighted Local Content criterion, including the percentage applied, on VIPP applicable projects as part of the Principal's annual reporting requirements as per the Department of Treasury and Finance - Financial Reporting Directive (FRD25C).
		2. Further information and assistance
			1. The Department of Economic Development, Jobs, Transport and Resources (**DEDJTR**) has prepared Guidelines on the application of VIPP to procurement in 'Implementing the VIPP - Suppliers Guidelines' (**Guidelines**). A copy of the Guidelines and further information about VIPP as well as useful templates are available on the DEDJTR website at [www.economicdevelopment.vic.gov.au/victorian-industry-participation-policy](http://www.economicdevelopment.vic.gov.au/victorian-industry-participation-policy)
			2. ICN provides free services to assist Service Providers. ICN's services are available during the tendering process and post-contract.
			3. Consultants are advised that ICN is also available to assist them in implementing the VIPP during the term of the design contract.
			4. For further information or assistance, Consultants can contact ICN on (03) 9864 6700 or visit [www.icnvic.org.au/vipp](http://www.icnvic.org.au/vipp)
1. - Major Projects Skills Guarantee
	* + 1. The Victorian Government is committed to creating job opportunities and promoting a strong and sustained vocational training culture through the employment of apprentices, trainees and engineering cadets within the Victorian building and construction industry.
			2. To implement this commitment, the Victorian Government, through its Major Projects Skills Guarantee, will use the awarding of Victorian Government building, construction, infrastructure, civil engineering and other capital projects to stimulate job opportunities and enhance vocational training in these sectors.
			3. Under the Skills Guarantee, all principal contactors awarded contracts for Victorian Government funded building, construction, infrastructure, civil engineering and other capital projects which have a pre-tender estimated value at or over $20 million must utilise Victorian registered apprentices, Victorian registered trainees or engineering cadets for at least 10 per cent (10%) of the Project's total estimated labour hours.
			4. The Major Projects Skills Guarantee operates separately to VIPP. Tenderers are required to submit a Major Projects Skills Guarantee Compliance Plan in accordance with the requirements set out in Tender Schedule 11 - Major Projects Skills Guarantee.
2. - Building Code
	1. General
		* 1. Capitalised terms used in this Annexure D which are defined in the Building Code 2016 have the meaning given to them in the Building Code 2016.
			2. The Tenderer's attention is drawn to the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) and to the Building Code 2016, which apply to the Commonwealth Funded Building Work that is the subject of the Project. More information about the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) and the Building Code 2016 is available at [www.abcc.gov.au](http://www.abcc.gov.au)
			3. The Tenderer:
				1. will be deemed to have read; and
				2. agrees that it and its Associates must comply with,

the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) and the Building Code 2016 from the time of submission of its Tender.

* + - 1. As part of its Tender, the Tenderer must complete and submit Tender Schedule 9 - Building Code 2016.
	1. Compliance with the Building Code 2016
		+ 1. The following are essential requirements:
				1. the Tenderer and its Associates are not covered by an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code 2016;
				2. the Tenderer is not subject to an Exclusion Sanction;
				3. the Tenderer has not had an adverse decision, direction or order made by a court or tribunal for a breach of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth), a designated building law, work health and safety law or competition and consumer law which has not been stayed or revoked and for which the period for compliance has expired without it having complied with the decision, direction or order;
				4. the Tenderer will only use products in relation to the Project that comply with the relevant Australian standards published by, or on behalf of, Standards Australia; and
				5. if the Tender Particulars state that a Workplace Relations Management Plan is required, the Tenderer has submitted a Workplace Relations Management Plan as part Tender Schedule 9 - Building Code 2016 for approval by the ABCC in accordance with Part 6 of the Building Code 2016.
			2. Without limiting clause 11.1, the Tenderer acknowledges and agrees that the Principal:
				1. will only enter into a contract with a Tenderer whose Workplace Relations Management Plan (if required) has been approved by the ABCC;
				2. will exclude the Tenderer from further consideration if at any time before a contract is executed in relation to the Project the Principal considers that it does not comply with the essential requirements;
				3. may exclude the Tenderer from further consideration if at any time before a contract is executed in relation to the Project it is excluded from performing Building Work funded by a State or Territory Government; and
				4. (may (in its absolute discretion) exclude the Tenderer from further consideration if the Tenderer's Workplace Relations Management Plan (if required) is not approved by the ABCC.
	2. ABCC evidence of Tenderer eligibility under Building Code 2016
		+ 1. In order for the Principal to assess the Tenderer's eligibility to lodge a Tender for the Project, the Tenderer must provide evidence of its eligibility to lodge a Tender, as set out in Tender Schedule 9 - Building Code 2016. This evidence must establish that the Tenderer and its Associates are not covered by an Enterprise Agreement that does not meet the requirements of section 13 of the Building Code 2016 and must align with that specified by the ABCC as acceptable to establish eligibility to lodge a Tender.
			2. The Tenderer acknowledges and agrees that if it does not provide the required evidence set out in Tender Schedule 9 - Building Code 2016 when lodging its Tender, the Principal may (in its absolute discretion and without limiting clause 11.2:
				1. decide not to evaluate the Tender; or
				2. notify in writing that the Principal requires the Tenderer to provide the required evidence, and such evidence must be provided by the time and date stated in the notice in order for the Principal to evaluate the Tender (failing which the Tenderer will be deemed ineligible to lodge a Tender for the Project and its Tender will not be evaluated).

#

# PART C - Tender Returnables

Tender Form

Tender Deed Poll

Date

**This Tender** is made by [***insert***] **ABN** [***insert***] of [***insert***] (**Tenderer**)

**in favour of**

 [***insert***] **ABN** [***insert***] of [***insert*** (**Principal**)

The Tenderer hereby offers to execute the Works, all in accordance with the Tender Documents for the fixed lump sum stated below. This Tender complies with all requirements of the Tender Documents.

* 1. Contract Sum

The Tenderer's offered price is $[***insert***] (excluding GST), a detailed breakdown of which is set out in Tender Schedule 1.

* 1. Corporate details

The Tenderer is a company, details of which are as follows:

| **TENDERER DETAILS** |
| --- |
|  | Full name: |  |
|  | Place of incorporation: (if applicable) |  |
|  | ABN: (if applicable) |  |
|  | ACN: (if applicable) |  |
|  | Address of registered office: |  |
|  | Address for correspondence and notices (must not be a post box number): |  |
|  | Email address for correspondence and notices: |  |
|  | Telephone number: |  |
|  | Tenderer's contractor's licence number: (if applicable) |  |
|  | Name of the individual nominated as Tenderer's contact person (must be contactable at the addresses and numbers stated above): |  |

[***Note to Tenderers:*** ***If a Tenderer comprises 2 or more individuals or companies (whether a joint venture, consortium, partnership or any other unincorporated grouping of 2 or more companies):***

***(a) the above details must be given for each company comprising the Tenderer;***

***(b) the Tenderer must nominate a single address, facsimile number, email address and telephone number for communication purposes and must nominate a single individual as the contact person for the purposes of the Tender; and***

***(c) a copy of the agreement governing the arrangements between those companies (whether a joint venture agreement, consortium agreement, partnership agreement or otherwise) must be submitted with the Tender.***]

* 1. Addenda

The Tenderer acknowledges receipt of the following addenda and clarification responses issued by the Principal and confirms that the requirements of the addenda and clarification responses form part of the Request for Tender and have been taken into account in preparing the Tender:

* + - 1. [***insert numbers and dates of each Addendum***].
	1. Tender submission

The Tenderer confirms that the Tender includes all information required by the Request for Tender and that the documents comprising the Tender are:

* + - 1. this completed and signed Tender Form;
			2. all Tender Schedules; and
			3. any other information lodged with the Tender Schedules.
	1. Tender Schedules

