

Invitation to Supply

(Invitation)

Mount Hotham Alpine Resort Management Board

Civil Construction Services (Preferred Contractors)

Reference number: **MH18-005**

Date of issue: **26-April-2018**

TENDER DUE

2PM WEDNESDAY 16 MAY 2018

Unclassified

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Introduction

The opportunity

Mt Hotham is located 55km south east of Bright on the Great Alpine Road in Victoria's North East. The Mt Hotham Alpine Resort is managed by the Mount Hotham Alpine Resort Management Board (**Organisation**).

This Invitation is associated with support of the Organisation's winter snow clearing operations and summer capital works program. The Invitation seeks to establish a panel of suppliers for a three year period with a further three year option that are capable of providing plant and equipment as detailed in the Specification and briefly summarised as:

Package 1 - Snow Clearing Support: Dry hire of loader with quick hitch (Cat 938 or approved equivalent) and suitable winter fit-out from 1 July to 31 August with operating house in the range 450 to 700 per year.

Package 2 - Larger Capital Works Projects: Larger civil plant, equipment and labour such as loaders (Cat 958), excavators to 50 tonne, graders (Cat 14), on and off road trucks, crushing equipment and the like. The equipment may be required for a variety of periods between September and May each year. There is no guaranteed minimum spend per year, however normal expenditure varies between \$100,000 and \$500,000 per summer season. Any single contract with a value over \$500,000 will be the subject of a separate public competitive procurement process.

Package 3 - Smaller Capital Works Projects: Moderate to small civil plant, equipment and labour typically 20 to 25 tonne excavators and associated implements. The equipment may be required for a variety of periods between September and May each year. There is no guaranteed minimum spend per year, however normal expenditure varies between \$50,000 and \$150,000 per summer season. The maximum amount payable to any one Supplier in one financial year is \$150,000.

Package 4 – Bitumen and asphaltting works: Bitumen works in support of the Organisation's summer capital works program. Works may include bitumen for frost free pavement, deep lift asphalt, chip seals and the like. There is no guaranteed minimum spend per year, however normal expenditure varies between \$50,000 and \$150,000 per summer season.

All amounts listed above are exclusive of GST.

The services and products are required to operate in and around the Mount Hotham Alpine Resort.

The Organisation seeks to establish a series of cooperative working relationships whereby the Organisation's winter snow clearing and summer capital works can be achieved with input and expertise of the suppliers.

The Organisation seeks Suppliers that are responsive to the Organisation's needs and are passionate about alpine infrastructure and the environment.

It is intended that the Contract operates for three years with a single three year option.

Structure of Invitation

This Invitation comprises the following documents:

- **Introduction** – contains an overview of the opportunity presented;
- **Part A – The Invitation:**
 - **A.1 – About this Invitation:** provides details about the procurement opportunity;
 - **A.2 – Specifications:** provides the technical requirements for the Goods and/or Services in respect of which the Organisation invites Offers;
- **Part B – Conditions of Participation:** sets out the conditions applying to the Invitation and the Invitation Process, and consists of:
 - **B.1 - Organisation Specific Requirements:** provides the Organisation's specific requirements for the Invitation Process; and

- **B.2 - Victorian Government Requirements:** sets out the terms and conditions applying to the Invitation Process generally;
- **Part C – Proposed Contract:** sets out the proposed terms and conditions that will apply to the provision of the Goods and/or Services as set out in Part A.2 – Specifications; and
- **Part D – The Offer:** specifies the information to be provided in an Offer and may also specify any information to be provided by an Invitee by other means. This part may be in a template format for completion.

Conditions

- (a) All Invitees wishing to participate in this Invitation Process for the supply of Goods and/or Services must comply with the conditions contained within this Invitation, including the conditions in:
 - (i) Part A.1 – About this Invitation; and
 - (ii) Part B – Conditions of Participation.
- (b) By submitting an Offer, the Invitee agrees to be bound by the conditions contained within this Invitation.
- (c) The conditions contained in this Invitation apply to:
 - (i) the Invitation and any other information given, received or made available in connection with the Invitation, including any Additional Materials, revisions and addenda;
 - (ii) the Invitation Process; and
 - (iii) any communications (including any briefings, presentations, meetings or negotiations) relating to the Invitation or the Invitation Process.
- (d) In addition to any other remedies available to it under Law or contract, any failure to comply with the requirements set out in this Part A.1 or Part B will, in the absolute discretion of the Organisation, entitle the Organisation to disqualify an Invitee from the Invitation Process.

Part A – The Invitation

A.1 – About this Invitation

1. Establishment details

Invitation title	Civil Construction Services (Preferred Contractors)
Invitation reference number	MH18-005

2. Organisation details

Organisation name	Mount Hotham Alpine Resort Management Board
Organisation address	28 Great Alpine Road, Hotham Heights, Victoria, 3741

3. Registration

Registration location	email tompelly@mthotham.com.au AND grant@surfc.com.au
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4. Organisation Contacts

Project Manager

Name:	Tom Pelly
Position title:	Manager Technical Services and Environment
Business unit:	n/a
Contact details:	tompelly@mthotham.com.au

Alternate Contact

Name:	Grant Cameron
Position title:	Principal
Business unit:	Surface Consulting Pty Ltd
Contact details:	grant@surfc.com.au 0438 091 734

5. Closing Time

Closing Time

Melbourne time	2PM 16 May 2018
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6. Lodgement details

email lodgement	
email address	tompelly@mthotham.com.au AND grant@surfc.com.au
Access restrictions (if any)	Nil
Other requirements	As specified in clause 3.1(b) of Part B.2 - Victorian Government Requirements, Invitees may only submit documentation that has been virus checked and is free from viruses. Size limit 10MB

7. Briefing session

No briefing sessions are planned for this Invitation.

8. Indicative timetable

This timetable is an indication of the timing of the Invitation Process and may be changed by the Organisation in accordance with Part B – Conditions of Participation, more specifically clause 5.1(c) of Part B.2 - Victorian Government Requirements.

Activity	Indicative Date
Invitation issued	26 April 2018
End of period for questions or requests for information (see clause 2.2 of Part B.2)	7 May 2018
Closing Time for Offers (see clause 3.3 of Part B.2)	2pm, 16 May 2018
Intended completion date for evaluation of Offers	May 2018
Negotiations with Invitee(s) (if applicable)	May 2018
Intended date for formal notification of successful Invitee(s)	May 2018
Intended date for execution of Proposed Contract(s)	May 2018
Intended commencement date of the Proposed Contract	1 June 2018

9. Additional Materials

The following information may assist with the development of an Offer in response to this Invitation.

