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## STATE PROPERTY AUTHORITY

**RFT id: 0802206**

### **REQUEST FOR TENDER**

in respect of

**The Provision of Valuation Services to the State Property Authority**

<b>Closing Date:</b>	<b>9:30am 4 December 2008</b>
<b>Place for Lodgement:</b>	<b>See RFT for details</b>
<b>Routine Enquiries (Contact):</b>	<b>David Nalty</b>
<b>Telephone No:</b>	<b>(02) 9338 7072</b>

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For further information, contact



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## STATE PROPERTY AUTHORITY

**NO. 0802206**

### REQUEST FOR TENDER

in respect of

**The Provision of Valuation Services to the State Property Authority**

### PART A - PREAMBLE

**PART A                      PREAMBLE****A1                      PREAMBLE**

- A1.1** Part A of this Request for Tender provides background information and is not to be relied upon by Tenderers. It is subject to the detailed requirements in Parts B - F of this Request for Tender. Without limitation, the proposed Scope of Services may be subject to amendment in accordance with Addenda issued under Clause B9.3 of the Conditions of Tendering.

**A2                      INTRODUCTION**

- A2.1** The State Property Authority ("the Authority") is inviting Tenders from suitably qualified and experienced valuation firms for the provision of valuation services, as specified in the following Request for Tender.
- A2.2** It is intended that the Authority will appoint valuation firm(s) who are suitably qualified, experienced and have the relevant expertise and resources. The Authority also reserves the right not to appoint any provider to undertake the work.
- A2.3** Tenders must be prepared and submitted in accordance with the requirements of this Request for Tender.

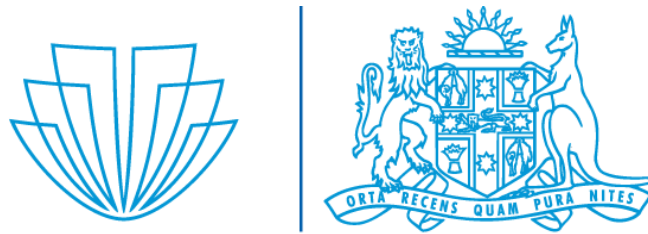
**A3                      STATE PROPERTY AUTHORITY ORGANISATION**

- A3.1** State Property Authority is a statutory authority established under the *State Property Authority Act 2006* (NSW). The Authority has the power to enter into commercial contracts and arrangements of the type contemplated by this Request for Tender.
- A3.2** The role of the Authority is:
- (a) to improve operational efficiencies in the use of properties of government agencies particularly generic properties (such as offices, warehouses, depots and car parks);
  - (b) to manage properties of government agencies in a way that supports the service delivery functions of those agencies
  - (c) to provide advice and support within government on property matters
  - (d) to operate at least as efficiently as any comparable business, consistently with the principles of ecologically sustainable development and social responsibility for the community (including the indigenous community).

- A3.3** The Authority wishes to receive Tenders containing efficient and cost effective approaches to its requirements.

**A4                      NEW SOUTH WALES GOVERNMENT POLICIES**

- A4.1** The attention of all Tenderers is drawn to the requirements of Clause B15 and all Tenderers, by submitting their Tenders, acknowledge their willingness to comply with such policies to the extent that they are relevant and applicable to this Tender.



## STATE PROPERTY AUTHORITY

**NO. 0802206**

### REQUEST FOR TENDER

in respect of

**The Provision of Valuation Services to the State Property Authority**

### PART B - CONDITIONS OF TENDERING

## **PART B                      CONDITIONS OF TENDERING**

### **B1            INVITATION AND COMPLIANCE**

- B1.1**    The Tenderer is invited to submit a Tender in accordance with this RFT for the performance of the Services.
- B1.2**    Submission of a Tender does not in any way create an agreement for the Services, nor does it create an obligation to accept any Tender. There will be no binding agreement between the Authority and a Tenderer in relation to the Services until a Letter of Acceptance has been issued by the Authority and an Agreement executed by the Tenderer.
- B1.3**    Further, Tenderers acknowledge that no agreement has been formed between the Authority and a Tenderer as a result of the tender process such that the Authority is limited or constrained in the way in which it can deal with Tenderers other than as set out in this RFT.

### **B2            INTERPRETATION**

- B2.1**    In these Conditions of Tendering and in the RFT all words and expressions will (unless the context otherwise requires) have the meanings assigned to them in the Conditions of Agreement or the meanings assigned to them below:

**"Addenda"** means addenda to the RFT issued under clause B9.3.

**"Closing Date"** means 9:30am 4 December 2008 (or as amended)

**"Complying Tender"** means a Tender that, in the Authority's reasonable opinion, substantially complies with the requirements of this RFT.

**"Contact Officer"** means:

David Nalty

Senior Property Advisor (analysis); Planning & Strategy

State Property Authority

Level 1, 4-6 Bligh Street

Sydney NSW 2000

Telephone No: (02) 9338 7072

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**"RFT" or "Request for Tender"** means:

- (a)    the Preamble in Part A;
- (b)    these Conditions of Tendering in Part B;
- (c)    the Conditions of Agreement in Part C;
- (d)    the Service Requirements in Part D;
- (e)    the Tender Form in Part E; and



(f) the Tender Schedules in Part F.

**"Services"** means the valuation services and requirements stated in Part D to this RFT.

**"Tenancy Schedule"** means the tenancy schedules provided by the Authority to the successful Tenderer.

**"Tender"** means the documents comprising the Tender Form and Schedules duly completed and executed by or on behalf of the Tenderer and received by the Authority in accordance with these Conditions of Tendering.

**"Tenderer"** means the individual, partnerships, company or companies identified as such on the Tender Form and includes all persons on whose behalf the company or companies named in the Tender Form may be deemed to have lodged the Tender.

**"Tender Form"** means Part E.

**B2.2** Any reference to one of the documents described in the definition of **"RFT"** in this clause 2 is a reference to the document so entitled, which is included in this Request for Tender.

### **B3 COMPLIANCE**

**B3.1** Any Tender, which is not a complying Tender, may be rejected by the Authority. The Authority may, in its absolute discretion and without having any obligation to do so, consider and accept any Tender, other offer or proposal notwithstanding such Tender, other offer or proposal is not a complying Tender.

**B3.2** Alternative Tenders may be considered, but must:

- (a) meet the objective and intent of the RFT; and
- (b) offer increased benefits to the Authority.

In addition to the above, alternative Tenders must:

- (c) include a separate and properly completed Tender Form (Part E) and all Schedules (Part F);
- (d) be clearly marked "Alternative Tender" on each page;
- (e) highlight details of where the alternative Tender varies from the requirements of the RFT; and
- (f) demonstrate how the alternative Tender would provide increased benefits to the Authority.

**B3.3** Whether or not an alternative Tender:

- (a) complies with the requirements of this clause B3; or
- (b) has been submitted with a Complying Tender,

The Authority may, in its absolute discretion, accept or reject an alternative Tender.

- B3.4** Tenderers may submit Tenders for the whole or part of the Services, however preference will be given to Tenderers who can demonstrate they have a strong property and commercial valuation expertise.

#### **B4 LODGEMENT OF TENDERS**

- B4.1** Tenders must be lodged by 9:30am on the Closing Date.

- B4.2** If a Tenderer wishes to lodge a correction or additional information following submission of a Tender, the correction or additional information must be submitted before the Closing Date. The Authority may, in its absolute discretion, either consider or reject any such correction or additional information.