The Tenderer confirms that the Tender includes all Tender Schedules required by the Request for Tender and that the Tender Schedules comprising the Tender are:

| **TENDER SCHEDULES** | **Addressed in Tender?** |
| --- | --- |
| * + - 1. (
 | Tender Schedule 1 - Contract Sum breakdown | Yes/No |
| * + - 1. (
 | Tender Schedule 2 - Proposed Key People | Yes/No |
|  | Tender Schedule 3 - Program | Yes/No |
| * + - 1. (
 | Tender Schedule 4 - Tender Design(*Optional: to be included if the Tenderers are required to perform any design during the Tender Process. If not required, include "not used" to retain numbering.)* | Yes/No |
| * + - 1. (
 | Tender Schedule 5 - Tender's Insurance Details  | Yes/No |
| * + - 1. (
 | Tender Schedule 6 - Proposed Subcontractors | Yes/No |
|  | Tender Schedule 7 - Industrial Relations, Work Health and Safety (WHS) and Quality Assurance  | Yes/No |
|  | Tender Schedule 8 - Contract | Yes/No |
|  | Tender Schedule 9 - Building Code*(Optional to be included if the Building Code applies. If not required, include "not used" to retain numbering.)* | Yes/No |
|  | Tender Schedule 10 - VIPP*(Optional to be included if VIPP applies. If not required, include "not used" to retain numbering.)* | Yes/No |
|  | Tender Schedule 11 - Major Projects Skills Guarantee*(Optional to be included if MPSG applies. If not required, include "not used" to retain numbering.)* | Yes/No |
|  | Tender Schedule 12 - Tenderer's Current Workload | Yes/No |
|  | Tender Schedule 13 - Tenderer's Past Performance | Yes/No |
|  | Tender Schedule 14 - Financial Information | Yes/No |
|  | Tender Schedule 15 - Commitment to the Victorian State Government Supplier Code of Conduct | Yes/No |
|  | Tender Schedule 16 - Collusive Tendering - Statutory Declaration | Yes/No |

* 1. Representation and warranties

The Tenderer represents and warrants to the Principal:

* + - 1. that at the time it submitted this Tender, it had no knowledge of the tender price of any other tenderer;
			2. that it did not collude with any other tenderer regarding the preparation of this Tender or any other tender for the Works;
			3. it has made proper allowance in its Tender, including in the Contract Sum, for all matters which might impact upon its ability to carry out the work under the Contract or to carry out the work under the Contract within any particular time, cost or quality constraints;
			4. where it has been invited to submit a Tender on the basis of a pre-qualification process, it continues to meet the requirements or standards for that pre-qualification process;
			5. it has made all investigations, searches, inquiries and inspections and examined information relevant to the risks, contingencies and other circumstances having an effect on the Tender that a competent and experienced Tenderer should make in preparing its Tender;
			6. the information contained in the Tender is accurate and complete;
			7. it is not insolvent within the meaning of s.95A of the *Corporations Act 2001* (Cth) or otherwise and there is no unfulfilled or unsatisfied judgment or Court order outstanding against the Tenderer; and
			8. to the effect set out in relevant clauses of the Conditions of Tendering.
	1. Probity and conflicts of interest

The Tenderer warrants that:

* + - 1. no actual, potential or perceived probity issues (including any actual, potential or perceived conflicts of interest) exist or are likely to arise in respect of the Tenderer or its involvement in the Project, other than those probity issues disclosed and described in its Tender;
			2. if an actual, potential or perceived probity issue arises, or appears likely to arise, after the lodgement of its Tender, the Tenderer will:
				1. immediately notify the Principal in writing as soon as such actual, potential or perceived probity issue becomes apparent to the Tenderer and provide details of such probity issue; and
				2. take all steps required by the Principal to prevent, end, avoid, mitigate, resolve or otherwise manage the actual, potential or perceived probity issue;
			3. it must not engage in any practice that would defeat the purpose of a fair and transparent selection process, including engaging in collusive tendering or any other anti-competitive practices such as, but not limited to:
				1. an agreement between Tenderers about who should be the successful Tenderer;
				2. any meeting of Tenderers to discuss the Tender before Closing Time if the Principal or Tender Officer is not present;
				3. an exchange of information between Tenderers about their Tenders before awarding of the Contract or a commission;
				4. an agreement or exchange of information between Tenderers for the payment of money or securing of reward or benefit for unsuccessful Tenderers by the successful Tenderer;
				5. agreements between Tenderers to fix the prices or conditions of the Contract (this means any collaboration between Tenderers of prices or conditions to be included in contracts or commissions without the consent of the Principal);
				6. a submission of a Tender or to provide any assistance to any Tenderers to submit a Tender (that is, a Tender submitted as genuine but which has been deliberately priced in order not to win the Contract or a commission);
				7. any agreement between Tenderers prior to submission of a Tender to fix the rate of payment of employer or industry association fees where the payment of such fees is conditional upon the Tenderer being awarded the Contract or commission; and
				8. payment to any third party of money, fees, incentives or other concessions contingent on the success of the Tender that do not relate to the provision of proper services relevant to the Tender; and
			4. must not:
				1. accept or provide any secret commissions;
				2. enter into any improper commercial arrangements with other contractors, subcontractors, suppliers, agents or parties;
				3. seek to influence contract decisions by improper means during the Tender Process; or
				4. accept incentives to provide contracts or services to other contractors, subcontractors or suppliers that financially disadvantage the Principal.
	1. Tenderer bound by Conditions of Tendering

The Tenderer confirms and agrees that it is bound by the Conditions of Tendering including, but not limited to, clause 6(a) thereof regarding the validity period for the Tender.

* 1. Amendments

This Tender cannot be revoked and may only be varied by a deed executed by or on behalf of the Tenderer and the Principal.

* 1. Deed Poll

This document operates as a deed poll and is enforceable against the Tenderer in accordance with its terms by the Principal, despite the Principal not being a party to this Tender.

* 1. Governing law

This Tender is governed by and must be construed according to the law applying in Victoria.

* 1. Date of Tender

This Tender is dated the day of .

**Executed** as a deed poll.

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by [**insert Company name and ACN/ARBN/ABN]** in accordance with section 127 of the Corporations Act by or in the presence of: |  |  |  |
|  |  |  |  |
| Signature of Secretary/other Director |  |  | Signature of Director or sole Director and sole Secretary |
| Name of Secretary/other Director in full |  |  | Name of Director or sole Director and sole Secretary in full |

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of the **Tenderer** by its duly authorised agent in the presence of: |  |  |  |
| Signature of Authorised Agent |
|  |  |  |  |
| Signature of Witness |  |  | Name of Authorised Agent in full |
| Name of Witness in full |  |  |  |

Tender Schedules

[***Drafting Notes: Agencies to consider the following for the specific project:***

* ***whether Tenderers should be requested to provide an outline project execution plan or detailed contractor's activity proposal requiring the Tenderers to outline how they will deliver the Works and carry out the work under the Contract.***
* ***whether requirements should be included for the Tenderers to bid back certain key Project Plans; and***
* ***whether page limits on Tender Schedules should be specified.***]

Tender Schedule 1
Contract Sum breakdown

[***Drafting Note: This schedule will need to be prepared based upon the price mechanism for the Contract and any other details required, e.g. lump sum, breakdown of lump sum, cost schedule, schedule of rates.***]

The Tenderer is requested to complete this Tender Schedule 1 in accordance with clause 5.3.

1. **Contract Sum**

[***Drafting Note: Include the following where the Contract is a lump sum contract. Delete where not applicable.***]

**Lump sum Contract Sum**

The Tenderer must provide a lump sum Contract Sum as follows:

|  |  |  |
| --- | --- | --- |
| Contract Sum: | $[***insert***] | (GST exclusive) |

**Breakdown of Contract Sum**

The Tenderer must provide a breakdown of the lump sum Contract Sum which fully and clearly provides details of how the lump sum Contract Sum has been calculated. The breakdown should clearly itemise and identify each amount in respect of at least the following:

|  |  |
| --- | --- |
| [***Insert e.g. building elements, sections, trades, stages etc.***] | $[***insert***] (GST exclusive). |
| Security | $[***insert***] (GST exclusive). |
| Insurances | $[***insert***] (GST exclusive). |
| [Tenderer to insert additional items] | $[***insert***] (GST exclusive). |
| **Contract Sum** | $[***insert***] (GST exclusive). |

[***Drafting Note: Include the following where the Contract is part lump sum and part schedule of rates. Delete where not applicable.***]

**Lump sum forming part of the Contract Sum**

The Tenderer must provide a lump sum forming part of the Contract Sum as follows:

|  |  |  |
| --- | --- | --- |
| Lump sum forming part of the Contract Sum: | $[***insert***] | (GST exclusive) |

**Breakdown of lump sum forming part of Contract Sum**

The Tenderer must provide a breakdown of the lump sum forming part of the Contract Sum which fully and clearly provides details of how the lump sum forming part of the Contract Sum has been calculated. The breakdown should clearly itemise and identify each amount in respect of at least the following:

|  |  |
| --- | --- |
| [***Insert e.g. building elements, sections, trades, stages etc.***] | $[***insert***] (GST exclusive). |
| Security | $[***insert***] (GST exclusive). |
| Insurances | $[***insert***] (GST exclusive). |
| [Tenderer to insert additional items] | $[***insert***] (GST exclusive). |
| **Contract Sum** | $[***insert***] (GST exclusive). |

[***Drafting Note: Include the following if a Schedule of Rates will be used for calculating the Contract Sum (in whole or in part). Delete where not applicable.***]

**Schedule of Rates for calculating Contract Sum**

The Tenderer must provide a Schedule of Rates as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Unit** | **Quantity** | **Rate/Price** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

1. **Table of Variation Rates and Prices**

The Tenderer must provide a Table of Variation Rates and Prices which is to apply for the purposes of clause 40.5 of the Contract as follows:

|  |  |  |
| --- | --- | --- |
| **Role / Position / Item** | **Unit** | **Rate / Price** |
| [***Tenderer to insert relevant Contractor personnel***] | Hour | $[***insert***] (GST exclusive). |
| [Work, items, materials, goods] | [***insert***] | $[***insert***] (GST exclusive). |
| [Tenderer to insert additional items] | [***insert***] | $[***insert***] (GST exclusive). |

The rates and prices must not include any allowance for non-time related on-site overheads and preliminaries or off-site overheads and profit.