Item	Description	Location
Nil		

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Evaluation Criteria

Offers will be assessed in accordance with Part B – Conditions of Participation, more specifically clause 5 of Part B.2 - Victorian Government Requirements.

In evaluating Offers, the Organisation will have regard to:

- (a) specific Evaluation Criteria identified in the list below, including mandatory requirements, if applicable;
- (b) the particular weighting assigned to any or all of the criteria in the table below (noting that any criteria for which a weighting has not been assigned should be assumed to have equal weighting); and
- (c) the overall value for money proposition presented in the Offer.

Invitees must meet the following mandatory compliance criteria, which are not weighted or scored. Invitees either meet the standard or they do not.

Mandatory requirements	Complies
(a) Supplier Code of Conduct commitment letter (see Part D, Schedule 11)	Yes/No

Invitees that meet the mandatory requirements above will then be evaluated against the weighted and non-weighted Evaluation Criteria set out in the table below.

Evaluation Criteria

(a) Professional competence

- Occupational Health and Safety
- Compliance with specifications
- Past performance and current work in alpine environments
- Customer services and history of working collaboratively with Clients
- Capability

(b) Commercial

- Financial viability
- Risk and insurance
- Compliance with Proposed Contract
- Conflict of interest

(c) Financial

- Costing

As part of the evaluation process, the Organisation will conduct a pricing assessment based on the Invitee's Offer in Part D, and may include risk analysis adjustments.

The overall value for money evaluation of the Offer will combine the evaluation score and the pricing assessment outcome to determine which Offer provides the best value for money outcomes for the Organisation.

A.2 – Specifications

Refer separately bound document.

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Part B – Conditions of participation

B.1 – Organisation Specific Requirements

1. Complaints procedure

Any complaint about this Invitation or the Invitation Process must be submitted in writing to the Project Manager by the means set out in Item 4 of Part A.1 above immediately upon the cause of the complaint arising or becoming known to the Invitee. The written complaint must set out:

- (a) the basis for the complaint (specifying the issues involved);
- (b) how the subject of the complaint (and the specific issues) affects the person or organisation making the complaint;
- (c) any relevant background information; and
- (d) the outcome desired by the person or organisation making the complaint.

Any complaint submitted to the Project Manager in accordance with this clause 1 that relates to the conduct or performance of the Project Manager or the manner in which the Project Manager has handled the Invitation Process must also be copied to the Alternate Contact.

2. Submission of Offers

The location of the Tender Box is as specified in Item 0 of Part A.1 above.

Offers are to be submitted electronically as specified in Item 0 of Part A.1 above.

3. Not used

4. Application of these rules

The rules contained in Part A.1 and this Part B apply to:

- (a) this Invitation and any other information given, received or made available by the Organisation in connection with this Invitation, including any Additional Materials specified in clause 9 of Part A.1 and any revisions or addenda to this Invitation;
- (b) the Invitation Process; and
- (c) any communications (including any, presentations, meetings or negotiations) relating to this Invitation or the Invitation Process.

B.2 – Victorian Government Requirements

1. Invitation

1.1. Status of Invitation

- (a) This Invitation is an invitation to submit an Offer for the provision of the Goods and/or Services as set out in Part A.2 – Specifications.
- (b) Nothing in this Invitation is to be construed, interpreted or relied upon, whether expressly or implied, as an offer capable of acceptance by any person, or as creating any form of contractual, promissory, restitutionary or other rights.
- (c) No binding contract (including a process contract) or other understanding (including any form of contractual, promissory, restitutionary or other rights) for the supply of the Goods and/or Services will exist between the Organisation and any Invitee unless and until the Organisation has signed a formal written contract as contemplated in clause 6.1 of this Part B.2.
- (d) Participation in the Invitation Process is subject to compliance with the rules contained in Part A.1 - About this Invitation and Part B - Conditions of Participation.
- (e) All entities (whether or not they submit an Offer) having obtained or received this Invitation may only use it, and the information contained in it, in compliance with the conditions contained in Part A.1 - About this Invitation and Part B - Conditions of Participation.
- (f) All Invitees are deemed to accept the rules contained in Part A.1 - About this Invitation and Part B - Conditions of Participation from the date that the Invitee receives this Invitation.

1.2. Accuracy of Invitation

- (a) While all due care has been taken in connection with the preparation of this Invitation, the Organisation does not make any warranties or representations that the content of this Invitation or any part of it or any information communicated to or provided to Invitees in connection with this Invitation or during the Invitation Process is, or will be, accurate, current or complete. The Organisation and its Representatives will not be liable in respect of any information communicated or provided which is not accurate, current or complete or for any omission from the Invitation documents.
- (b) If an Invitee finds (or reasonably believes it has found) any discrepancy, ambiguity, error or inconsistency in this Invitation or any other information provided by the Organisation (other than minor clerical matters), the Invitee must immediately notify the Project Manager in writing of such discrepancy, ambiguity, error or inconsistency, so that there is fair opportunity to consider what corrective action is necessary (if any).
- (c) Any actual discrepancy, ambiguity, error or inconsistency in this Invitation or any other information provided by the Organisation will, if possible, be corrected by the Organisation and provided (or the proper information made available) to all Invitees without attribution to the Invitee that provided the notice.
- (d) If there is any inconsistency between any of the documents, or parts of the documents, constituting this Invitation, the Project Manager will determine the order of precedence. The Project Manager will notify all Invitees in writing where a determination is made pursuant to this clause 1.2(d).

1.3. Additions and amendments

The Organisation reserves the right to change or remove any information and/or to issue addenda to this Invitation before the Closing Time. Where the Organisation exercises its right to change information in accordance with this clause 1.3, the Organisation may, at its discretion:

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- (a) seek amended Offers from Invitees; and/or
- (b) amend the Closing Time to allow Invitees sufficient time to amend their Offer.

1.4. Availability of Additional Materials

Additional Materials (if any) may be accessed in the manner set out in Item 9 of Part A.1 - About this Invitation. Invitees should familiarise themselves with the Additional Materials.

1.5. Representation

No representation made by or on behalf of the Organisation or its Representatives in relation to this Invitation (or its subject matter) will be binding on the Organisation unless the representation is expressly incorporated into the contract(s) ultimately entered into between the Organisation and an Invitee.

1.6. Licence to use Intellectual Property Rights

- (a) Persons obtaining or receiving this Invitation and any other documents issued in relation to this Invitation may use the documents only for the purpose of preparing an Offer.
- (b) Such Intellectual Property Rights as may exist in this Invitation and any other documents provided to the Invitees by or on behalf of the Organisation in connection with the Invitation Process are owned by or licensed to (and will remain the property of) the Organisation except to the extent expressly provided otherwise.