#### ***LODGING TENDERS BY HAND***

- B4.3** Tenders must be lodged in a sealed envelope, clearly endorsed with the RFT Number, RFT Name and Closing Date. Tenderers must submit one (1) original and two (2) complete copies of the Tender for evaluation. The original must be signed and marked "Original". The copies must be initialled and marked "Copy Only". The Tenderer is to ensure that the copy is a true copy of the original in all respects. Should any discrepancy be discovered, the "Original" will take precedence over the copy.

- B4.4** Subject to clause B4.1, Tenders must be lodged in a designated tender box:-

By hand in the NSW Department of Commerce Tender Box, Level 3 (ground floor west) McKell Building, 2-4 Rawson Street, Sydney, NSW 2000 between the hours of 8:30 am and 5:30 pm on normal working days; or

- B4.5** The Authority may, in its absolute discretion, either consider or reject late Tenders.

- B4.6** Not used

- B4.7** Tenders delivered by courier may be placed directly into the NSW Department of Commerce Tender Box, Level 3 (ground floor west) McKell Building, 2-4 Rawson Place, Street, Sydney, NSW 2000. In cases where delivery personnel require a signature as evidence of delivery, an appointment must be made in advance with the Commerce Tenders Office (02 09372 8900) and delivery will only be accepted between 8:30am and 4:30pm.

#### ***LODGING TENDERS BY ELECTRONIC TENDERING***

- B4.8** The NSW Government, has adopted an electronic tendering system, using the Internet, which has the capacity to allow viewing of documents, downloading or ordering of requests for tender and the lodgement of such requests in appropriate circumstances.

- B4.9** Tenderers are required (unless other methods are specifically allowed by this Request for Tender), to obtain the Request for Tender electronically and to lodge their Tender electronically, through the Government Tenders website at:

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

- B4.10** Tenders lodged electronically will be treated in accordance with the NSW Electronic Transactions Act 2000 and given the same level of confidentiality, probity and attention as a Request lodged by other methods.

- B4.11** Tenderers, by electronically lodging the Tender, are taken to have accepted any conditions shown on the *eTendering* web site.
- B4.12** The evaluation committee may decline to assess the Tender if it cannot be effectively evaluated because it is incomplete, corrupt or both.
- B4.13** The Request for Tender for which electronic lodgement is available can be identified by the blue 'LODGE A RESPONSE' link at the foot of the specific page on the tenders website.
- B4.14** To lodge the Tender electronically the files containing the Tender must be up-loaded to the e-tendering system through the website. Access to the up-loading process is through the blue 'LODGE A RESPONSE' link. Tenderers can then follow the steps and instructions on the tenders web site. The tenderer must be logged in as a system user.
- B4.15** On receipt, the Tenders will be encrypted and stored in a secure 'electronic tender box'. For reasons of probity and security, the Authority is prevented from interrogating the electronic system to ascertain whether tenders have been received, or for any other reason, until after the Closing Time & Date.
- B4.16** The Tender shall be in a file format that can be read, formatted, displayed and printed by Microsoft Word 2000 or equivalent.
- B4.17** Tenderers may compress the Tender in any format that can be decompressed by WinZip. Tenderers shall not lodge self-extracting (\*.exe) zip files.
- B4.18** Signatures are not required on a Tender lodged electronically. Tenderers shall ensure that electronically lodged Tenders are authorised by the person who may do so on behalf of the Tenderer, and appropriately identify the person and indicate the person's approval of the information communicated.
- B4.19** Electronically lodged Tenders may be made corrupt or incomplete by computer viruses. To reduce the likelihood of viruses, Tenderers shall not include any macros or executable code / executable files, unless required to by this Request for Tender.
- B4.20** Tenderers shall ensure electronically lodged Tenders are free from viruses by checking files with an up to date virus-checking program before lodgement.
- B4.21** If Tenderers experience any difficulties with accessing the tenders web site when lodging Tenders they shall contact the Tenders Section at NSW Department of Commerce (02 9372 8900 during 8:30am to 4:30pm).
- B4.22** If there is a known defect or failure of the *eTendering* system, or the tenders web site, the Contact Officer may grant an extension to the Closing Time & Date, which will be communicated by addendum.
- B4.23** When Tenders are received through the *eTendering* web site, a unique receipt acknowledgment number shall be displayed on screen and an e-mail confirming receipt shall be sent to the e-mail address shown in the system users login.

**B5 SUBMISSION OF TENDER**

- B5.1** All Tenders must be completed in indelible ink (where submitted by hand) and submitted in English. Any alterations or erasures in the Tender must be initialled by the Tenderer, where lodged by hand.
- B5.2** All prices must be submitted in Australian Currency unless otherwise noted in, or expressly required by, the RFT.
- B5.3** Compliance with the requirements set out in the Request for Tender will be an important consideration in the Tender evaluation process. In addition the Tenderer must submit all additional information required in support of the Tender.
- B5.4** Where the Tender is submitted by hand, all Tenders must be executed by the Tenderer as indicated below:
- (a) In the case of a corporation, executed in accordance with Section 127 of the *Corporations Act 2001*.
  - (b) In the case of a partnership or an individual, by signature of each partner or the individual as the case may be (with the full name printed under the signature).
- B5.5** Where the Tender is submitted by hand, the foot of each page of the Tender Form and each Schedule must be signed by the Tenderer or, if the Tenderer is a corporation, by a person authorised to execute documents in accordance with Section 127 of the *Corporations Act 2001*.
- B5.6** The order of documentation in the Tender must reflect the order of documents in this Request for Tender.

**B6 FIRM PRICES**

- B6.1** All Tenders must be valid and are deemed to be irrevocable for a period of 60 days from the Closing Date.
- B6.2** Tenders may not be withdrawn or, subject to clause B4.2, varied by Tenderers before the expiration of that period without the Authority's prior written consent.
- B6.3** The prices included in Part F, Schedule A should include provision for all costs, including but not limited to attendance at client liaison and performance meetings.

**B7 TENDERERS TO INFORM THEMSELVES**

- B7.1** Each Tenderer must:
- (a) acquaint and satisfy itself with all aspects of the RFT and all other documents included or referred to in it;
  - (b) examine all other information provided by the Authority to Tenderers in connection with this RFT.
  - (c) examine all other relevant information available on reasonable enquiry;
  - (d) obtain all necessary information as to the risks, contingencies and other circumstances which is obtainable by the making of reasonable enquiries and

could have an effect on the performance and cost of executing the Services;  
and

- (e) satisfy itself as to the correctness and sufficiency of the Tender and that the Tender prices cover the cost of complying with all the requirements of the RFT and of all matters and things necessary for the due and proper performance and completion of the Services, before submitting its Tender.

**B7.2** Where Tenderers have made assumptions in preparing Tenders or where a Tender includes qualifications or exclusions in relation to specified requirements or conditions, these must be clearly defined in the Tender.

**B7.3** By submitting a Tender, the Tenderer will be deemed to have complied with the requirements of the RFT.

## **B8 OPENING OF TENDERS**

Neither Tenderers nor their representatives will be permitted to attend the opening of Tenders.

## **B9 FURTHER INFORMATION**

**B9.1** Requests by prospective Tenderers for further information or queries regarding the RFT should be directed in writing to the Contact Officer.