The Tenderer must also provide the following percentages which are to apply for the purposes of clause 40.5 of the Contract:

|  |  |
| --- | --- |
| Percentage of amount determined for non-time related on site overheads and preliminaries | [***insert***]% |
| Percentage of amount determined for off-site overheads and profit | [***insert***]% |

1. **Anticipated Monthly Cashflow**

The Tenderer is requested to provide an anticipated monthly cash flow for payment of the Contract Sum.

[***Drafting Note: This following section to be included if the progress payments are stage-based. If not used, delete this section.***]

The Tenderer must provide an anticipated stage-based cash flow for payment of the Contract Sum following completion of the stages for payment described in Annexure Part A of the Contract as follows:

|  |  |
| --- | --- |
| [***Insert stage for payment from Contract.***] | $[***insert***] (GST exclusive). |
| [***Insert stage for payment from Contract.***] | $[***insert***] (GST exclusive). |
| [***Insert stage for payment from Contract.***] | $[***insert***] (GST exclusive). |
| **Contract Sum** | $[***insert***] (GST exclusive). |

Tender Schedule 2
Proposed Key People

The Tenderer is required to complete this Tender Schedule, nominating persons from its own organisation who will fill the following positions:

* + - 1. Contractor's representative;
			2. [*insert others*],

describing their respective roles and the percentage of time each of the above persons would be dedicated to work under the Contract.

An organisational chart and curriculum vitae for each person are also to be submitted. Curricula vitae should include details of all relevant projects worked on in the last 5 years and key client contact details (with current telephone numbers).

| **Position** | **Name** | **Time on Contractor's activities** | **Nature and extent of experience** |
| --- | --- | --- | --- |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

Tender Schedule 3
Program

1. **Content of the program**

The Tenderer is required to complete this Tender Schedule by showing its proposed:

* + - 1. order of work;
			2. period of time or times for carrying out each of design, documentation and construction activities including off-Site activities;
			3. key dates;
			4. completion dates (or time period from which it is given access to the Site); and
			5. monthly cash flow table.

The Tenderer is also required to show the percentage of time against activities each of the Tenderer's proposed key people would be dedicated to work under the Contract.

1. **Format of the program**

The program must be in the format identified in the Tender Particulars.

1. **Allowances in the program**

The program must allow for all necessary reviews, consents and approvals.

[***Note to Tenderers: The Tenderer should note that the program will not form part of the Contract but will form the basis of the initial program submitted by the preferred Tenderer under the Contract.***]

Tender Schedule 4
Tender Design

[***Drafting Note: to be included if the Tenderers are required to perform any design during the Tender Process. To maintain Tender Schedule numbering, to be [Not Used] if design is not relevant to the Project.***]

The Tenderer is requested to prepare and provide a preliminary design solution for the Works. [***Drafting Note: Agencies to include any specific requirements for the tender design.***].

The Tenderer should note that:

* + - 1. any preliminary design solution for the Works must not include the installation into any building of Type A or Type B Construction a Prescribed Combustible Product as part of an External Wall (including as an attachment) unless the Tenderer has obtained a determination of the Building Appeals Board that the installation of the Prescribed Combustible Product complies with the *Building Act 1993* (Vic) and the regulations made under that Act. Terms which have a defined or special meaning in the Cladding Guideline have the same meaning where used in this paragraph (a);
			2. subject to paragraph (c), the design solution provided by the successful Tenderer will form part of the Preliminary Design incorporated into the Contract; and
			3. the Principal reserves the right to negotiate the design solution provided by the Tenderer before entering into any Contract with the successful Tenderer.

[***Drafting Note: to be considered on a Project specific basis. The tender design solution will not always form part of the Preliminary Design including, for example, if the tender design solution related to an Optional Item that is not awarded to the successful Tenderer, if the Principal does not accept the tender design solution proposed or the Principal would prefer to specify the requirements in the Principal's Project Requirements.***]

Tender Schedule 5
Tenderer's Insurance Details

[***Drafting Note: to be completed on a Project specific basis. For example, to take into account any Principal effected and maintained insurance policies, any Project specific insurance policies (e.g. marine transit insurance etc.) and to request policy information as required (e.g. information on excesses and deductibles etc.).***]

| **Insurance Type** | **Insurance Company** | **Policy No** | **Extent of Cover Per Incident $AUD** | **In Aggregate $AUD** | **Expiry Date** |
| --- | --- | --- | --- | --- | --- |
| **Workers' Compensation Insurance** |  |  |  |  |  |
| **Works Insurance** |  |  |  |  |  |
| **Public Liability Insurance** |  |  |  |  |  |
| **Professional Indemnity Insurance** |  |  |  |  |  |

Tender Schedule 6
Proposed Subcontractors

The Tenderer must set out below the work which it proposes to subcontract together with a list of the subcontractors to whom it proposes to subcontract this work or from whom it proposes to call tenders.

Curriculum vitae of each subcontractor are also to be submitted. They should include details of relevant projects completed in the last 5 years and client contact details (with current telephone numbers).

| **Work to be Subcontracted** | **Name of Proposed Subcontractor** |
| --- | --- |
|  |  |
|  |  |
|  |  |
|  |  |

Tender Schedule 7
Industrial Relations, Work Health and Safety (WHS) and Quality Assurance

The Tender is required to provide details of the Tenderer's:

* + - 1. industrial relations record;
			2. Industrial Relations Management Plan;
			3. WHS record;
			4. WHS management systems; and
			5. capacity to comply with quality assurance system obligations.

Tender Schedule 8
Contract

1. **Contract**

This paragraph 1 only applies if it is indicated in Item 15 that departures from the Contract are applicable.

The Tenderer is to either:

* + - 1. confirm that it accepts the terms of the Contract, including the Formal Instrument of Agreement and the Conditions of Contract, as set out in the Tender Documents; or
			2. state which terms it is not able to accept and specify the alternative terms which it proposes. This must be done by providing a "mark-up" of the Contract showing the exact changes in wording proposed, together with a full explanation set out within the relevant document detailing:
				1. the reasons for the proposed amendment; and
				2. the benefits to the Principal if it accepts the proposed amendment.

The Principal will take the commercial and risk allocation implications of such amendments into account when evaluating the Tenderer's Tender Schedule 8.

1. **Contract Particulars**

This paragraph 2 only applies if it is indicated in Item 15 that departures from the Contract are not applicable.

The Tenderer must complete the following table for the purposes of Annexure Part A of the Contract.

[***Drafting Note: those parts of Annexure Part A that are to be completed by the Tenderers are to be extracted and included in this Tender Schedule 8.***]

Tender Schedule 9
Building Code 2016

[***Drafting Note: This Tender Schedule 9 is to be included where the Building Code applies. The Building Code will apply to building work that is indirectly funded by the Commonwealth grant or program for which:***

* ***the value of the Commonwealth's contribution is at least $5 million and represents at least 50% of the total construction value; or***
* ***the Commonwealth's contribution is at least $10 million.***

***To maintain Tender Schedule numbering, to be [Not Used] if the Building Code does not apply.***]

All capitalised terms in this Tender Schedule 9 unless defined in the Conditions of Tendering have the same meaning given to those terms in the Building Code 2016.

The Tenderer must:

* + - 1. ensure that the declaration set out in Part 1 (including all attachments) of this Tender Schedule 9 is complete, accurate, duly executed and valid; and
			2. if applicable, provide a Workplace Relations Management Plan in accordance with Part 2 of this Tender Schedule 9.