1.7. Confidentiality

- (a) The Organisation may require persons and organisations wishing to access or obtain a copy of this Invitation or certain parts of it, or any Additional Materials, to execute a deed of confidentiality (in a form required by or satisfactory to the Organisation) before or after access is granted or a copy is provided.
- (b) Regardless of whether a deed of confidentiality is executed in relation to this Invitation, all persons (including Invitees) obtaining or receiving this Invitation must:
 - (i) keep, and must ensure that its Representatives keep, the content of this Invitation and any other information provided to Invitees by or on behalf of the Organisation in connection with the Invitation Process confidential; and
 - (ii) not disclose or use that information except as required for the purpose of developing an Offer in response to the Invitation.
- (c) Nothing in this clause 1.7 prevents an Invitee from contacting Industry Capability Network Victoria for the purposes of complying with its obligations under clause 8 of this Part B.2.

1.8 Others to be bound

The Invitee shall ensure that any of its Representatives, or any other person to whom it supplies this Invitation and any other documents issued in relation to the Invitation Process, will, in relation to use of, return of and liability for that material and documentation, be bound by the same terms in or to the same effect as those contained in this Invitation.

1.9 Continuing obligations

The obligations of the Invitee under this clause 1 survive the termination or expiration of the Invitation Process.

2. Communication

2.1. Communication protocol

All communications relating to this Invitation and the Invitation Process must be directed to the Project Manager.

2.2. Requests for clarification or further information

- (a) Any questions or requests for clarification or further information regarding this Invitation or the Invitation Process must be submitted to the Project Manager in writing by the date specified in Item 8 of Part A.1 - About this Invitation.
- (b) Any communication by an Invitee to the Organisation will be effective upon receipt by the Project Manager (provided such communication is in the required format).
- (c) The Organisation is not obliged to respond to any question or request, irrespective of when such question or request is received.
- (d) The Organisation may restrict the period during which it will accept questions or requests for further information or for clarification and reserves the right not to respond to any question or request, irrespective of when such question or request is received.
- (e) The Organisation may use any method of its choosing to provide answers to questions submitted in accordance with this clause 2.2.
- (f) If a question or request relates to only a particular Invitee, as determined by the Organisation, the Organisation may provide its response to that question or request (if any) only to that particular Invitee.
- (g) Responses to questions or requests that do not specifically relate to a particular person or organisation may be published to all Invitees by the Organisation without identifying the person or organisation having submitted the question or request, in which event such responses shall form part of this Invitation.
- (h) An Invitee may, by notifying the Project Manager in accordance with clause 2.1 of this Part B.2, withdraw a question submitted in accordance with this clause 2.2 in circumstances where the Invitee does not wish the Organisation to publish its response to the question, provided that such notification is received before any response is provided.

2.3. Briefing session

The Organisation will not hold a Briefing Session.

2.4. Unauthorised communication and improper assistance

- (a) Communications (including promotional or lobbying activities) with the Organisation, its Representatives or other Victorian Government departments or agencies are not permitted during the Invitation Process except as provided in clause 2.1 above, or otherwise with the prior written consent of the Project Manager.
- (b) Unauthorised communications with such persons may, in the absolute discretion of the Organisation, lead to disqualification of an Invitee from further participating in the Invitation Process.
- (c) Nothing in this clause 2.4 is intended to prevent communications with the Organisation's Representatives to the extent that such communications do not relate to this Invitation or the Invitation Process.

- (d) Invitees must not engage in any activities or obtain or provide improper assistance that may be perceived as, or that may have the effect of, influencing the outcome of the Invitation Process in any way. Such activities or assistance may, in the absolute discretion of the Organisation, lead to disqualification of an Invitee from further participating in the Invitation Process.
- (e) Invitees must not seek or obtain the assistance of Representatives of the Organisation or the State in the preparation of their Offers. In addition to any other remedies available to it under Law or contract, the Organisation may, in its absolute discretion, immediately disqualify an Invitee that it believes has sought or obtained such assistance.

2.5. Anti-competitive conduct

- (a) Invitees and their Representatives, including proposed subcontractors and suppliers, must not engage in any collusive, anti-competitive or similar conduct with any other Invitee or person in relation to:
 - (i) the preparation, content or lodgement of their Offer;
 - (ii) the evaluation and clarification of their Offer;
 - (iii) the conduct of negotiations with the Organisation; or
 - (iv) the Invitation Process.
- (b) For the purpose of this clause 2.5, collusion, anti-competitive conduct or any other similar conduct may include disclosure, exchange and clarification of information, whether or not such information is confidential to the Organisation or any other Invitee or any person or organisation. It does not include discussions between members of a consortium or discussions between an Invitee and a subcontractor to that Invitee.
- (c) In addition to any other remedies available to it under Law or contract, the Organisation may, in its absolute discretion, immediately disqualify an Invitee that it believes has engaged in, or whose Representatives it believes has engaged in, such collusive, anti-competitive or similar conduct.

2.6. Unlawful inducements

- (a) Invitees and their Representatives must, at all times during the Invitation Process, comply with any applicable Laws and State policies regarding the offering of unlawful inducements in connection with the preparation of their Offer.
- (b) The Invitee must not, and must ensure that its Representatives do not, make or provide any inducement, payment or promise to the Organisation or any of its personnel in connection with this Invitation or the Goods and Services requested under it.

2.7. Legal entities and consortia

- (a) The Organisation will only enter into the Proposed Contract with a legal entity which has the capacity to enter into a binding contract. Invitees must provide proof of their legal status if requested by the Organisation.
- (b) Where the Invitee is a member of a consortium, the Offer must stipulate which part(s) of the Goods and/or Services that each entity comprising the consortium would provide and how the entities would relate to each other to ensure full provision of the required Goods and/or Services. All consortium members are to provide details relating to their legal structure, and where applicable, provide details of any special purpose vehicle established to meet the requirements of this Invitation.
- (c) Where the Invitee consists of more than one entity, each of these entities will be jointly and severally liable to provide the Goods and/or Services.

2.8. Complaints about this Invitation

An Invitee with a complaint about this Invitation or the Invitation Process which has not been resolved in the first instance with the Project Manager must follow the complaints process of the Organisation as detailed in Item 1 of Part B.1 - Organisation Specific Requirements.

2.9. Conflict of interest

- (a) Invitees must not, and must ensure that their Representatives do not, place themselves in a position that may give rise to an actual, potential or perceived conflict of interest between the interests of the State and the Invitee's interests during the Invitation Process.
- (b) Invitees are required to disclose any conflicts of interest in their Offer in accordance with the requirements in Part D - The Offer. If an Invitee submits its Offer and a conflict of interest arises, or is likely to arise, which was not disclosed in the Offer, the Invitee must promptly notify the Project Manager immediately in writing of that conflict by the means set out in clause 2.1 of this Part B.2.
- (c) The Organisation may disqualify an Invitee from the Invitation Process if the Invitee fails to notify the Organisation of any conflict of interest or if the Organisation determines that a conflict (whenever and howsoever arising) cannot be managed to the Organisation's satisfaction.