**B9.2** Any errors, omissions or inconsistencies noted by Tenderers in the Request for Tender or any questions or enquiries the Tenderer wishes to make in relation to the Request for Tender must be communicated immediately in writing to the Authority. The response to any such communication from any Tenderer may be sent to all Tenderers.

**B9.3** The Authority may amend the RFT at any time prior to the Closing Date. Any amendment to the RFT will be issued in the form of Addenda and will be issued to all Tenderers before the Closing Date. No explanation or interpretation of the RFT may be relied upon by the Tenderer as an amendment to the RFT unless given in the form of Addenda. Such Addenda will become part of the RFT.

**B9.4** Tenderers must nominate a person for the purpose of responding to clarifications which may arise during the evaluation of Tenders. The name, and contact details of this person must be supplied in Part F, Schedule C.

## **B10 EVALUATION**

**B10.1** In the course of the evaluation process, the Authority may request additional information from Tenderers by way of clarification or otherwise. The cost of providing any additional information must be borne by the Tenderer.

**B10.2** Tenderers are advised that the Authority reserves the right to seek clarification, verification and additional information from third parties, and the Tenderer authorises the Authority to do so.

**B10.3** As part of the evaluation process, selected Tenderers may be invited to make a presentation to the evaluation committee which will be set up by the Authority.

**B10.4** Any Tender which the Authority evaluates will be evaluated in accordance with the criteria set out below, and such other criteria as the Authority in its absolute

discretion, considers appropriate. The criteria are not listed in any special order, may not be accorded equal or any weight and are not exhaustive. However, Tenderers should recognise and take into account the importance that the Authority attaches to obtaining a high level of service and value for money. Submissions will be assessed by determining the best value for money having regard to the following criteria:

- Compliance with this Request For Tender
- Level of professional indemnity (minimum of \$5 million required)
- Level of public liability insurance (minimum of \$20 million required)
- Experience and ability of the organisation's nominated staff to provide the Services. Tenders should include relevant qualifications such as Australian Property Institute Membership. Previous experience with a diverse Government Office Portfolio is preferred.
- Competitiveness of fee proposals.
- Ability to meet the time and program required.

**TENDERERS MUST ADDRESS ALL SELECTION CRITERIA IN THEIR PROPOSAL.**

Tenderers must provide the Authority with proof of all insurance required to be maintained.

The Authority reserves the right to engage more than one tenderer to provide the Services.

The evaluation criteria may be accorded different weightings. Submissions with the lowest proposed cost and disbursement structure may not necessarily be accepted.

**B10.5** The Authority may engage the services of external organisations to assist with the evaluation of Tenders.

**B11 CLARIFICATION/NEGOTIATION WITH TENDERERS**

**B11.1** Clarification of Tenders and negotiation of Tenders may be carried out by the Authority and, if so, will be carried out in accordance with the New South Wales Government Code of Practice for Procurement. The purpose of any such negotiations will be to achieve a tender that is mutually acceptable.

**B11.2** Tenderers by lodging a Tender agree to engage in this process and offer to do so at no cost to the Authority. Commencement of negotiations by a Tenderer will be legal acceptance of that offer to participate in the negotiations at no cost to the Authority. The Authority will not consider claims for costs or damages as a result of participating in the negotiation process and the Authority has no liability for any such claims.

**B11.3** At the Authority's sole discretion, one or more Tenderers may be requested to submit a revised Tender as a formal record of the outcome of any such clarification or negotiation process.

**B11.4** Tenderers may be required to execute a negotiation deed on terms required by the the Authority.

## **B12 ACCEPTANCE OF TENDERS**

**B12.1** A Tender will be accepted when a Letter of Acceptance is sent by the Authority to the Tenderer. No binding agreement shall arise between the Authority and any Tenderer for the provision of any Services unless and until a formal Agreement is entered into.

**B12.2** The Authority is not bound to accept the lowest priced or any Tender.

**B12.3** The Tenderer, in submitting a Tender, acknowledges and agrees that the decision of the Authority in relation to its Tender and that of any other Tender received by Authority pursuant to this Request for Tender will be final and not subject to challenge, dispute, explanation or further correspondence.

**B12.4** Within 2 days of the date of the Letter of Acceptance the successful Tenderer must enter into a written Agreement with the Authority. Should the successful Tenderer fail or decline to do so, the Authority will be free to enter into negotiations and contract with any other Tenderer without the successful Tenderer or any other Tenderer having any right of recourse against the Authority and without prejudice to the rights of the Authority against the successful Tenderer.

**B12.5** The Authority will notify unsuccessful Tenderers of the name of Tenderers with whom the Authority will enter into an Agreement.

## **B13 DISCLOSURE**

**B13.1** In accordance with NSW Government Policy to publicly disclose details of its contracts, the Authority may publish the following information about the Agreement awarded as a result of Tenders received in response to this RFT:

- (a) details of the Agreement (description of project to be completed or goods/services to be provided or property to be transferred; commencement date of the Agreement; the period of the Agreement);
- (b) the full identity of the successful Tenderer including details of cross ownership of relevant companies;
- (c) the price payable by the Authority and the basis for future changes in this price;
- (d) the significant evaluation criteria in Tender assessment; and
- (e) provisions for re-negotiation (where applicable).

**B13.2** Tenderers may request that the Authority not disclose information included in their Tender that would place the Tenderer at a substantial commercial disadvantage with its competitors but must give the reasons for requesting this. Tenderers must identify any information within their Tender which is considered Commercial-in-Confidence by marking such information "Commercial-in-Confidence". The Authority

will advise a Tenderer in contention for the Agreement what information it agrees not to disclose. The Authority's decision is however final and is at the Authority's absolute discretion and Tenderers will not make any claim against Authority in relation to any action taken under this clause B13. A decision by the Authority under this paragraph is not a decision, which falls within any dispute resolution procedures specified in the Agreement being tendered for.

- B13.3** The Authority may publish the identities of all Tenderers' but will not disclose other information included in an unsuccessful Tender unless the Tenderer agrees, or release is determined under the *Freedom of Information Act 1989* or is otherwise legally required. For contracts valued at over \$150,000, the Authority will normally publish the names of Tenderers when Tenders close, and other information specified above, within 60 days after award of the Agreement. For other contracts the Authority will disclose the specified information on request.

## **B14 JOINT UNDERTAKINGS AND JOINT VENTURES**

- B14.1** Any Tender which is submitted by a combination of two or more organisations, as a joint venture, a consortium or otherwise, must clearly state the nature of the association between the organisations and the basis upon which they propose to contract with the Authority. This information must be provided in the Tender Form, Part E.

## **B15 NEW SOUTH WALES GOVERNMENT POLICIES**

- B15.1** The attention of all Tenderers is drawn to the New South Wales Government policies, codes, NSW Government Preference Scheme and purchasing policies that may apply to this Request for Tender.
- B15.2** Tenderers must comply with the New South Wales Government Code of Practice for Procurement. A copy of the Code is available on the Treasury website [www.treasury.nsw.gov.au](http://www.treasury.nsw.gov.au). The ability of a Tenderer to demonstrate compliance with the Code is an essential condition.
- B15.3** Lodgement of a Tender will itself be an acknowledgement and representation by the Tenderer that it is aware of the requirements of the Code, that the Tenderer will comply with the Code, and that the Tenderer agrees to provide periodic evidence of compliance with the Code and access to all relevant information to demonstrate compliance for the duration of any *Agreement* that may be awarded.
- B15.4** If a Tenderer has failed to comply with the Code, this failure will be taken into account by the Authority when considering its Tender and may result in the Tender or any subsequent Tender being passed over without prejudice to any other rights of action or remedies available to the Authority.
- B15.5** The Authority is committed to acting with integrity and probity and expects all participating parties to act with integrity and probity in relation to the tender process. The Authority requires that Tenderers have due regard to probity throughout all processes undertaken pursuant to this Request for Tender.