Part 1 Declaration of compliance

**Declaration of Compliance with the Building Code 2016**

[***INSERT NAME OF*** [***TENDERER***](#tenderer)***, ABN AND ACN, AS APPLICABLE***]

The Tenderer:

* + - 1. confirms that it has complied with the Building Code 2016 in preparing its Tender;
			2. acknowledges that it and its Related Entities must comply with the Building Code 2016 in relation to all Building Work described in Schedule 1 of the Building Code 2016 for which an expression of interest or request for tender (however described) is called on or after the date that the Building Code 2016 commenced, being 2 December 2016, and, should it be the successful Tenderer, in relation to the Commonwealth Funded Building Work that is the subject of the Project;
			3. undertakes to ensure that it and its subcontractors that it subcontracts any of the Commonwealth Funded Building Work that is the subject of the Project to, should it be the successful Tenderer, comply with the Building Code 2016;
			4. acknowledges the powers and functions of the ABC Commissioner and the ABCC under the *Building and Construction Industry (Improving Productivity) Act* 2016 (Cth) and the Building Code 2016 and undertakes to ensure that it and its subcontractors will comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests for entry under section 72 of the *Building and Construction Industry (Improving Productivity) Act* 2016 (Cth), requests to interview any person under section 74 of the *Building and Construction Industry (Improving Productivity) Act* 2016 (Cth), requests to produce records or documents under sections 74 and 77 of the *Building and Construction Industry (Improving Productivity) Act* 2016 (Cth) and requests for information concerning matters relating to the Building Code 2016 under subsection 7(c) of the Building Code 2016;
			5. declares that where it proposes to subcontract any of the Commonwealth Funded Building Work that is the subject of the Project, should it be the successful Tenderer, it will:
				1. not enter into a subcontract with a subcontractor who:

is covered by, or has Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code 2016;

is subject to an Exclusion Sanction; or

unless approved otherwise by the ABC Commissioner, is excluded from performing Building Work funded by the Commonwealth or a State or Territory Government; and

* + - * 1. only enter into a subcontract where:

the subcontractor undertakes to only use products in relation to the Project that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;

the subcontractor undertakes to comply with the Workplace Relations Management Plan (if required) approved by the ABCC in accordance with Part 6 of the Building Code 2016 that applies to the Project;

the subcontractor has submitted a declaration of compliance, including the further information outlined in the attachment to the declaration of compliance, in the form set out in the Proforma Building Code 2016 Subcontract Provisions (or in such other form as notified in writing by the Principal);

the subcontract with the subcontractor contains clauses in the form set out in the Proforma Building Code 2016 Subcontract Provisions (or in such other form as notified in writing by the Principal);

the subcontractor has advised, prior to entering into a subcontract with the Tenderer, whether the subcontractor has within the preceding three year period:

had an adverse decision, direction or order made by a court or tribunal for a breach of a designated building law, work health and safety law or the *Migration Act* 1958 (Cth); or

been required to pay any amounts under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of Building Work) or owed any unsatisfied judgement debts (including by any Related Entity) to a Building Contractor or Building Industry Participant; and

the subcontractor has agreed to update the advice referred to in subsubparagraph E every six months for the duration of the subcontract between the Tenderer and the subcontractor;

* + - 1. declares that it has provided all of the further information required by Attachment A to this Declaration of Compliance;
			2. declares that:
				1. it and its Related Entities are not covered by an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code 2016 (and it must complete question 1 of Attachment A to this Declaration of Compliance);
				2. it is not subject to an Exclusion Sanction;
				3. it has not had an adverse decision, direction or order made by a court or tribunal for a breach of the *Building and Construction Industry (Improving Productivity) Act* 2016 (Cth), a designated building law, work health and safety law or competition and consumer law which has not been stayed or revoked and for which the period for compliance has expired without it having complied with the decision, direction or order;
				4. it will only use products in relation to the Project that comply with the relevant Australian standards published by, or on behalf of, Standards Australia, should it be the successful Tenderer; and
				5. it has provided as part of its Tender a Workplace Relations Management Plan (if required) for approval by the ABCC in accordance with Part 6 of the Building Code 2016; and
			3. confirms that all information provided in this Tender Schedule 9 - Building Code 2016 is true and correct at the time of lodging its Tender.

 **[*INSERT DATE*]**

**[*S 127 OF CORPORATIONS ACT execution clause (delete if not used)*]**

|  |  |  |  |
| --- | --- | --- | --- |
| **Declared and executed** by **[INSERT NAME]** in accordance with section 127 of the *Corporations Act* 2001 (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director |
|  |  |  |  |
| Full name of director |  |  | Full name of company secretary/director |

**[*OR - AUTHORISED SIGNATORY OF COMPANY execution clause (delete if not used)*]**

|  |  |  |  |
| --- | --- | --- | --- |
| **Declared and signed** for and on behalf of **[INSERT NAME]** by its authorised signatory in the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of authorised signatory |
|  |  |  |  |
| Full name of witness |  |  | Full name of authorised signatory |

**[*OR - INDIVIDUAL execution clause (delete if not used)*]**

|  |  |  |  |
| --- | --- | --- | --- |
| **Declared and signed** by **[INSERT NAME]** in the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature |
|  |  |  |  |
| Full name of witness |  |  |  |

Attachment A - Information regarding compliance with the Building Code 2016

The Tenderer must provide the following information as part of its Declaration of Compliance:

1. Does the Tenderer or its Related Entities have an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code 2016?[[1]](#footnote-1)

**❑ YES ❑ NO**

**Please provide details:**

**[COMPLETE THE FOLLOWING QUESTION AND ATTACH THE REQUIRED EVIDENCE ACCORDING TO THE TENDERER'S SITUATION, SEE CLAUSE 16 OF THE CONDITIONS OF TENDERING REGARDING PROVISION OF BUILDING CODE 2016 EVIDENCE OF ELIGIBILITY TO LODGE A TENDER FOR THE PROJECT AND THE CONSEQUENCES OF A FAILURE TO PROVIDE THIS EVIDENCE - THE ONUS IS ON THE TENDERER TO ESTABLISH TO THE PRINCIPAL'S SATISFACTION ITS ELIGIBILITY TO TENDER.]**

1. Does the Tenderer or its Related Entities have an Enterprise Agreement made or varied (in accordance with section 207 of the *Fair Work Act* 2009 (Cth)) on or after 25 April 2014 that covers the Tenderer or its Related Entities in respect of Building Work?

**❑ YES ❑ NO**

If Yes, the Tenderer must:

* + 1. attach a copy of the letter of compliance issued by the ABCC that relates to the Project or complete and attach Self-Declaration of Eligibility A (a template of which is available from the ABCC); and
		2. list all Enterprise Agreements made or varied (in accordance with section 207 of the *Fair Work Act* 2009 (Cth)) on or after 25 April 2014 that cover the Tenderer or its Related Entities in respect of Building Work:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **NAME OF ENTITY COVERED BY THE ENTERPRISE AGREEMENT** | **TITLE OF ENTERPRISE AGREEMENT THAT COVERS THE TENDERER OR ITS RELATED ENTITIES IN RESPECT OF BUILDING WORK** | **DATE MADE OR VARIED (IN ACCORDANCE WITH SECTION 207 OF THE *FAIR WORK ACT* 2009 (CTH))** | **FAIR WORK COMMISSION REFERENCE** | **DOES THE ENTITY HAVE AN ABCC LETTER OF COMPLIANCE (DETERMINATION) IN RELATION TO THE AGREEMENT?** | **IF NO, IS THE ENTITY ENTITLED TO AN EXEMPTION OUTLINED IN SCHEDULE 5 OF THE BUILDING CODE 2016 IN RELATION TO THE ENTERPRISE AGREEMENT?** |
| **[INSERT]** | **[INSERT]** | **[INSERT]** | **[INSERT]** | **[YES/NO]** | **[INSERT]** |

If No, the Tenderer must complete and attach Self-Declaration of Eligibility A (a template of which is available from the ABCC).

1. Is the Tenderer excluded from performing Building Work funded by the Commonwealth or a State or Territory Government? If so, the Principal reserves the right to exclude the Tenderer from further consideration.

**❑ YES ❑ NO**

Please provide details:

**[*INSERT*]**

1. Does the Tenderer positively commit to the provision of appropriate training and skills development for its workforce, and, if so, what evidence can the Tenderer supply in relation to this (for example, evidence of its compliance with any Commonwealth, State or Territory Government building training policies and evidence of its support in the delivery of nationally endorsed building and construction competencies)?

**❑ YES ❑ NO**

Please provide details:

**[INSERT]**

1. How many current apprentice and trainee employees are engaged or intended to be engaged by the Tenderer to undertake the Commonwealth Funded Building Work that is the subject of the Project?