3. Submission of Offers

3.1. Lodgement

- (a) Offers must be lodged by the Closing Time and only by the means set out in Item 6 of Part A.1 - About this Invitation. The Closing Time may be extended by the Organisation in its absolute discretion. Where the Organisation extends the Closing Time, it will provide written notice to Invitees.
- (b) All Offers lodged after the Closing Time will be recorded by the Organisation. The determination of the Organisation as to the actual time that the Invitee's Offer is lodged is final.
- (c) Where this Invitation requires or permits Offers to be lodged via the internet through the website nominated in Item 0 of Part A.1 - About this Invitation, Invitees:
 - (i) may only submit documentation that has been virus checked and is free from viruses; and
 - (ii) are deemed to accept the online user agreement applying to that website and must comply with the requirements set out on that website.
- (d) Where this Invitation requires or permits Offers to be lodged in hard copy, packages containing the Offer must be marked with the information set out in Item 0 of Part A.1 - About this Invitation and must be placed in the Tender Box at the address which is set out in Item 0 of Part A.1 - About this Invitation.
- (e) If there is any inconsistency between the documents that comprise an Invitee's Offer, the hardcopy "Original" version of the document will take precedence.
- (f) Offers lodged at a location or in a manner that is contrary to that specified in this Invitation may be disqualified from the Invitation Process and may be ineligible for consideration.

3.2. Late Offers

- (a) If an Offer is lodged after the Closing Time, it may be disqualified from the Invitation Process and may be ineligible for consideration unless:
 - (i) the Invitee can clearly document to the satisfaction of the Organisation that an event of exceptional circumstances caused the Offer to be lodged after the Closing Time; and

- (ii) the Organisation is satisfied that accepting a late submission would not compromise the integrity of the market approach.
- (b) The determination of the Organisation as to the actual time that the Invitee's response is lodged is final. All Offers lodged after the Closing Time will be recorded by the Organisation.
- (c) Subject to this clause 3.2, the Organisation will inform an Invitee whose Offer was lodged after the Closing Time of their ineligibility for consideration.

3.3. Providing an Offer

It is the responsibility of all Invitees to:

- (a) understand the requirements of this Invitation, the Invitation Process and any reference documentation or other information in relation to this Invitation;
- (b) examine this Invitation and any documents referenced or attached to this Invitation and any associated or additional material or documentation;
- (c) fully inform themselves in relation to all matters arising from this Invitation, including all matters regarding the Organisation's requirements for the provision of the Goods and/or Services;
- (d) make their own enquiries and assess all risks regarding this Invitation and the Invitation Process;
- (e) ensure that they comply with all applicable Laws with regard to preparing their Offer and participating in the Invitation Process (including Chapter 2 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic));
- (f) ensure that Offers remain valid and open for acceptance for a minimum of 120 days from the Closing Time (or such other period agreed between the Organisation and the Invitee);
- (g) ensure that the Offer is not conditional on:
 - (i) any type of board, committee, third party or regulatory approval or consent;
 - (ii) the Invitee (or any other party) obtaining any regulatory approval or consent or the consent or approval of any third party;
 - (iii) the Invitee conducting due diligence or any other form of enquiry or investigation; or
 - (iv) the Invitee stating that it wishes to discuss or negotiate any commercial terms of the Proposed Contract,

and the Organisation may, in its absolute discretion, disregard any Offer that is, or is stated to be, subject to any one or more of the conditions detailed above (or any other conditions);
- (h) ensure the Offer includes a GST exclusive price, the GST payable and the total cost for the Goods and/or Services; and
- (i) provide additional information in a timely manner as requested by the Organisation.

3.4. Format and contents

- (a) Each Invitee must ensure that:
 - (i) its Offer is presented in the required format as set out in Part D - The Offer, conforms with word limits (if specified) and is accurate and complete; and
 - (ii) all the information fields in Part D - The Offer are completed and contain the information requested.
- (b) The Organisation may, in its absolute discretion, reject an Offer that does not include the information requested or is not in the required format.

- (c) Unnecessarily elaborate responses or other presentations beyond what is sufficient to present a complete and effective proposal are not desired or required. Elaborate artwork and expensive visual and other presentation aids are not necessary.
- (d) Word or page limits, where specified, should be observed and the Organisation reserves the right to disregard any parts of the Offer exceeding the specified word or page limit.

3.5. Illegible content, alteration and erasures

- (a) Incomplete Offers may, at the Organisation's discretion, be disqualified or evaluated solely on the information contained in the Offer.
- (b) The Organisation may disregard any content in an Offer that is illegible and will be under no obligation whatsoever to seek clarification from the Invitee.

3.6. Alternative Offers

- (a) An Invitee may submit an Alternative Offer. An Alternative Offer will only be accepted if:
 - (i) the Invitee also provides a conforming Offer; and
 - (ii) the alternative proposal is clearly identified as an "Alternative Offer".
- (b) An Alternative Offer may:
 - (i) not comply with the Specifications for relevant Goods and/or Services due to the inherent design or capability of those Goods and/or Services; or
 - (ii) contain an offer to provide Goods and/or Services in a manner different to that specified in the Specifications.
- (c) Invitees are encouraged to offer options or solutions which may, in an innovative way, contribute to the Organisation's ability to carry out its business in a more cost-effective manner. These may be related to:
 - (i) the outputs, functional, performance and technical aspects of the requirement;
 - (ii) minimisation of environmental impact; and/or
 - (iii) opportunities for more advantageous commercial arrangements.
- (d) Any such options or solutions will be considered by the Organisation on a "commercial in confidence" basis if so requested by the Invitee.
- (e) Where an Invitee submits an Alternative Offer which meets the requirements of this Invitation in an alternative and practical manner, the Offer must also include any supplementary material (including such pricing and costing details as may be necessary to enable the Organisation to fully assess the financial impact of the Alternative Offer), which demonstrates in detail that such an alternative will fully achieve all the specified requirements, together with references as to why the additional features may be advantageous.
- (f) The Organisation reserves the right to consider Alternative Offers on their merits or not to consider them at all.

3.7. Errors in an Offer

If an Invitee identifies an error in its Offer after the Closing Time (excluding clerical errors which would have no bearing on the evaluation), it must promptly notify the Organisation.

The Organisation may, in its discretion, permit an Invitee to correct an unintentional error in its Offer after the Closing Time, but in no event will any correction be permitted if the Organisation reasonably considers that the correction would materially alter the Offer.