**B16 CHECKLIST**

- B16.1** Tenderers should ensure that the following information is included in the Tender. All schedules must be completed signed and dated.

List of Attached Schedules

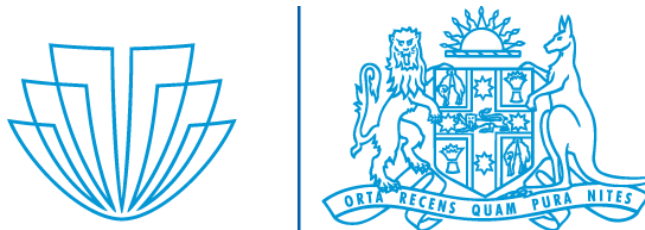
1. Tender Form
2. Schedule A – Pricing Schedule
3. Schedule B – Value Add Services
4. Schedule C – Contact Details
5. Schedule D – List of Properties to be Valued
6. Schedule E – Experience and ability of nominated staff
7. Schedule F – Insurances

**B17 COSTS**

- B17.1** No payment will be made by the Authority to any Tenderer for any costs, expenses, losses or damages suffered or incurred by the Tenderer arising out of, or in any way in connection with, the tender process including any costs or expenses in preparing its Tender or in respect of any discussions, negotiations, enquiries or site inspections or any services performed by the Tenderer after its Tender is submitted.

**B18 TAXES**

- B18.1** The Tenderer must include an allowance in its Tender for all taxes (excluding GST), duties, levies, imposts and charges which may be payable in connection with the Services.



## STATE PROPERTY AUTHORITY

**NO. 0802206**

### REQUEST FOR TENDER

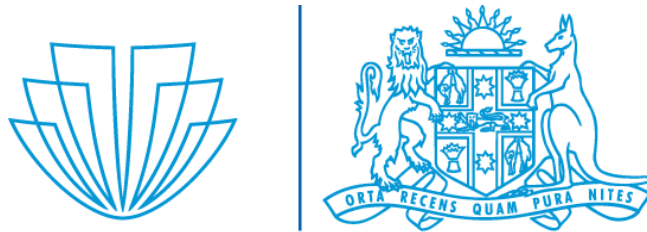
in respect of

**The Provision of Valuation Services to the State Property Authority**

### PART C – AGREEMENT FOR VALUATION SERVICES

## **PART C**

## **AGREEMENT FOR VALUATION SERVICE**



## STATE PROPERTY AUTHORITY

**NO. 0802206**

### REQUEST FOR TENDER

in respect of

**The Provision of Valuation Services to the State Property Authority**

### PART D – SERVICE REQUIREMENTS

## **PART D                      SERVICE REQUIREMENTS**

### **D1        SCOPE OF SERVICES**

#### **D1.1    INSTRUCTIONS**

Determine the current gross effective market rentals for a number of properties and provide a written report of the valuation undertaken. The determination of rentals is to be made on the following basis:

- Assess market rentals for each individual suite according to the Tenancy Schedule as at 1 January 2009.
- Assess market rentals for any common facilities areas that constitute part of the net lettable area.
- Assess market rentals for car parking spaces.
- Assess rentals on a gross basis (common area cleaning and common power to be included in gross rental). Alternatively, tenant area cleaning and tenant area electricity is not to be included in the gross rental as it will be charged in addition to the gross market rent.
- Assume leases are to be for a two-year term with market rental reviews every two years.
- Assess rentals on a GST exclusive basis
- Assess rentals assuming an open floor plan

Where a private tenant occupies part of an office building, the determination must take into account the existing lease terms and conditions.

Rentals are to be assessed on a fully gross basis as the Authority does not recover increases in outgoings over the base year from tenants until the next rental review opportunity.

It is acknowledged that the above instructions will need to be modified depending on the unique arrangements in place for some properties. For example, the Authority currently charges NSW Department of Commerce in the McKell Building a net rental with State Property Authority paying for some expenses that are typical tenant related costs.

Where a property has recently been vested in the Authority, the valuer will be required to provide gross and net rents. Gross rents are required for the remainder of the portfolio.

The properties highlighted in green in Schedule D indicate the Authority requires both net rents and gross rents. Refer to Schedule D for further information regarding whether gross and/or net rents are to be assessed.

Before the commencement of the valuation exercise, successful proponents are required to attend a one hour meeting at 4-6 Bligh Street, Sydney to develop a greater understanding of the information being provided by the Authority to assist Valuers with the exercise.

**D1.2 FORMAT AND CONTENT**

The Authority requires that the Rental Valuation Reports are to follow the pro-forma set out below. It is understood that the format and content may vary slightly depending on the property being valued. However, all valuation reports must include those items requested, which are considered relevant to that individual report.

**FORMAT AND HEADINGS OF RENTAL VALUATION REPORTS****1.0 INSTRUCTIONS****2.0 DESCRIPTION OF PROPERTY****3.0 CURRENT TENANCY POSITION****4.0 OVERVIEW OF OFFICE MARKET****5.0 RENTAL VALUATION****APPENDICES:**

A Tenancy schedules

B Survey Plan

The Rental Valuation Report should be concise and address the requirements of the instructions in the Scope of Services. The report must contain appropriate tenancy schedules and comment on any physical changes to the properties in the past two years. It must also provide commentary on movement in rentals for each property and reasons given where rentals assessed vary from current passing rentals.

The report must cover but certainly not be limited to the following:

- Overview of rental market in the locality / town; comments on supply, vacancies, demand, superior location or inferior location in the town etc...
- Rental range of values in town or locality; top rates versus bottom rates, high or low profile buildings, a detailed breakdown of comparable rental evidence to support your views.
- Rental growth prospects (or reductions) in the market
- Where the subject property sits in its own market place or where the building should be considered the premium building in the locality, the Valuer should give clear reasons on how they determined or arrived at the market rental for those premises. The valuer should also make comment on whether or not the comparables are inferior or superior to the subject property.
- Rentals adopted - give the range of gross rentals you have adopted within the subject property
- Valuer to provide comment on the level of incentives available in the market place.

- Outgoings – percentage of gross rent, rate per square metre, market outgoings and comment on comparable properties if information is available. In determining the gross and net rental, the Valuer will be required to take into account the level of management and maintenance services provided by the Authority and government exemptions i.e. land tax and council rates.

In addition to the above, it is expected that Valuers will provide comment on the quality of office accommodation being occupied by Local and Federal Government tenants in relevant regional towns. Commentary should also include whether or not these properties are owned or leased, superior or inferior to the subject property and the approximate rental rate per square metre.

Two signed copies of the report will be required, together with an electronic copy of the valuation report as well as all information that was used to assist in the preparation of the report, which is to be saved on a CD in Microsoft Word or Excel format and provided to the Authority.

### **D1.3 PROGRAM**

It is expected that the successful valuation firm(s) will be appointed by 9 December 2008.