Please provide details:

**[INSERT]**

1. How many and what classes of persons that hold visas under the *Migration Act* 1958 (Cth) are engaged or intended to be engaged by the Tenderer to undertake the Commonwealth Funded Building Work that is the subject of the Project?

Please provide details:

**[INSERT]**

1. Has the Tenderer within the preceding three years had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the *Migration Act* 1958 (Cth)?

**❑ YES ❑ NO**

Please provide details:

**[INSERT]**

1. Has the Tenderer or its Related Entities within the preceding three years been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of Building Work) to a Building Contractor or Building Industry Participant?

**❑ YES ❑ NO**

Please provide details:

**[INSERT]**

1. Has the Tenderer or its Related Entities within the preceding three years owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant?

**❑ YES ❑ NO**

Please provide details:

**[INSERT]**

1. To what extent does the Tenderer intend to use domestically sourced and manufactured building materials to undertake the Commonwealth Funded Building Work that is the subject of the Project?

Please provide details:

**[INSERT]**

1. What is the Tenderer's assessment of the whole-of-life costs of the Project?

Please provide details:

**[INSERT]**

1. What does the Tenderer consider the impact on jobs will be of the Project?

Please provide details:

**[INSERT]**

1. Does the Tenderer consider that the Project will contribute to skills growth?

**❑ YES ❑ NO**

1. Please provide details:

**[INSERT]**

Part 2 - Workplace Relations Management Plan

If the Tender Particulars state that a Workplace Relations Management Plan is required, the Tenderer must provide a proposed Workplace Relations Management Plan which meets the requirements described in section 32 of the Building Code 2016 (including any matters in Schedule 3 of the Building Code 2016 that the ABCC consider necessary which may be the subject of an addendum under clause 16 of the Conditions of Tendering) for the approval of the ABCC.

The Tenderer should note that it may provide its proposed Workplace Relations Management Plan prior to the Closing Time and in accordance with the Conditions of Tendering.

If the Tenderer does provide its proposed Workplace Relations Management Plan prior to the Closing Time, it must still provide its proposed Workplace Relations Management Plan (unamended in all respects from that provided prior to the Closing Time) as part of this Tender Schedule 9.

**A model WRMP can be found on the ABCC website at https://www.abcc.gov.au/building-code/workplace-relations-management-plans.**

***[Note to Tenderers: Workplace Relations Management Plan (if required) to be provided as a separate document capable of issue to the ABCC in accordance with the requirements specified by the ABCC.]***

Tender Schedule 10
VIPP - LIDP

[***Drafting Note: This Tender Schedule only applies for Strategic Projects where an LIDP is required (Alternative 2 in Item 22). To maintain Tender Schedule numbering, to be [Not Used] if not required.***]

**Certified LIDP Plan**

The Tenderer must attach a copy of the certified Local Industry Development Plan (**LIDP**), together with any documentation evidencing the certification by the ICN to this Tender Schedule 10.

The template attached as Attachment 1 to this Tender Schedule 10 may be used to prepare an LIDP, with guidance on how it may be completed. Tenderers are required to consult with the Industry Capability Network (Victoria) Ltd (**ICN**) for certification of their LIDP.

1. to Tender Schedule 10



**LOCAL INDUSTRY DEVELOPMENT PLAN**

This document provides a template to prepare a Local Jobs First Victorian Industry Participation Policy (VIPP) Local Industry Development Plan (LIDP). Use of this guide is optional. Tenderers may choose to use other formats, however each question outlined in this guide must be answered in order to receive VIPP acknowledgment. Tenderers must consult with the Industry Capability Network (Victoria) Ltd (ICN) for certification of their Local Industry Development Plan. ICN can be contacted on (03) 9864 6700 or at **info@icnvic.org.au**. Please refer to the Local Jobs First Victorian Industry Participation Policy (VIPP) Supplier Guidelines document for more details.

**1. Company Details**

|  |  |
| --- | --- |
| Company name: | Click here to enter text. |
| Contact person: | Click here to enter text. |
| Contact phone: | Click here to enter text. |
| Email:  | Click here to enter text. |

**3**

**2. Project Details**

|  |  |
| --- | --- |
| Tender name: | Click here to enter text. |
| Tender reference number: | Click here to enter text. |
| Tender due date | Click here to enter text. |
| Lead Agency: | Click here to enter text. |
| Lead Agency contact: | Click here to enter text. |

**3. Project Description**

|  |
| --- |
| Click here to enter contract description. |

**4. Commitments Table**

|  |  |  |
| --- | --- | --- |
| VIPP Criteria | Notes | Commitment |
| ANZ value-added activity | The Tenderer shall demonstrate its ability to deliver:**97% minimum Local Content and to maximise the use of local steel products made from locally milled steel over the design and construction phase of the Project.** | **Click here to enter %.** |
| Employment (AEE) | Refers to the number of actual new and/or retained annualised employee equivalent opportunities (jobs) to be created in Australia and New Zealand as a result of the Contract.**Total jobs created/retained includes apprentice and trainee related employment.** |  | Created: | Retained: |
| Total | **Click here to enter #** | **Click here to enter #.** |
| Apprentices | Click here to enter # | Click here to enter #. |
| Trainees | Click here to enter # | Click here to enter #. |

**Local Content Calculation**

Local content (ANZ value added activity) of a good or service is determined on a cost basis and is the part of a product or service left once the cost of the international component has been subtracted. It can be expressed by the following equation:

Local content = total cost of the good or service less international content

Consideration should be given to use of the contestable items by competitive local suppliers. ICN has provided an indicative list of contestable items (refer to **Attachment A**) that may be required to complete the Project, based on the information provided to it by government. The use of contestable items will assist in meeting the minimum local content requirements and in completing **Attachment B**.

**Employment Calculation**

**AEE** replaces Full Time Equivalence (FTE), and is calculated by dividing the total number of ordinary working hours that an employee worked and was paid (includes paid leave) over the reporting period (e.g. length of contract) by the total number of full-time working hours paid per annum (this is generally 38 hours per week for 52 weeks).

Tenderers may attach employment modelling as an appendix to this LIDP should they wish to provide further information on their employment commitments

The sections below require Tenderers to outline processes for **identifying**, **selecting**, **assessing** and **monitoring** local products, services and capabilities to meet the commitments stated in this LIDP.

**5. Identifying local products and capabilities to meet contract requirements**

|  |
| --- |
| **Section 5.1 Consultation Process**Many of the technologies and materials for this Project may be available locally. Where applicable, Tenderers should propose procedures to work with various stakeholders to minimise the need to source from overseas and promote the concept of local industry participation. This could include consulting with:* Subcontractors
* Industry associations
* ICN
* Government organisations and agencies
* ANZ industry and other groups
 |
| Click here to enter text. |

|  |
| --- |
| **Section 5.2 Alerting Local Industry**Where applicable, Tenderers should detail methods to alert local industry of upcoming tenders and contract requirements. This could include:* Issuing work packages on ICN Gateway
* Advertising in the local newspapers' tender section
* Contacting local suppliers and subcontractors directly at tender time to attract interest from local industry
* Utilising industry databases/websites to alert local industry
 |
| Click here to enter text. |

|  |
| --- |
| **Section 5.3 Liaising With International Suppliers**Where applicable, Tenderers should detail methods to liaise with international suppliers to increase opportunities for local industry, including manufacturing under overseas licensing arrangements and technology transfer. This may include identifying work packages and items with the potential for import replacement by local products and services. Where no local supply options can be identified, the Tender should consult with ICN to ensure local options that offer the best value-for-money have not been overlooked. |
| Click here to enter text. |

**6. Assessing and comparing local products and capabilities with overseas equivalent/s**

|  |
| --- |
| **Section 6.1 Benchmarking**Where applicable, Tenderers should develop benchmarks (based on “whole-of-life” cost parameters and appropriate quality and performance indicators) for the evaluation of proposals and alternatives. This may include the application of the principles of VIPP in their procurement process and set a benchmark of a nominal percentage point (for local value-added activities) for evaluating proposals and alternatives. This could be expressed in the form of a VIPP declaration, which should be agreed between the proposed subcontractor and the Tenderers before implementation. Tenderers may seek assistance from ICN to improve the benchmark set. |
| Click here to enter text. |

|  |
| --- |
| **Section 6.2 Assessing the local value-added content**Where applicable, Tenderers should develop procedures for assessing the local value-added content in a product or service. This could include a checklist to assess local content in a product or service, to ensure that the company, as well as the goods and services they are supplying are local. |
| Click here to enter text. |

|  |
| --- |
| **Section 6.3 Comparing Local products and services against overseas equivalents**Where applicable, Tenderers should develop procedures for ensuring that local products and services are evaluated against imported goods and services. For example, the Tenderers may choose to instruct subcontractors that tender submissions should consider local products and services alongside imported alternatives and/or identifying work packages for import replacement so that they can make a value-for-money judgement as appropriate. |
| Click here to enter text. |