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3.8. Use of an Offer

Upon submission, all Offers become the property of the Organisation. The Invitee will retain all ownership rights in any Intellectual Property Rights contained in its Offer, however each Invitee, by submission of its Offer, is deemed to have granted a licence to the Organisation to reproduce the whole, or any portion of, its Offer for the purposes of enabling the Organisation to evaluate the Offer and for the purpose of disclosing it under clause 7.1 of this Part B.2.

3.9 Status of Offer

Each Offer constitutes an irrevocable offer by the Invitee to the Organisation to provide the Goods and/or Services required under, and otherwise to satisfy the requirements of, the Specification (Part A.2 of this Invitation) on the terms and conditions of the Proposed Contract (Part C of this Invitation), subject to the statement indicating the Invitee's compliance with the Specification and the Proposed Contract contained in the Offer.

3.10. Responsibility for costs

- (a) An Invitee's participation or involvement in any stage of the Invitation Process is at the Invitee's sole risk, cost and expense. The Organisation will not be responsible for, nor pay for, any expense or loss that may be incurred by Invitees in relation to the preparation or lodgement of their Offers, any subsequent negotiations or any future process connected with or related to the Invitation Process.
- (b) The Organisation is not liable to any Invitee for any claim in respect of any costs, expenses or losses on the basis of any contractual, promissory or restitutionary grounds whatsoever as a consequence of any matter relating to the Invitee's participation in the Invitation Process, including instances where:
 - (i) the Invitee is not engaged to perform under any contract;
 - (ii) the loss results from the exercise of the Organisation's rights (or failure to inform an Invitee of the exercise of any of the Organisation's rights) in relation to the Invitation Process, whether under this Invitation or at Law; or
 - (iii) the loss results from placing reliance on the Invitation or any Additional Material or information supplied or made available by the Organisation.

4. Compliance with Specifications and Proposed Contract**4.1. Compliance statement**

- (a) Invitees are required to provide a statement of its compliance with Part A.2 – Specifications and Part C – Proposed Contract. Further instructions regarding requirements of the compliance statements are contained within Part D – The Offer.
- (b) For the purpose of the Invitee's preparation of the compliance statements required under this clause 4, indefinite responses such as “noted”, “to be discussed” or “to be negotiated” are not acceptable. Whilst the Organisation may conduct negotiations with one or more Invitees, Invitees are required to indicate specifically why they do not comply with a provision of the Specifications or the Proposed Contract, or the conditions surrounding their compliance.
- (c) Where the Invitee is unwilling to accept a specified condition, the non-acceptance must be clearly and expressly stated. Prominence must be given to the statement detailing the non-acceptance. It is not sufficient that the statement appear only as part of an attachment to the Offer, or be included in a general statement of the Invitee's usual operating conditions.
- (d) An incomplete Offer may be disqualified or assessed solely on the information received with the Offer.

5. Evaluation

5.1. Evaluation process

- (a) The Organisation will evaluate all Offers complying with the conditions of this Invitation, including Late Offers where the Organisation is satisfied of the matters referred to in clause 3.2 of this Part B.2, in accordance with the evaluation process described in this clause 5.
- (b) The Organisation will evaluate Offers in accordance with the Evaluation Criteria. In the event that one or more of the Evaluation Criteria are subjective, then the Organisation reserves the right to exercise discretion as to evaluation against that Evaluation Criteria.
- (c) Offers which are significantly deficient as against one or more Evaluation Criteria may result in the Offer not being further evaluated.
- (d) The Organisation has absolute discretion in relation to the evaluation of an Offer and the conduct of the evaluation process, including whether or not the proposed evaluation process set out in this clause 5 is followed in whole or in part by the Organisation. The commencement of negotiations by the Organisation with one or more other Invitees is not to be taken as an indication that any particular Invitee has been or has not been successful.
- (e) An Offer from an Invitee will not be deemed to be unsuccessful until such time as the Invitee is formally notified of that fact by the Organisation.
- (f) Without limiting the Organisation's rights in relation to this Invitation, the Organisation may, in its absolute discretion:
 - (i) reject or accept any or all Offers in whole or in part;
 - (ii) reject an Offer that does not include all the information requested or is not in the format required;
 - (iii) after concluding a preliminary evaluation, reject any Offer that does not meet the mandatory criteria specified in Item 0 of Part A.1 or that, in its opinion, is unacceptable;
 - (iv) disregard any content in an offer that is illegible without any obligation whatsoever to seek clarification from the Invitee;
 - (v) disqualify an incomplete Offer or evaluate it solely on the information contained within the Offer;
 - (vi) shortlist one or more Invitees to proceed to further negotiations;
 - (vii) commence or continue discussions or negotiations with all or some Invitees without shortlisting any Invitees and allow any Invitee to vary its Offer;
 - (viii) conduct site visits, due diligence checks, reference checks, financial checks and panel interviews during the course of the evaluation;
 - (ix) invite some or all Invitees to give a presentation to the Organisation in relation to their Offers and/or a demonstration of their goods and/or services;
 - (x) invite some or all Invitees to submit a best and final offer in relation to all or certain aspects of their respective Offers;
 - (xi) conduct workshops on selected topics with some or all Invitees, whether before or after the Closing Time;
 - (xii) accept one or more of the Offers;
 - (xiii) reject any or all Offers;
 - (xiv) alter the structure and/or the timing of this Invitation or the Invitation Process;

- (xv) vary or extend any time or date specified in this Invitation for any or all Invitees;
 - (xvi) elect not to appoint any Invitee or enter into a contract with any Invitee;
 - (xvii) cease to proceed with or suspend the Invitation Process prior to the execution of a formal written contract;
 - (xviii) consider Alternative Offers; or
 - (xix) call for new or revised Offers.
- (g) The Organisation may, but is not in any way bound to, shortlist, select as successful, or accept the Offer offering the lowest price.
- (h) If the Organisation wishes to include a shortlisting stage in its evaluation process, the Organisation is not, at any time, required to notify Invitees or any other person or organisation interested in submitting an Offer.

5.2. Evaluation Stages

The Organisation may choose to conduct all, or any combination of, the evaluation stages set out in this clause 5.2 and is under no obligation to notify Invitees of the stages it is conducting.

(a) Stage 1 – Receipt of Offers and initial evaluation, including compliance

Offers will be submitted in accordance with clause 3.1 of this Part B.2. Offers received will be receipted and logged. Any Late Offers will be dealt with in accordance with clause 3.2 of this Part B.2.

The Organisation's evaluation team will then perform an initial review of the Offers, consisting of a compliance check to ensure that the Offers meet the mandatory Evaluation Criteria, are compliant with the requirements set out in Part A.1, Part B and the Offer requirements set out in Part D of this Invitation. Probity and legal advice may also be sought to confirm appropriate action with non-conforming and non-compliant Offers.