Rental Valuation Reports are required to be completed by 22 January 2009 ("The Completion Date"). Rental valuation figures for properties located in the Sydney CBD and metropolitan areas should be submitted immediately when finalised ahead of completion of the formal reports. The Authority also recommends where possible valuation reports be submitted progressively prior to the date mentioned above.

If the successful Tenderer fails to provide all reports as required by the Services by the Completion Date, the Authority may deduct from the Fee an amount calculated at \$100 per day for each day after the Completion Date that the Contractor does not provide such reports.

The successful tenderer is not allowed to engage contractors to undertake any work. The nominated staff in the Tender must complete all work on this exercise. Failure to comply with this may result in non-payment of the proportion of work completed by contractors.

### **D1.4 PAYMENT TERMS**

Payment of this exercise will be made according to the following basis:

The successful Tenderer will be paid 100% of the total approved fee (subject to any deductions allowed for in accordance with the Agreement) upon receipt by the Authority of all Rental Valuation Reports that satisfy our requirements.



## STATE PROPERTY AUTHORITY

**NO. 0802206**

### REQUEST FOR TENDER

in respect of

**The Provision of Valuation Services to the State Property Authority**

### PART E – TENDER FORM



**PART E TENDER FORM****PARTICULARS OF TENDERER**

The Tenderer must provide in legible print the following details

Name of Tenderer: .....

Name of Tenderer's Representative: .....

If the Tenderer is a corporation/partnership/individual proprietor:

A.B.N : .....

Registered office: .....

.....

.....

.....

Business Service of Notice Address:.....

.....

.....

.....

Contact Telephone No: (.....) .....

Facsimile No: (.....) .....

Mobile No: .....

Email Address: .....

**TENDER**

1. The Tenderer tenders to perform the Services for the price set out in the Price Schedule (Part F Schedule A) as qualified by the further provisions of the Request for Tender and Schedules. This Tender is lodged upon the following conditions:
  - 1.1 The Tender is submitted as an offer in accordance with and subject to all the provisions of the Request for Tender and may be accepted by the Authority issuing a Letter of Acceptance to the Tenderer.
2. The Tender will remain open for acceptance by the Authority for 60 days from the Closing Date and will not be withdrawn or amended without Authority's prior written consent.
3. The Tenderer acknowledges that:
  - 3.1 the Tender comprises the Request for Tender and this completed Tender Form and all Schedules attached and listed on this Tender Form;
  - 3.2 no information provided by or on behalf of the Tenderer to the Authority at any time in relation to the Tenderer or this Tender is or will be false or misleading; and
  - 3.3 this Tender is governed by the provisions of the Conditions of Tender read with the other documents comprising the Request for Tender.
4. The Tenderer warrants that:
  - 4.1 neither the Tenderer nor any of its servants or agents have entered into any contract, arrangement or understanding to pay moneys or provide any other consideration or benefit to any trade association apart from the normal amount (annual subscription, turnover or contract fee) imposed by that trade association, in the event that it is the successful Tenderer;
  - 4.2 neither the Tenderer nor any of its servants or agents had any knowledge of the price of any other Tenderer prior to submitting this Tender nor has the Tenderer or any of its servants or agents disclosed to any rival Tenderer the Tenderer's price prior to the closing of Tenders;
  - 4.3 the Tenderer submits this Tender in good faith and has not deliberately set its Tender price above the level of rival Tenderers;
  - 4.4 neither the Tenderer nor any of its servants or agents has entered into any contract, arrangement or understanding having the result that, in the event that it is successful in this Tender, it will pay to any unsuccessful Tenderer any moneys or provide any other consideration or benefit in respect of or in relation to the Tender or any contract arising there from;
  - 4.5 It does not have or is aware of any actual or potential conflict of interest; and
  - 4.6 it has otherwise complied with the requirements of the RFT.
5. The Tenderer will keep confidential and will not disclose to any third party any information, whether oral or recorded, provided to or obtained by the Tenderer concerning the Authority or this Tender, which is not in the public domain (or which is

in the public domain as a consequence of a breach of this provision). The Tenderer may, however, make disclosure to a bona fide independent consultant retained by the Tenderer for the purposes of preparing or submitting this Tender provided that the consultant has furnished a written undertaking of confidentiality to the Authority on terms similar to this Clause. Without limitation no Tenderer will in any way publicise its Tender or proposed Tender.

#### List of Attached Schedules

Schedule A -	Pricing Schedule
Schedule B -	Value Added Services
Schedule C -	Contact Details
Schedule D -	List Of Properties To Be Valued
Schedule E -	Experience And Ability of Nominated Staff (Max 10 Pages)
Schedule F -	Insurances

If the Tenderer is a corporation, complete Part A;

if an individual or partnership, complete Part B.

## PART A

Executed by

.....  
(Company name)

(Affix Common Seal here)  
(If applicable)

in accordance with Section 127

of the *Corporations Act 2001*.

.....  
Director

.....  
\*Director/Sole Director/Secretary  
(\*delete as applicable)

.....  
Name of signatory  
in block letters

.....  
Name of signatory  
in block letters

Dated: .....

## PART B

.....  
Trading Name

1. ....  
(signature)

2. ....  
(signature)

.....  
Name of signatory  
in block letters

.....  
Name of signatory  
in block letters

.....  
(capacity)

.....  
(capacity)

3. ....  
(signature)

4. ....  
(signature)

.....  
Name of signatory  
in block letters

.....  
Name of signatory  
in block letters

.....  
(capacity)

.....  
(capacity)

Dated: .....

(Note: If required by the Authority, the Tenderer will provide evidence of the authority of the designated signatory to sign)



**NO. 0802206**

**REQUEST FOR TENDER**

in respect of

**The Provision of Valuation Services to the State Property Authority**

**PART F – SCHEDULES**

**NOTE:**

**Tenderers are to ensure that all Schedules are fully completed, signed and dated and that sufficient information is provided to enable the Authority to fully assess your Tender. Failure to do so may result in your tender being excluded from further consideration**

**SUFFICIENT INFORMATION IS TO BE PROVIDED TO ENABLE ASSESSMENT BY THE AUTHORITY****SCHEDULE A: PRICING SCHEDULE**

The fees quoted are provided in accordance with this Request for Tender. Fees quoted are to be fixed and all-inclusive, including travelling costs and all other out of pocket expenses.

Tenderers are encouraged to include a pricing methodology whereby discounts may be given based on volumes of work

All amounts must be stated in Australian Dollars and exclude GST.

**A. WHOLE OF PORTFOLIO**

\$ \_\_\_\_\_

**B. INDIVIDUAL GROUP****Group One – (Sydney CBD Office)**

\$ \_\_\_\_\_

**Group Two – (Southern Office Portfolio)**

\$ \_\_\_\_\_

**Group Three – (Northern Office Portfolio)**

\$ \_\_\_\_\_

**Group Four – (Western Office Portfolio)**

\$ \_\_\_\_\_

Tenderers are also requested to provide an individual price for each property within each Group in case adjustments are required.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

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SUFFICIENT INFORMATION IS TO BE PROVIDED TO ENABLE ASSESSMENT BY THE AUTHORITY

**SCHEDULE B: VALUE ADD SERVICES**

(no more than 1 page)

Describe the value added services, relevant to the Authority, that the Tenderer proposes to offer together with the Services.