**7. Products or service selection policy or procedure**

|  |
| --- |
| Describe the procedures or policies for the selection of products and services that provide the best value-for-money over the life of the Contract. Where applicable, Tenderers should apply the principle of the VIPP to their selection process. |
| Click here to enter text. |

**8. Monitoring and reporting**

|  |
| --- |
| Tenderers should detail how they will monitor and report on outcomes for local industry involvement. The response should include answers to all of the following items:* The number of jobs created and retained (AAE for the whole Project, including sub-contractors, apprentices and trainees).
* The number of apprentices and trainees created and retained (labour hours).
* VIPP commitments secured against contract levels.
* Frequency of monitoring and reporting and associated mechanisms.
* Procedures for corrective action should inappropriate or ineffective action be determined.
* Frequency and level of internal assessment of the effectiveness of the implementation of the Plan.
* Frequency of external assessment of sub-contractor and supplier commitment to local industry participation.
* Level of use of ICN and other organisations to assist in the identification of competitive local sources of supply.
* Use of Attachment C : VIPP Monitoring Table.
* The ICN can assist in the monitoring of compliance with VIPP commitments as part of overall performance management.
 |
| Click here to enter text. |

**9. Statement of compliance**

|  |
| --- |
| The Tenderer shall:* take all reasonable steps to comply with VIPP principles;
* agree to be monitored by the Department or Agency for compliance with VIPP commitments as part of overall performance management;
* agree to complete the Statutory Declaration (Attachment D) at practical completion of the Project, confirming VIPP outcomes achieved;
* agree to allow ICN to review the VIPP outcomes at the completion of the Contract;
* acknowledge that the VIPP Local Industry Development Plan shall be centrally recorded by the Victorian Government; and
* agree to the ICN Terms and Conditions as set out in Attachment F of this document.

To confirm that you agree to the Statement of Compliance as listed above, please sign below.Note: If submitting a VIPP Local Industry Development Plan online via the VIPP Management Centre – VMC ([www.icnvic.org.au/vipp](http://www.icnvic.org.au/vipp)), acceptance of the Terms and Conditions must be acknowledged and agreed to prior to submission, therefore no signature is required within the VIPP Local Industry Development Plan. |

|  |
| --- |
| Signed on behalf of: Click here to enter text. |
| Signature: | (Note: If submitting VIPP Local Industry Development Plan online, a signature is not required here) |
| Name: | Click here to enter text. |
| Position Title: | Click here to enter text. |
| Date: | Click here to enter date. |

**Attachment A: Contestable Products and Services**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **[Insert]** |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
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**Attachment B: Local Content Commitments**

The table shall be completed, to enable ICN to provide assessment on local content commitments for the design and construction of the Project.

| **WBS/ Item Number** | **Item/Description** | **Potential or selected Brand/ Manufacturer** | **Potential or selected Supplier** | **ICN Assist** | **% ANZ Local Value Activity per line item** | **% Contract Content (expressed as % of the contract value)** | **% ANZ Value Activity (expressed as % of the contract value)** | **No. of SMEs in supply chain** | **Total No. of suppliers in supply chain** | **% of SMEs in supply chain** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| % Import | % Local **(A)** | **(B)** | **(C)** | **(D)** | **(E)** | **(F)** |
| **Contestable Items** |
| ***[Insert number e.g. 1]*** | ***[Insert item name]*** | ***[Insert brand/ manufacturer]*** | ***[Insert supplier]*** | ***[Y/N]*** | ***[Insert percentage e.g. 30%]*** | ***[Insert percentage e.g. 70%]*** | ***[Insert percentage]*** | ***[Insert percentage using the formula C = A% x B%]*** | ***[Insert no. of SMEs engaged in the supply chain of this item]*** | ***[Insert total no. of suppliers engaged in the supply chain of this item]*** | ***[Insert percentage using the formula F =D/∑E\*100]*** |
| ***[Insert number e.g. 2]*** |  |  |  |  |  |  |  |  |  |  |  |
| **Non-Contestable Items** |
| ***[Insert number e.g. 1]*** | ***[Insert item name]*** | ***[Insert brand/ manufacturer]*** | ***[Insert supplier]*** | ***[Y/N]*** | ***[Insert percentage e.g. 30%]*** | ***[Insert percentage e.g. 70%]*** | ***[Insert percentage]*** | ***[Insert percentage using the formula C = A% x B%]*** | ***[Insert no. of SMEs engaged in the supply chain of this item]*** | ***[Insert total no. of suppliers engaged in the supply chain of this item]*** | ***[Insert percentage using the formula F =D/∑E\*100]*** |
| ***[Insert number e.g. 2]*** |  |  |  |  |  |  |  |  |  |  |  |
| ***[Escalation, overheads, risk, admin and/or margin]*** |  |  |  |  |  |  |  |  |  |  |  |
| **Total** | **100%** | ***[Insert total ANZ Value added activity % (add all Cs)]*** | ***[Insert total no. of SMEs (add all Ds)]*** | ***[Insert total no. of suppliers (add all Es)]*** | ***[Insert total % of no. of SMEs (add all Fs)]*** |

**Attachment C: VIPP Monitoring Table**

The monitoring table shall be completed to demonstrate the VIPP outcomes, have been achieved through the Project. Additional comments may need to be provided to reasonably explain any discrepancies between the expected outcomes from the agreed LIDP to the outcomes reported in the monitoring table.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  |  | **LIDP Commitments** | **Secured VIPP Outcomes** |  |
| **WBS/ Item Number** | **Item Description** | **Brand /****Manufacturer/ Supplier** | **% ANZ Value Activity #** | **% Local** | **% of Contract Content**  | **% ANZ Value Activity**  | **No. of SMEs in supply chain**  | **% of SMEs in supply chain**  | **ICN Assist** | **Progress/Comments** |
| **(A)** | **(B)** | **(C)** | **(D)** | **(E)** |  |  |
| ***[Insert number e.g. 1]*** | ***[Insert description e.g. Item 1]*** | ***[Insert brand/ manufacturer]*** | **[Insert percentage e.g. 1.5%]** | **[Insert percentage e.g. 85%]** | ***[Insert percentage]*** | ***[Insert percentage here using the formula C = A% x B%]*** | ***[Insert no. of SMEs engaged in the supply chain of this item]*** | ***[Insert percentage using the formula E =D/ Total no. of suppliers on the Project]*** | ***[Y/N ]*** |  |
|  |  |  |  |  |  |  |  |  |  |  |
| ***[Insert number here e.g. 30]*** |  |  |  |  |  |  |  |  |  |  |
| **Total Committed** |  | **Total Secured:** | **100%** |  |  |  |  |  |

**Employment**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **New Jobs** | **Existing Jobs** | **Total Jobs Committed** | **Total Jobs Secured** | **Progress / Comments** |
| **Committed** | **Secured** | **Committed** | **Secured** |  |  |  |
|  |  |  |  |  |  |  |

**Trainees**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **New trainees** | **Existing trainees** | **Total trainees Committed** | **Total trainees Secured** | **Progress / Comments** |
| **Committed** | **Secured** | **Committed** | **Secured** |  |  |  |
|  |  |  |  |  |  |  |

**Apprentices**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **New Apprentices**  | **Existing Apprentices**  | **Total Apprentices Committed** | **Total Apprentices Secured** | **Progress / Comments** |
| **Committed** | **Secured** | **Committed** | **Secured** |  |  |  |
|  |  |  |  |  |  |  |

**Attachment D: Statutory Declaration**

State of Victoria

**Statutory Declaration**

I,

 [full name]

of,

 [address]

 , do solemnly and sincerely declare that:-

 [occupation]

 , achieved the Victorian Industry

 [contracted company]

Participation Policy objectives and outcomes relating to local content; employment; skills and technology transfer; and apprentices/ trainees reflected in the VIPP Monitoring Table for as submitted to

 [name and tender number of procurement activity]

 on \_\_\_\_\_\_\_/\_\_\_\_\_\_\_/\_\_\_\_\_\_\_

 [agency] [date]

**I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.**

Declared at

this day of 20

 Signature of person making this declaration

[to be signed in front of an authorised witness]

Before me,

Signature of Authorised Witness

The authorised witness must print or stamp his or her name, address and title under section 107A of the *Evidence (Miscellaneous Provisions) Act 1958* (as of 1 January 2010), (previously *Evidence Act 1958*), (e.g. Justice of the Peace, Pharmacist, Police Officer, Court Registrar, Bank Manager, Medical Practitioner, Dentist)

**Attachment E: Glossary**

**Acronyms**

ICN Industry Capability Network (Victoria) Ltd

LIDP Local Industry Development Plan

VIPP Victorian Industry Participation Policy

**Definitions of Terms**

**Contestable –** Refers to goods and services where there are both competitive international suppliers and competitive local suppliers.