(b) Stage 2 – Compliance against requirements

This stage will evaluate each Offer to determine the level of compliance with the requirements in Part A.2 - Specification. Where an Invitee's Offer is unclear, clarifications may be sought from the Invitee to enable their level of compliance to be assessed appropriately. Only those Offers that demonstrate a sufficient level of compliance with the requirements in Part A.2 of this Invitation will be assessed further.

In its absolute discretion, the Organisation may invite some or all Invitees to give a presentation to the Organisation in relation to their Offer. Invitees who are requested to provide a presentation will be given details of these scenarios in advance. The presentations also provide an opportunity for the Organisation's evaluation team to ask any outstanding clarification questions of Invitees.

Reference checks may also be carried out during this stage to further refine the assessment of some or all of the Offers.

(c) Stage 3 – Value for money assessment

This stage involves performing a financial and value for money assessment on each Offer based on scores resulting from the evaluations undertaken to date and the pricing provided by each Invitee.

This stage may result in the Organisation shortlisting one or more Invitees based on the value for money assessment and other evaluations conducted to date.

The Organisation may, in its sole discretion, proceed to Stage 4 with only one Invitee or may consider not proceeding with the Invitation Process.

(d) Interactive Vendor Engagement

(i) Walkthrough

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During this stage, Invitees shortlisted as at the conclusion of Stage 3 will be invited to present an individual walk through of their Offer. Each session will provide the Invitee with an allocated time to present its solution to the evaluation team in an interactive environment, giving the evaluation team the opportunity to clarify any issues relating to the Invitee's solution and ask questions pertaining to each Offer. The evaluation team will set the agenda for each walk through to ensure each Invitee is given a consistent and equal opportunity to address each area of its Offer.

During the walk through, Invitees may be asked to present responses to scenarios that will have been provided to Invitees prior to the walk through. The scenarios will refer to requirements that are included in this Invitation.

The evaluation team may also conduct a site visit(s) to an Invitee's nominated referee site as part of this stage. Invitees must cooperate and assist the evaluation team where site visits are requested. Invitees agree that, if requested, the Organisation may conduct a site visit to an Invitee's nominated referee site without the Invitee being present.

(ii) Report card

Subject to the outcome of the walkthrough session, if the Organisation considers necessary, the Organisation may supply each Invitee with a "report card". The report card will provide initial and high level comments on the Invitee's Offer as submitted.

The report card is not a scoring instrument. The report card:

- (A) aims to focus the Invitee on a small number of particularly key areas within an Invitee's Offer that require attention;
- (B) will not provide detailed feedback or cover all parts of its Offer; and
- (C) will take the form of a short narrative to the Invitee describing opportunities for improvement in its Offer and is not in any way an exhaustive list of areas for improvement.

Each Invitee will be required to acknowledge in writing that it has received a report card within one working day of receipt.

Invitees are to note that the provision of a report card does not indicate the completion of the evaluation process and does not indicate or imply that any decision has been made in respect of its Offer.

(iii) Submission of Addendum

Following the receipt of a report card, the Invitee will have the opportunity to submit an addendum to its Offer. Any addendum must be received by the due date specified in Item 8 of Part A.1 - About this Invitation. Submission of an addendum is at the Invitee's discretion.

The submission of an addendum based on information provided in the report card will not guarantee the Invitee any particular outcome or progression in the evaluation. The Organisation takes no responsibility for any addendum made to an Offer as part of the refinement process in this stage.

Offers will be re-evaluated and scored following receipt of the addenda.

(e) Further value for money assessment and latest shortlisting point

Shortlisting (including not proceeding with any Offer) may occur at any stage prior to Stage 5. Stage 5 is the latest point at which shortlisting will occur.

During this stage, the scores received by Invitees in the previous stages will be reviewed, and a further value for money assessment conducted, based on scores received and the pricing provided by the Invitee.

The Organisation may shortlist one or more Invitees based on the further value for money assessment.

The Organisation may, in its sole discretion, proceed to Stage 6 with only one Invitee or may decide not to continue with the Invitation Process.

(f) Stage 6 – Negotiations

The Organisation may proceed to negotiations with one or more Invitees with a view to maximising the benefits of the Offers submitted. As part of this negotiation process, the Organisation may request such Invitee(s) to improve one or more aspects of their Offer, including any technical, financial, corporate or legal components.

The Organisation is under no obligation to conduct any negotiations with Invitees.

(a) Stage 7 – Best and final offer and final selection

One or more Invitees may be invited to submit a best and final offer (**BAFO**) based on the outcomes of the negotiations (if any) or otherwise. Any BAFO submitted is to be treated as a variation to an Offer. These Conditions of Participation will continue to apply to the submission of any BAFO.

After receiving any BAFOs, the Organisation may then conduct a final value for money assessment to select the successful Invitee.

Notwithstanding the possibility that the Organisation may give any or all Invitees the opportunity to submit a BAFO, Invitees should be aware that the Organisation will, in conducting its evaluation of Offers, rely on all information (including all representations) contained in such Offers. The Organisation is not obliged to give any or all Invitees, even if shortlisted or invited to proceed to negotiations, the opportunity to submit a BAFO, therefore Invitees are encouraged to submit their best and final offers in their initial response to this Invitation. If the Organisation chooses to give any Invitee the opportunity to submit a BAFO, it is under no obligation to give notification before the Closing Time that such opportunity will be given.

(b) Stage 8 – Prepare procurement recommendation

The evaluation team will prepare a final evaluation report and may submit a recommendation to the Organisation to enter into a contract with an Invitee.

(c) Stage 9 – Notification of unsuccessful Invitees and debriefing

All Invitees will be informed in writing of the outcome of their Offers at the earliest opportunity, and will be offered an optional debriefing at the earliest practicable time, after the conclusion of the Invitation Process. Attendance at such sessions is optional.

5.3. Clarification of an Offer

(a) If, in the opinion of the Organisation, an Offer is unclear in any respect, the Organisation may, in its discretion, seek clarification from an Invitee. Failure to supply clarification to the satisfaction of the Organisation may render the Offer liable to disqualification.

(b) The Organisation is under no obligation to seek clarification and reserves the right to disregard any clarification that the Organisation considers to be unsolicited or otherwise impermissible in accordance with the conditions set out in Part A – About this Invitation and Part B – Conditions of Participation.

5.4. Discussion with Invitees

The Organisation may:

- (a) negotiate with one or more Invitees and allow any Invitee to vary its Offer;
- (b) interview, negotiate or hold discussions with any Invitee or prospective Invitee on any matter contained (or proposed to be contained) in an Offer to the exclusion of others; or

- (c) request some or all Invitees to conduct site visits, provide references and additional information, and/or make themselves available for panel interviews.