If these services are additional costs, please provide information that will assist in SPA in determining whether or not this represents value for money.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_



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**SUFFICIENT INFORMATION IS TO BE PROVIDED TO ENABLE ASSESSMENT BY THE AUTHORITY****SCHEDULE C: CONTACT DETAILS**

The Tenderer shall provide details of a nominated contact person to respond to any matters &/or clarifications regarding this 'Request for Tender'

Contact details:

Name: .....

Position: .....

Address: .....

.....

.....

Telephone No.: .....

Facsimile No.: .....

Email: .....

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

---

SUFFICIENT INFORMATION IS TO BE PROVIDED TO ENABLE ASSESSMENT BY THE AUTHORITY

**SCHEDULE D: LIST OF PROPERTIES TO BE VALUED**

This spreadsheet must be submitted with your Tender.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

SUFFICIENT INFORMATION IS TO BE PROVIDED TO ENABLE ASSESSMENT BY THE AUTHORITY

**SCHEDULE E: EXPERIENCE AND ABILITY OF NOMINATED STAFF**

**(MAX 10 PAGES)**

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

SUFFICIENT INFORMATION IS TO BE PROVIDED TO ENABLE ASSESSMENT BY THE AUTHORITY

**SCHEDULE F:        INSURANCE**

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

---

DATED

2008



## STATE PROPERTY AUTHORITY

STATE PROPERTY AUTHORITY

("the Authority")

and

("the Contractor")

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CONTRACT FOR SERVICES

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**THIS DEED OF AGREEMENT is made on**

**BETWEEN: STATE PROPERTY AUTHORITY ABN 91 840 597 406 of Level 9,  
4-6 Bligh Street, Sydney in the State of New South Wales (“the  
Authority”)**

**AND: (“the Contractor”).**

## **RECITALS**

- A. The State Property Authority is a statutory authority constituted by the *State Property Authority Act 2006*.
- B. The Authority wishes to engage the Contractor, in accordance with the terms of this Agreement, to perform certain valuation and advisory services in relation to the Authority undertaking its operations and meeting its obligations under the *State Property Authority Act 2006*.

## **IT IS AGREED AS FOLLOWS:**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 DEFINITIONS**

**“Agreement”** means this Contract for Services including all schedules, the Request for Tender and the Contractor's Proposal and any variations agreed in writing between the parties and if there is any inconsistency between them this Contract prevails;

**“Authority Material”** means all material supplied by the Authority, to the Contractor by whatever means, including but not limited to documents, equipment, information and data stored by any means including Intellectual Property Rights;

**“Authority's Representative”** means the person appointed by the Authority pursuant to clause 11.1;

**“Commencement Date”** means the date of this Agreement;

**“Completion Date”** means the 22 January 2009 or such other date as may be agreed in writing by the parties.

**“Confidential Information”** means information that is, by its nature confidential, privileged or commercially sensitive, and includes all Contract Material and the Authority Material, but does not include information which:

- (a) is or becomes public knowledge other than by breach of this Agreement;
- (b) is in lawful possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Authority; or

- (c) has been developed or acquired by the Contractor independently of the carrying out of the Services.

**“Contract Material”** means:

- (a) all material brought into existence as part of, or for the purpose of performing the Services, including but not limited to documents, equipment, information and data stored by any means including Intellectual Property Rights therein, and
- (b) any material which is existing at the date of this Agreement and which is incorporated into the material described in (a).

**“Contractor’s Proposal”** means the Contractor’s proposal submitted in response to Authority’s Request for Tender;

**“Contractor’s Representative”** means the person appointed by the Contractor pursuant to clause 11.2;

**“Fee”** means the amount fee inclusive of GST, payable by the Authority to the Contractor calculated in accordance with the Price Schedule;

**“GST”** has the same meaning as in the A New Tax system (Goods and Services Tax) Act 1999 (Cth);

**“Intellectual Property”** means all rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets and all other rights of intellectual property (including moral rights) as recognised by the law in force in New South Wales;

**“Price Schedule”** means Schedule 1 of this Agreement, being the prices tendered by the Contractor in response the Request for Tender;

**“Personnel”** means the principals, partners, officers, employees, agents, consultants and sub-contractors or other persons for whom the Contractor is responsible at law or otherwise;

**“Request for Tender”** means the Authority’s Request for Tender for the provision of Valuation Services RFT No 0802206; and

**“Services”** without limiting the generality of the expression, means the Services to be provided by the Contractor as described in the Request for Tender and as v aired in accordance with clause 7.

**“Term”** means the term of this Agreement described in clause 2.

## 1.2 INTERPRETATION

In this Agreement, headings are only for convenience and do not affect interpretation and, unless the context requires otherwise, a reference to:

- (a) a person includes an individual, a firm or a corporation;

- (b) a clause, party, schedule or annexure is a reference to a clause of, a party, schedule or annexure to, this Agreement;
- (c) a party includes that party's legal personal representatives, successors, directors, officers, employees, agents and related bodies corporate;
- (d) "dollars", \$ or \$A in this Agreement must be read as a reference to the Australian dollar and all payments made under this Agreement must be made in Australian dollars.

## **2. TERM OF AGREEMENT**

### **2.1 TERM OF AGREEMENT**

This Agreement commences on the Commencement Date and will continue until the Completion Date unless this Agreement is terminated earlier in accordance with clause 12 or is extended by agreement in writing between the parties.

## **3. ENGAGEMENT**

### **3.1 ENGAGEMENT**

The Authority engages the Contractor to provide the Services in accordance with this Agreement and the Contractor accepts that engagement, but the Authority shall not be bound expressly or impliedly to request from the Contractor any Services.

### **3.2 NO EXCLUSIVITY**

The Contractor acknowledges that the Authority may have appointed other Contractors in respect of the Services and no objection shall be taken to such appointment by the Contractor.

## **4. CONTRACTOR'S OBLIGATIONS**

### **4.1 PERFORMANCE OF THE SERVICES**

In performing its obligations under this Agreement, the Contractor must at all times:

- (a) ensure that the Services are provided:
  - (i) in a diligent and cost effective manner;
  - (ii) to the standard of skill and care expected of a contractor experienced in the provision of the Services; and
  - (iii) in a timely and expeditious manner so as to meet any timing requirements made known to the Contractor and so as to complete the Services within the time for completion set out in the Request for Tender;



- (b) take out, keep current and produce to the Authority on request, evidence of any relevant authorisation, permit or licence including permission to use software, required by law to provide the Services;
- (c) not be a party to any act or thing prejudicial to the overall public image of the Authority; and
- (d) ensure that the performance of the Services is not interfered with, delayed or hindered by other work the Contractor may be doing under any other contract or arrangement with any other person or organisation.

#### **4.2 PERSONNEL**

- (a) The Contractor must ensure that all Personnel engaged by it in connection with the Services are appropriately qualified, hold current professional certificates (where required), competent and experienced to provide the Services in accordance with this Agreement.
- (b) The Contractor must use its best endeavours to ensure that the Personnel nominated and accepted by the Authority (or alternates agreed by the Authority) are engaged by the Contractor to undertake the Services. The Contractor shall secure the Services of Personnel with equivalent qualifications and experience should the persons nominated be unavailable to provide the Services, only with the prior consent of the Authority.

#### **4.3 PROVISION OF SERVICES**

The Contractor must perform the Services expeditiously and in accordance with the Service Requirements provided in the Request for Tender, or as otherwise agreed with the Authority. If there is any inconsistency between the Request for Tender and this Agreement, this Agreement shall apply.