**Employment –** Refers to the number of actual new or retained annualised employee equivalent opportunities (jobs) to be created in Australia and New Zealand as a result of the Contract.

Note: AEE replaces Full Time Equivalence (FTE), and is calculated by dividing the total number of ordinary working hours that an employee worked and was paid over the reporting period (including paid leave) by the total number of full-time working hours paid per annum (this is generally 38 hours per week for 52 weeks).

**Lead Agency –** Refers to inner and outer government agencies or contracting principal.

**Local** **–** Under VIPP, the term ‘local content’ covers all suppliers producing goods and services, or value adding to imported items, within Australia or New Zealand (ANZ).

Australia and New Zealand are treated as a single market for government procurement under the Australia and New Zealand Government Procurement Agreement. All other jurisdictions are considered ‘international’. Items imported into New Zealand as part of New Zealand-sourced goods and services are considered to be international content.

**Local Content** **–-** The ‘local content’ (ANZ value added activity) of a good or service is determined on a cost basis and is the part of a product or service left once the cost of the international component has been subtracted. It can be expressed by the following equation:

Local content = total cost of the good or service less international content

The content of a good or service may include but not be limited to; fees, tax, margins, profits, tariffs, insurances, freight, transport, engineering, planning, testing and analysis certification, commissioning, manufacturing or provision of service.

**Non-Contestable Items –** Items that are considered as only being available through the international market or through local suppliers. That is, it is considered that there is no current competition between international and local suppliers to deliver the particular good or service.

**SME** – Known as a small-to-medium size enterprise and refers to a business with an Australian Business Number (ABN) and with less than 200 employees.

**WBS** – Work breakdown structure is used to define and group a project's discrete work elements in a way that helps organize and define the total work scope of the Project.

**Attachment F: Terms and Conditions**

In submitting to ICN information relating to your Victorian Industry Participation Policy (VIPP) Local Industry Development Plan (LIDP) you agree to the following:

**Purpose for which information submitted**

Before submitting information to ICN relating to your VIPP LIDP you have familiarised yourself with the terms and conditions on which you have submitted your Tender to the relevant Government agency. This includes the provisions that relate to the VIPP and ICN’s role under the VIPP.

Accordingly, you are fully aware of the role performed by ICN for the relevant Government agency under the VIPP in relation to both your Tender and in relation to other Tenderers.

You understand and agree that the purpose for which you have submitted the information about your VIPP LIDP to ICN is to enable ICN to deal with the information in accordance with ICN’s role under the VIPP.

**Authority to perform role**

You expressly consent, authorise and permit ICN to do everything reasonably required of ICN by the relevant Government agency to perform ICN’s role under the VIPP throughout all stages of the Tender Process.

You also expressly consent, authorise and permit ICN to do everything reasonably required of ICN by the relevant Government agency to perform ICN’s role under the VIPP to report on VIPP outcomes whenever required during the performance of any Tender contract or upon completion.

Amongst other things, you understand and agree that in the course of dealing with the information you provide in relation to your VIPP LIDP, ICN will compare information provided by all short listed tender respondents in relation to their VIPP LIDP, assess their relevant merits and report to the relevant Government agency.

You undertake and agree to co-operate with ICN in the performance of its role under the VIPP.

**Accuracy of information submitted**

You acknowledge and agree that regardless of any assistance you may be given by ICN in relation to the preparation of your VIPP LIDP, the VIPP LIDP you submit for consideration is your document and you are responsible for its content.

You agree and represent that the information submitted by you to ICN in relation to your VIPP LIDP has been carefully prepared by you or on your behalf and is complete, current and accurate and is not misleading or deceptive.

You undertake and agree on a continuing basis to make ICN aware of any errors or misrepresentations of fact and of any other matters that it would be important for ICN to know in consequence of relying upon that information for the purposes of performing ICN’s role under the VIPP. You also agree to inform ICN of any changes in matters of fact that may have occurred since any information or material was first provided by you.

You agree that upon request from the relevant Government agency you will provide the relevant Government agency with your written confirmation of the truth, accuracy and completeness of all information provided and representations made by you in your VIPP LIDP particularly (but without limitation) information which is not capable of independent confirmation and verification from independent sources.

**Reliance on accuracy of information**

You understand and acknowledge that the relevant Government agency and ICN will be relying upon your representations as to the completeness, currency and accuracy of all information that you submit in relation to your VIPP Local Industry Development Plan and that ICN cannot be responsible for or liable in any way for the consequences of you submitting incomplete or inaccurate information or information that is not current.

**Confidentiality of information**

In so far as information that you provide in your VIPP Local Industry Development Plan is confidential information, ICN undertakes and agrees to keep that information and the VIPP LIDP confidential as between ICN and the Government agency issuing the tender request.

**Submission of information electronically**

You are aware there are inherent risks with the transmission of information via the internet. ICN will endeavour to keep secure information that it receives from you that is submitted by you via the Internet, however, you will be assuming all risks associated with the use of ICN's website and any associated databases including the risks of your computer, software or data being damaged by any virus which might be transmitted, downloaded or activated by ICN website and/or the relevant database its contents and your access to it.

**Submission of information physically**

If you have any concerns regarding the transmission of information via the internet, ICN can receive information via mail, facsimile or telephone or by physical delivery. Please refer to the ICN web site for details.

**Indemnities**

You agree to indemnify the relevant Government agency and ICN on a continuing basis and so as to survive the consideration and acceptance of any Tender and the term of any agreement including any contract arising from the acceptance of a Tender by any Government agency against any action, claim, demand, liability, loss or expense, costs or damage, including legal costs on a solicitor client basis, arising out of the reliance by ICN upon any information, material or documentation provided by you in relation to your VIPP Local Industry Development Plan which is incomplete, inaccurate, false or misleading or omits any material particulars or arising from a failure to supply relevant information, documentation or material.

**Release**

You acknowledge and agree that the relevant Government agency and ICN will not be liable to you in any way or for any reason whatever by reason of a Government agency to whom you submit a Tender incorporating your VIPP Local Industry Development Plan not awarding you a contract in response to your Tender submission and you release the relevant Government agency and ICN from any action, claim, demand, liability, loss or expense, costs or damage, including legal costs on a solicitor client basis, arising out of a Government agency not awarding you a contract in response to your Tender submission. You further acknowledge and agree that this release may be pleaded as an absolute bar to any proceedings you seek to commence against the relevant Government agency and ICN in any capacity whatever.

Tender Schedule 11
Major Projects Skills Guarantee

[***Drafting Note: This Tender Schedule 11 will apply where the Major Projects Skills Guarantee applies (Item 20).***]

Tenderers are required to complete the Major Projects Skills Guarantee Compliance Plan with respect to the employment of local apprentices, trainees or engineering cadets by itself and its subcontractors. The Major Projects Skills Guarantee Compliance Plan must be in accordance with the guidance form set out online at <http://economicdevelopment.vic.gov.au/about-us/strategies-and-initiatives/major-projects-skills-guarantee>.

Note that under the Major Project Skills Guarantee, Tenderers will be required to utilise Victoria registered apprentices, Victoria registered trainees or engineering cadets for at least 10 per cent of the Contract's total works and total labour costs.

The template attached as Attachment 1 to this Tender Schedule 11 may be used to prepare the Major Projects Skills Guarantee Compliance Plan.

1. to Tender Schedule 11 - Major Projects Skills Guarantee

**Major Projects Skills Guarantee Compliance Plan**

**Response instruction: Tenderers must indicate in Table 1 (Estimated Utilisation and Occupational Profile) below the occupational types and numbers of Apprentices, Trainees or Engineering Cadets (both existing and new) expected to be utilised for the Project.**

**Table 1: Estimated Utilisation and Occupational Profile**

|  |  |  |  |
| --- | --- | --- | --- |
| Occupational Type | Number of Apprentices | Number of Trainees | Number of Cadets |
| **Existing** | **New** | **Existing** | **New** | **Existing** | **New** |
| **Development Phase** |
| ***[Insert type (e.g. plumbers)]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** |
| ***[Insert type]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** |
| ***[Insert type]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** |
| ***[Insert type]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** |
| ***Total Development Phase*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** |
| **Operating Phase**  |
| ***[Insert type (e.g. plumbers)]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** |
| ***[Insert type]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** |
| ***[Insert type]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** |
| ***[Insert type]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** |
| ***Total Operating Phase*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** | ***[Insert no.]*** |

**Compliance Strategy/Plan**

**Response instruction: Tenderers are required to outline the strategy and/or plan that will be adopted in order to achieve the minimum labour hours requirement.**

Minimum labour hours agreed which must be performed by Apprentices, Trainees or Engineering Cadets:\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hours.