6. Shortlisted or preferred Invitee(s)

6.1. No legally binding contract

Selection as a shortlisted or preferred Invitee does not give rise to a contract (express or implied) between the shortlisted or preferred Invitee and the Organisation for the supply of goods and/or services. No legal relationship will exist between the Organisation and the shortlisted or preferred Invitee until such time as a binding contract in writing is executed by both parties.

6.2. Pre contractual negotiations

The Invitee is bound by its Offer and, if selected as the successful Invitee, must enter into a contract on the basis of the Offer without negotiation.

6.3. No obligation to enter into contract

- (a) Notwithstanding the outcome of any evaluation conducted in accordance with clause 5 of this Part B.2 and without limiting any other rights the Organisation may have, the Organisation is under no obligation to appoint a successful Invitee or to enter into a contract with a successful Invitee or any other person, including where it is unable to identify an Offer that complies in all relevant respects with the Organisation's requirements, or to do so would otherwise not be in the public interest.
- (b) Irrespective of whether the Organisation selects a successful Invitee, if the Organisation decides not to enter into a contract, the Organisation will be free to proceed via any alternative process.

7. Disclosure requirements

7.1. Disclosure of Offer contents and Offer information

Offers will be treated as confidential by the Organisation. The Organisation will not disclose Offer contents and information except:

- (a) as required by Law (including, for the avoidance of doubt, as required under the *Freedom of Information Act 1982* (Vic) (**FOI Act**));
- (b) for the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;
- (c) to Representatives (including external consultants and advisers to the Organisation) engaged to assist with the Invitation Process, or to other Victorian Government departments or agencies for the purposes of evaluating the Offers or making decisions or granting approvals in connection with this Invitation or the Invitation Process generally;
- (d) as required by the office of the Auditor General appointed under section 94A of the *Constitution Act 1975* (Vic) or the ombudsman appointed under the *Ombudsman Act 1973* (Vic);
- (e) as required by IBAC as established under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic); or
- (f) where general information from Invitees is required to be disclosed by government policy, including in the circumstances described in clause 7.2.

7.2. Contract disclosure

The Victorian Government Purchasing Board's 'Contract management and contract disclosure policy' requires the Organisation to disclose key details of contracts it enters into, including contracts under head agreements and variations to contracts, with a total estimate value exceeding \$100,000 (including GST). Where the value of the contract is estimated to exceed \$10 million (including GST), full contract details are to be provided on the Contracts Publishing System.

In submitting an Offer, the Invitee accepts that the Organisation may, in accordance with the requirements of applicable Victorian Government policy, publish (on the internet or otherwise):

- (a) the name of the successful Invitee(s);
- (b) the estimated value of the Offer(s) of the successful Invitee(s); and
- (c) the successful Invitee(s) name, together with the provisions of the contract generally.

7.3. Exemptions from disclosure

The Organisation will consider requests for exemption from disclosure in the evaluation of Invitees' submissions and negotiations with Invitees.

In determining whether any contractual clauses should be kept confidential, the Organisation will apply the exemptions from disclosure under the FOI Act. These exemptions include a public interest test under s36 of the FOI Act.

Any request by the successful Invitee for non-disclosure of contract provisions must be justified by the successful Invitee in accordance with s34(1) of the FOI Act. Under s34(1), information acquired by an organisation or a Minister from a business, commercial or financial undertaking is exempt from disclosure if the information relates to:

- (a) trade secrets; or
- (b) other matters of a business, commercial or financial nature and the disclosure would be likely to expose the undertaking unreasonably to disadvantage.

However, even if certain contractual clauses are redacted by agreement between the Organisation and the successful Invitee, this will not:

- (c) exempt the redacted clauses from the further operation of the FOI Act;
- (d) reduce, limit or restrict in any way any function, power, right or entitlement of IBAC, the Privacy Commissioner or the Ombudsman; or
- (e) constrain the Auditor General's power to secure and publish documents in accordance with the *Audit Act 1994* (Vic).

In this clause 7:

- (f) IBAC means the commission established under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) and includes any other organisation that may, from time to time, perform the functions of the commission;
- (g) a reference to the "Privacy Commissioner" is a reference to the Commissioner for Privacy and Data Protection appointed under section 96 of the *Privacy and Data Protection Act 2014* (Vic) or equivalent office holder (if any) with jurisdiction over the Organisation; and
- (h) a reference to the "Ombudsman" is a reference to the Ombudsman or equivalent office holder with jurisdiction over the Organisation; and

- (i) a reference to the "Auditor-General" is a reference to the Auditor-General or equivalent office holder with jurisdiction over the Organisation.

7.4. Unreasonable disadvantage

In determining whether disclosure of specific information will expose an Invitee's business unreasonably to disadvantage, the Invitee should consider s34(2) of the FOI Act. Broadly, the Invitee should consider:

- (a) whether the information is generally available to competitors; and
- (b) whether the information could be disclosed without causing substantial harm to the competitive position of the business.

8. Victorian Industry Participation Policy (VIPPP)

Not Applicable.

9. Invitee warranties

By submitting an Offer, an Invitee warrants that:

- (a) in lodging its Offer it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the organisation or its Representatives other than any statement, warranty or representation expressly contained in this Invitation;
- (b) it did not use the improper assistance of the Organisation or its Representatives or information unlawfully obtained from the Organisation or its Representatives in compiling its Offer;
- (c) it has examined this Invitation, and any other documents referenced or referred to herein, and any other information made available in writing by the Organisation to Invitees for the purposes of submitting an Offer;
- (d) it has sought and examined all necessary information which is obtainable by making reasonable enquiries relevant to the risks and other circumstances affecting its Offer;
- (e) it has otherwise obtained all information and advice necessary for the preparation of its Offer;
- (f) it has made proper allowance for all matters contained in or capable of inference from the information contained in this Invitation or obtained as part of the Invitation Process;
- (g) it has made proper allowance for all matters which might impact upon the Invitee's ability to provide the Goods and/or Services or provide the Goods and/or Services within any particular time, cost or quality constraints;
- (h) it has, and will maintain, the necessary skill, qualification and experience to enable it to provide the Goods and/or Services or carry out the works in accordance with the Proposed Contract;
- (i) it has, or will be able to, obtain all the necessary consents, permits and authorities necessary in order for it to provide the Services or carry out the works;
- (j) it is satisfied as to the correctness and sufficiency of its Offer;
- (k) it is responsible for all costs and expenses related to the preparation and lodgement of its Offer, any subsequent negotiation, and any future process connected with or relating to the Invitation Process;
- (l) its Offer has been prepared professionally, with due care and skill;
- (m) its Offer has been prepared in accordance with all relevant Laws and mandatory codes of conduct;

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- (n) no inducement, payment or promise has been made by the Invitee or any of its Representatives to any personnel of the Organisation in connection with this Invitation or the Goods and/or Services requested under it;
- (o) it does not, and will ensure that its Representatives do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, the interests of the State during the Invitation Process;
- (p) all statements made by the Invitee with respect to its Offer are true, not misleading and can be substantiated;
- (q) it is not insolvent within the meaning of Section 95A of the *Corporations Act 2001* (Cth) or otherwise and there is no unfulfilled or unsatisfied judgement or court order outstanding against the Invitee;
- (r) it otherwise accepts and will comply with the rules set out in Part A.1 – About this Invitation and Part B – Conditions of Participation; and
- (s) it will provide additional information in a timely manner as requested by the Organisation to clarify any matters contained in its Offer.