#### **4.4 DELAY**

As soon as practicable after becoming aware of any matter which is likely to change or which has changed the scope or timing of the Services, the Contractor must give written notice to the Authority detailing the circumstances and extent or likely extent of the change or delay.

#### **4.5 CO-OPERATION**

The Contractor must liaise, co-operate and confer with others as directed by the Authority.

#### **4.6 CONTRACTOR REPORTING**

The Contractor must during the performance of the Services, provide the Authority with written reports that are in a format acceptable to the Authority.  
(NOT USED)

#### **4.7 CONTRACTOR'S RELATIONSHIP WITH THE AUTHORITY**

- (a) The Contractor must not act outside the scope of authority conferred on it by this Agreement and must not bind the Authority in any way or hold itself out as having any authority to do so.

- (b) The Contractor shall not represent itself, and ensure that its Personnel do not represent themselves, as being employees or agents of the Authority.

#### **4.8. AUTHORITY MATERIAL**

- (a) The Contractor accepts all responsibility for the secure guardianship of the Authority's Material provided by the Authority to the Contractor and must protect and keep safe and secure all materials and documentation provided by the Authority to the Contractor.
- (b) Upon completion of the Services or termination of this Agreement, the Contractor must promptly:
  - (i) if requested by the Authority, return to the Authority all materials and documentation provided by the Authority to the Contractor at no cost to the Authority;
  - (ii) deliver to the Authority all confidential or personal information collected on behalf of the Authority together with all materials, records and documents held by the Contractor in relation to such information; and
  - (iii) deliver to the Authority all Contract Material at no cost to the Authority. The Contractor shall be entitled to retain one copy of the Contract Material for its records.

#### **4.9 CONFIDENTIALITY**

The Contractor must:

- (a) keep confidential all Confidential Information;
- (b) not disclose the Confidential Information either during the term or after termination of this Agreement:
  - (i) without the Authority's prior approval, which approval may be granted or withheld at the Authority's absolute and unfettered discretion; or
  - (ii) unless such disclosure is required pursuant to any law, regulation, legal process or regulatory authority;
- (c) not allow any person to use Confidential Information for any purpose other than the performance of the Services;
- (d) ensure that Confidential Information will be disclosed only to Personnel who need, and then only to the extent that they need, the information for the purposes of providing the Services;
- (e) if required by the Authority, ensure that each of the persons referred to in clause 4.9(d) enter into a confidentiality undertaking with the Authority in the form set out in Schedule 3, before the disclosure is made to them, and promptly deliver to the Authority each Confidentiality Undertaking signed by the relevant Personnel of the Contractor.

#### **4.10 SUB-CONTRACTING**

- (a) The Contractor must not assign or sub-contract any part of the Services without the prior express written consent of the Authority.
- (b) Consent given by the Authority in accordance with clause 4.10(a) does not relieve the Contractor from its obligations under this Agreement.
- (c) The Contractor must ensure that the sub-contractor will be subject to the same conditions of this Agreement, including but not limited to equivalent indemnity and insurance provisions as apply to the Contractor under this Agreement.

#### **4.11 LEGAL REQUIREMENTS**

Without limiting the generality of any other provision of this Agreement, the Contractor must ensure that all work done in connection with the Services complies with all applicable legislation, regulations, codes of conduct and all relevant Australian standards applicable to the Services.

#### **4.12 FITNESS FOR PURPOSE**

- (a) The Authority relies upon the skill and knowledge of the Contractor in providing the Services.
- (b) The Contractor must ensure that all Contract Material produced by it is suitable in all respects for the purposes for which it is required by the Authority.

#### **4.13 CONFLICT OF INTEREST**

- (a) The Contractor warrants that it has no conflict of interest in the performance of the Services, or has disclosed any such conflict to the Authority, at the date of this Agreement.
- (b) The Contractor must not knowingly enter into any arrangement which may or will result in a conflict of interest affecting the Contractor and the performance of its obligations under this Agreement, unless the Contractor has obtained the Authority's prior written approval, which approval may be granted or withheld at the Authority's absolute and unfettered discretion.
- (c) If the Contractor becomes aware of the existence, or possibility of a conflict of interest affecting the Contractor and the performance of its obligations under this Agreement:
  - (i) the Contractor must immediately advise the Authority in writing;
  - (ii) the Contractor must satisfy the Authority that the Contractor can manage the conflict of interest so that it will not adversely affect the provision of the Services; and
  - (iii) if the Authority is not so satisfied the Authority may terminate this Agreement in accordance with clause 12.2(b).

#### **4.14 MEDIA RELEASES AND ENQUIRIES**

The Contractor must seek the Authority's written approval to:

- (a) any press release or advertisement concerning the Agreement, the Authority or the Services; or
- (b) the release for publication of any information, publication, document or article concerning the Agreement, the Authority or the Services to any third party.

The Contractor must refer any media enquiries concerning the Agreement, the Authority or the Services to the Authority's Representative. The Contractor must ensure that all consultants, sub-contractors and suppliers engaged by the Contractor for the performance of the Services, comply with the requirements of this clause.

### **5. AUTHORITY'S OBLIGATIONS**

To engage the Contractor in the performance of the Services, the Authority will provide and make available to the Contractor all timely relevant instructions, information, documentation or data or any other material as required for the performance of the Services.

### **6. PAYMENT**

#### **6.1 PAYMENT**

In consideration of the provision of the Services, the Authority will pay the Contractor the Fee, subject to clause 6.2.

All approved payments will be made by Electronic Funds Transfer (EFT) direct into the Contractors nominated bank account, or as otherwise agreed with the Authority.

#### **6.2 PRICE ADJUSTMENT**

- (a) The prices specified in the Price Schedule are fixed.
- (b) If the Contractor fails to provide all reports as required by the Services by the Completion Date, the Authority may deduct from the Fee an amount calculated at \$100 per day for each day after the Completion Date that the Contractor does not provide such reports.

#### **6.3 GOODS AND SERVICES TAX**

- (a) Notwithstanding any other provision of this Agreement:
  - (i) if a GST applies to any supply made by either party under or in connection with this Agreement, the consideration provided or to be provided for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply;

- (ii) if the imposition of a GST or any subsequent change in the GST law is accompanied by or undertaken in connection with the abolition of or reduction in any existing taxes, duties or statutory charges (in this clause "taxes"), the consideration payable by the recipient of the supply made under this Agreement will be reduced by the actual costs of the party making the supply that are reduced directly or indirectly as a consequence of the abolition of or reduction in taxes.
- (b) Each party warrants that at the time any supply is made under this Agreement on which GST is imposed, that party is or will be registered under the GST law. If the other party requests written evidence of registration, the party claiming to be registered will promptly produce evidence satisfactory to the party seeking such evidence.
- (c) In relation to taxable supplies made under this Agreement, the Contractor must issue a proper Tax Invoice for each payment of the Fee at or before the time that payment is due.
- (e) "GST", "GST law" and other terms used in this clause 6.3 which have definitions in the *A New Tax System (Goods and Services Tax) Act 1999* have the meanings provided in those definitions and any other applicable legislation and any ruling whether binding or non-binding.

#### **6.5 EFFECT OF PAYMENT**

Payment in part or in total of the Fee, does not constitute an acceptance by the Authority of the Services and does not amount to a waiver of any right or action which the Authority may have at any time against the Contractor.