**Estimated Compliance Schedule**

**Response instruction: Tenderers are required to indicate the expected number of Victorian Apprentices, Trainees and Cadets to be created or maintained during the Project.**

**Note: The hours in Table 2 (Estimated Compliance Schedule) should be calculated on an Annualised Employee Equivalent (AEE) basis and provided as an annual average over the Development Phase and Operating Phase. This can be detailed further by referencing specific Project stages/milestones (including expected time period for each) as applicable.**

**AEE is calculated by dividing the total number of ordinary hours that an employee worked over the reporting period by the total number of full-time working hours per annum (this is to be taken as 38 hours per week for 52 weeks per year).**

Tender Schedule 12
Tenderer's Current Workload

[***Drafting Note: To be included if not a requirement in any EOI or Pre-Qualification phase.***]

The Tenderer must include in this Tender Schedule details of the Tenderer's current workload in Australia including the approximate value of each contract and the estimated completion date.

| **Project** | **Principal/ Owner**  | **Total Value of Contract** | **Date Due for Completion** | **Value Outstanding at Date of Tender** |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
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Tender Schedule 13
Tenderer's Past Performance

[***Drafting Note: To be included if not a requirement in any EOI or Pre-Qualification phase.***]

The Tenderer must set out below a history of its past performance in projects similar to the Works and projects completed in the last 12 months including:

* + - 1. details of works undertaken;
			2. the agreed contract price and date for completion;
			3. the end contract price and date of completion (and reasons for any variance);
			4. the number of variations and extensions of time;
			5. details of any claims (other than for progress payments on account of the original contract price over $50,000.00) made by either party to the contract;
			6. details of any innovations on these projects;
			7. details of problems which arose and how they were overcome;
			8. any added value for money achieved on these projects;
			9. a referee from both the owner/principal and its lead consultant on the project; and
			10. details of any best practice initiatives.

Tender Schedule 14
Financial Information

[***Drafting Note: To be included if not a requirement in any EOI or Pre-Qualification phase.***]

1. **Audited Financial Statements**

Tenderers must provide:

***[Drafting Note: Agencies to consider what financial information they require.]***

* + - 1. [audited financial statements for the last three financial years (and where a Tenderer is more than one person, audited financial statements for each person comprising the Tenderer must be provided);
			2. certified copies of cashflow and profit and loss statements for the Tenderer (and where a Tenderer is more than one person, copies of cashflow and profit and loss statements for each person comprising the Tenderer must be provided); and
			3. any reasonable evidence of financial standing when requested by the Principal prior to the Closing Time.]
1. **Security**

Tenderers must:

* + - 1. confirm that, as at the Date of Contract, it will be in a position to provide the Security required by clause 5 of the Contract; and
			2. provide evidence from each relevant financial institution or insurance company giving the Security that:
				1. it has the Required Rating; and
				2. that the relevant security will be in the form required by clause 5 of the Contract and set out in Annexure Part A of the Contract.
1. **Proposed parent guarantor**
	* + 1. This clause only applies if Item 16 indicate that a parent company guarantee is required.
			2. Each Tenderer must provide:
				1. details of the proposed guarantor who will give a parent company guarantee. Where a Tenderer:

is a single entity, the proposed guarantor must be the ultimate holding company of the Tenderer (as defined in the *Corporations Act 2001* (Cth));

comprises two or more persons a parent company guarantee will be required for each person comprising the Tenderer and the proposed Guarantor for each such person must be its ultimate holding company (as defined in the *Corporations Act 2001* (Cth);

* + - * 1. confirmation that each proposed guarantor is willing to give the parent company guarantee in favour of the Principal and as otherwise required by the Conditions of Contract (where it is described as a "deed of guarantee and indemnity";
				2. detailed audited financial statements of the proposed guarantor for the last three financial years; and
				3. certified copies of cashflow and profit and loss statements for the proposed guarantor.
1. **Financial arrangements**

Tenderers must provide evidence that financial arrangements have been made and are being maintained which, if successful, would enable the Tenderer to meet all of its obligations in accordance with the Contract.

1. **Other**
	* + 1. Each Tenderer must also provide all other information and documents that the Tender Documents require Tenderers to submit (whether technical, commercial or otherwise).
			2. A Tenderer may also provide such other information as it considers necessary to support its Tender.

Tender Schedule 15
Commitment to the Victorian State Government Supplier Code of Conduct

1. On behalf of the Tenderer, I acknowledge that:
	* + 1. the Victorian State Government (**the State**) is committed to ethical, sustainable and socially responsible procurement;
			2. the State has a Supplier Code of Conduct (**Code**), available at <http://www.procurement.vic.gov.au/Home> and the Code describes the State's minimum expectations of the conduct of its suppliers in relation to:
				1. integrity;
				2. ethics and conduct;
				3. conflicts of interest;
				4. gifts, benefits and hospitality;
				5. corporate governance;
				6. labour and human rights;
				7. health and safety; and
				8. environmental management;
			3. the expectations set out in the Code are not intended to reduce, alter or supersede any other obligations which may be imposed by any applicable contract, law, regulation or otherwise;
			4. to ensure that the Code remains current and relevant, it may be amended or updated by the State; and
			5. the Code includes an ongoing expectation that suppliers (including my organisation) will raise concerns or otherwise seek clarification in relation to any aspects of the Code, including any updates or amendments to the Code.
2. On behalf of the Tenderer I:
	* + 1. confirm that the Tenderer has read and understands the State's expectations of suppliers as set out in the Code;
			2. provide a commitment that if selected to supply goods and / or services to any State department or public body the Tenderer will:
				1. periodically check with reasonable frequency for updates and amendments to the Code;
				2. aspire to meet the State's expectations of suppliers as set out in the Code, including as updated or amended by the State; and
			3. confirm that at the time of submitting this tender, the Tenderer acknowledges that it is unaware of any breach to the Code.

Name:

Signed:

Tender Schedule 16
Collusive Tendering - Statutory Declaration

**I,**

**of                                                                                                                           in the State of Victoria**

**do solemnly and sincerely declare that in relation to the Tender**

**THAT**

1. I hold the position of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

and am duly authorised by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

("the Tenderer") to make this declaration on its behalf.

2. Neither the Tenderer nor any of its Associates has entered into any contract, arrangement or understanding to pay moneys or provide any benefits to any trade association, arising out of or in relation to any Contract resulting from the Tender except as stated herein and apart from the normal amount (annual subscription, turnover or contract fee) imposed by that trade association

and/or

the Tenderer has agreed to pay a special fee(s) of                                              to the following trade association(s)

if it is successful in its tender, for purposes of

(\* strikethrough and initial as may be appropriate)

3. Neither the Tenderer nor any of its Associates had any knowledge of the price or approximate price range of any other tenderer prior to submitting its tender nor has the Tenderer or any of its Associates disclosed to any rival tenderer the Tenderer's tender price prior to the closing of tenders.

4. The Tenderer submitted its tender in good faith and has not deliberately set its tender price in order to enhance the tender price of other tenderers.

5. As at the date of this declaration, the Tenderer intends to do the work set out in the Tender.

6. Neither the Tenderer nor any of its Associates has entered into any contract, arrangement or understanding for the purpose or one of the purposes being that, in the event that it is successful in its tender, it will pay to or provide any unsuccessful tenderer or any person any moneys or any benefits or fulfil any undertaking which is a consequence of any collusive tendering circumstance in respect of or in relation to the tender or any contract resulting therefrom.

**AND I make this solemn declaration conscientiously
believing the same to be true and by virtue of the
provisions of an Act of the Parliament of Victoria
rendering persons making a false declaration
punishable for wilful and corrupt perjury.**

**DECLARED at                                                                           )
in the State of Victoria this                                                       )
day of                                                                                       )  ............................................................
Two thousand                                                                          )**

**Before me  ........................................................................................................**(A person authorised under the *Evidence (Miscellaneous Provisions) Act* 1958 (Vic) to take Statutory Declarations)

1. Refer to the ABCC website for information regarding meeting the requirements of section 11 of the Building Code 2016 and the form of evidence required to demonstrate eligibility to lodge a Tender for the Project. [↑](#footnote-ref-1)