10. Organisation's rights

Notwithstanding anything else in this Invitation, and without limiting its rights at Law or otherwise, the Organisation reserves the right, in its absolute discretion at any time, to:

- (a) cease to proceed with or suspend the Invitation Process;
- (b) alter the structure and/or timing of this Invitation or the Invitation Process;
- (c) vary or extend any time or date specified in this Invitation for all or any Invitees;
- (d) terminate the participation of any Invitee or any other person in the Invitation Process;
- (e) require additional information or clarification from any Invitee or any other person or provide additional information or clarification;
- (f) negotiate with any one or more Invitees and allow any Invitee to alter its Offer;
- (g) call for new Offers;
- (h) reject any Offer received after the Closing Time;
- (i) reject any Offer that does not comply with the requirements of this Invitation; and/or
- (j) consider and accept or reject any Alternative Offer.

11. Law

11.1. Governing Law

This Invitation and the Invitation Process are governed by the Laws.

11.2. Compliance with Law

- (a) Invitees must comply with all applicable Laws in preparing and lodging their Offers and in taking part in the Invitation process.

- (b) Any Invitee, if requested by the Project Manager, must submit evidence of its compliance with any relevant Laws.

12. Interpretation

12.1. Definitions

Additional Materials	means any or all of the materials as specified at Item 9 of Part A.1 - About this Invitation.
Alternate Contact	means the person identified as the Alternate Contact in Item 4 of Part A.1 - About this Invitation.
Alternative Offer	means an Offer made by an Invitee as an alternative to its primary Offer in accordance with clause 3.4 of this Part B – Conditions of Participation.
Closing Time	means the time specified in Item 5 of Part A.1 - About this Invitation by which Offers must be received by the Organisation.
Contracts Publishing System	means the system of the Victorian Government for the publication of information about contracts entered into by the Victorian Government and some agencies, including any replacement or amended system.
Evaluation Criteria	means the criteria set out at Item 0 of Part A.1 - About this Invitation.
Goods	means the goods or other products required by the Organisation as set out in the Specifications.
Intellectual Property Rights	includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, trade secrets, know how, registered designs and circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
Invitation	means the opportunity set out in each of the documents identified in the Introduction to this Invitation, including this Part B – Conditions of Participation, any Additional Materials and any other documents so designated by the Organisation.
Invitation Process	means the process commenced by the issuing of this Invitation and concluding upon formal announcement by the Organisation of the selection of a preferred Invitee(s) or upon the earlier termination of the process.
Invitee	means any entity that submits an Offer in response to this invitation. An invitee may also be known as a tenderer, provider, registrant, bidder or supplier.
Item	means an item in Part A.1 - About this Invitation.
Late Offer	means an Offer deemed to be a late Offer under clause 3.2(a) of Part B.2 - Victorian Government Requirements.
Laws	means: <ul style="list-style-type: none"> (a) the law in force in Victoria, including common law, legislation and subordinate legislation; and (b) ordinances, regulations and by-laws of relevant government, semi-government or local authorities.
Offer	means a document lodged by an Invitee in response to this Invitation containing an offer to provide Goods and/or Services in accordance with this

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Invitation. This may also be referred to as a quote, tender, submission, registration or bid.

Organisation	means the Victorian government department or agency issuing this Invitation, as described in Part A.1 - About this Invitation. In the case of an aggregated demand procurement, the Organisation described in described in Part A.1 - About this Invitation is the lead department or agency issuing the Invitation.
Organisation Contact	means the persons so designated at Item 4 of Part A.1 - About this Invitation, and includes the Project Manager.
Part	means a part of this Invitation.
Project Manager	means the person identified as the Project Manager in Item 4 of Part A.1 - About this Invitation.
Proposed Contract	means the agreement and any other terms and conditions contained in or referred to in Part C – Proposed Contract.
Representative	means a party and its directors, officers, agents, servants, employees, contractors, associates, consultants, advisors, secondees, invitees and anyone else for whom that party is responsible and, in respect of an Invitee, includes any Related Body Corporate of the Invitee (as that term is defined in the <i>Corporations Act 2001</i> (Cth)) and any proposed subcontractors, suppliers and consortia members.
Services	means the services required by the Organisation as set out in the Specifications.
Specifications	means any specifications or description of the Organisation’s requirements contained in Part A.2 – Specifications.
State	means the Crown in right of the State of Victoria.
Supplier Code of Conduct	means the Supplier Code of Conduct issued by the Victorian Government for suppliers providing goods or services to the Victorian Government (as amended from time to time).
Tender Box	means the secure location within which hard copy Offers must be placed, as described in Item 0 of Part A.1 - About this Invitation (if applicable).

12.2. Interpretation

In this Invitation, unless expressly provided otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a reference to
 - (i) ‘includes’ or ‘including’ means includes or including without limitation;
 - (ii) any legislation (whether primary or subordinate) is to legislation of the Commonwealth of Australia, or the State of Victoria as amended or replaced from time to time; and
 - (iii) ‘\$’ or dollars is a reference to the lawful currency of the Commonwealth of Australia;
- (c) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (d) words importing a gender include any other gender;
- (e) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer; and

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- (f) words importing persons include a partnership and a body whether corporate or otherwise.

12.3 Inconsistency

If there is any inconsistency between the documents that comprise this Invitation (Parts A to D), the documents will be interpreted in the following, descending order of precedence:

- (d) the Conditions of Participation in Part A.1 and Part B of this Invitation and any appendices, annexures or attachments;
- (e) the Specification in Part A.2 of this Invitation;
- (f) the Proposed Contract in Part C of this Invitation; and
- (g) Part D of this Invitation and any annexures or attachments,

so that the provision in the higher ranked document, to the extent of the inconsistency, prevails.

Part C – Proposed Contract



Part D – The Offer

The Offer is bound separately.

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