#### **6.6 TIMING OF PAYMENTS**

The Contractor may lodge with the Authority an invoice for the Services performed after the date that all reports have been provided to the Authority, unless otherwise agreed. The Authority will pay the invoice within 30 days of receipt.

#### **6.7 RECORDS**

The Contractor must keep proper accounts, records (including information stored by computer and any other devices) its disbursements, the Fee and GST.

#### **6.8 ACCESS**

The Contractor must, within a reasonable time of any request, give the Authority access to, or verified copies of, any billing or other information which may be reasonably required to enable any invoice to be substantiated and verified.

#### **6.9 DISPUTE REGARDING PAYMENT**

If either party disputes the amount payable by the Authority to the Contractor in accordance with this Agreement, then the Authority may withhold payment of

the amount in dispute until the matter is resolved in accordance with the dispute resolution process set out in clause 13.4.

## **7. VARIATIONS**

### **7.1 REQUEST**

The Authority may, by notice in writing to the Contractor, request that the Services be varied.

### **7.2 VARIATION FEES**

The Contractor must not commence performance of any variation to the Services until the scope of and fees payable for the variation are agreed in writing between the parties.

## **8. COPYRIGHT AND INTELLECTUAL PROPERTY**

### **8.1 OWNERSHIP**

- (a) All Intellectual Property in that part of the Contract Material that has been developed for the Authority under this Agreement vests upon its creation in the Authority and the Contractor must, on request by the Authority, do everything necessary to vest title and Intellectual Property in the Contract Material in the Authority. Nothing in this subclause will affect the ownership of any pre-existing Intellectual Property in any methodologies, material and tools used or adapted to produce the Contract Material.
- (b) Except where expressly stated to the contrary, this Agreement does not affect the Intellectual Property in any part of the Contract Material that existed prior to the date of this Agreement but the Contractor grants and will ensure that all relevant third parties grant to the Authority, at no additional cost, an irrevocable licence:
  - (i) to use, reproduce and adapt that part of the Contract Material for its own use;
  - (ii) where and to the extent specified in the Agreement, to perform any other act with respect to copyright or to manufacture, sell, hire or otherwise exploit that part of the Contract Material or to licence any third party to do any of those things in respect of that part,but only as part of the Contract Material.
- (c) The Contractor must ensure all licence fees or consents required under law are paid or obtained in connection with any exercise of any Intellectual Property rights in relation to the Contract Material, necessary in the provision of the Services.

## **9. INDEMNITY**

The Contractor indemnifies the Authority from and against all loss, liability, actions, claims, costs, expenses and damages (including all legal costs) which the Authority pays, suffers, incurs or is liable for in respect of:

- (a) any breach of this Agreement by the Contractor;
- (b) any wilful, unlawful or negligent act or omission by the Contractor or a partner, employee, sub-contractor or agent of the Contractor;
- (c) any claim, action, demand, or proceeding by a third party against the Authority (whether in contract, tort (including breach of statutory duty or negligence), equity or otherwise) arising in connection with any wilful, unlawful or negligent act or omission of the Contractor or any partner, employee, subcontractor or agent of the Contractor;
- (d) any dispute, claim, demand, suit, action or proceeding alleging infringement of any Intellectual Property rights of any person on grounds in any way related to the Contract Material;
- (e) personal injury or loss of or damage to property of any kind (whether of the Authority or any other person of any kind), in connection with any wilful, unlawful or negligent act done or not done by the Contractor in respect of the Services,

except to the extent that any such loss, liability, actions, claims, costs, expenses and damages are caused, or contributed to, by the negligent act or omission of the Authority or any person or entity for whose acts it is responsible.

## **10. INSURANCES**

### **10.1 INSURANCE**

Before commencement of the Services, the Contractor must obtain and maintain the following policies of insurance, on terms that sufficiently cover the activities of the Contractor with respect to the Services:

- (a) Such insurances as may be required by law or by the requirements of any relevant professional body;
- (b) Works Compensation Insurance;
- (c) Professional Indemnity insurance of not less than \$5,000,000; and
- (d) Public Liability insurance of not less than \$20,000,000.

The insurances must operate from the date of this Agreement until termination, with the exception of professional indemnity insurance which must operate for a period of six years after termination of this Agreement.

### **10.2 PROOF OF INSURANCE**

On request by the Authority, the Contractor must provide the Authority with proof of the currency of all insurance required to be maintained by the Contractor under this Agreement.

## **11. REPRESENTATIVES**

### **11.1 AUTHORITY'S REPRESENTATIVE**

- (a) The Authority must appoint a person as the Authority's Representative to administer this Agreement for the Authority. The Authority may replace the Authority's Representative from time to time. The appointment and any replacement of the Authority's Representative is to be by way of written notice to the Contractor.
- (b) Any notice, request, variation, direction, demand, consent or other communication given by the Authority's Representative to the Contractor, is deemed to be given on behalf of the Principal.

### **11.2 CONTRACTOR'S REPRESENTATIVE**

- (a) The Contractor must appoint a person as the Contractor's Representative to administer this Agreement for the Contractor. The Contractor may replace the Contractor's Representative from time to time, provided that the Contractor obtains the prior written consent of the Authority.
- (b) Any notice, request, variation, direction, demand, consent or other communication given by the Contractor's Representative to the Authority, is deemed to be given on behalf of the Contractor.

### **11.3 KEY PERSONS**

The Contractor must ensure that the provision of the Services is supervised by the persons nominated in Schedule 4 (each a "**Key Person**") and that each Key Person is available to perform the Services if requested to do so by the Authority. The Contractor may replace a Key Person from time to time, provided that the Contractor obtains the prior written consent of the Authority.

## **12. TERMINATION**

### **12.1 TERMINATION BY THE AUTHORITY FOR CONVENIENCE**

- (a) Subject to clause 12.1(a), the Authority may terminate the whole or any part of this Agreement by notifying the Contractor at any time in writing that this Agreement or a part of this Agreement is terminated from the date specified in the notice (which date shall not be a date earlier than the date on which the notice is received by the Contractor).
- (b) If the Authority gives a notice under clause 12.1(a), the Authority may give to the Contractor such directions as it thinks fit in relation to the performance of this Agreement or part of this Agreement for the period from the date of the notice of termination until this Agreement or part of this Agreement is terminated.
- (c) The Contractor must immediately comply with any direction given under clause 12.1(b).



- (d) Subject to the Contractor complying with clause 12.1(c), the Authority must pay to the Contractor the Fee for Services rendered up until the date specified in the notice of the termination.
- (e) The Contractor releases the Authority from any claim the Contractor may have against the Authority by reason of any termination carried out under clause 12.1(a).

## **12.2 TERMINATION BY THE AUTHORITY FOR DEFAULT BY THE CONTRACTOR**

If the Contractor:

- (a) becomes bankrupt, or insolvent, or enters into a scheme or arrangement with its creditors;
- (b) is unable to satisfy the Authority that it can manage a conflict of interest so that it will not adversely affect the provision of the Services in accordance with clauses 4.13;
- (c) without reasonable cause suspends the carrying out of the Services; or
- (d) commits a substantial breach of this Agreement;

the Authority may:

- (f) in the case of sub-clauses (a) or (b), immediately terminate this Agreement by written notice addressed to the Contractor; or
- (g) terminate this Agreement if the Contractor fails to remedy the breaches in sub-clauses (c) and (d) within 7 days of the date of service of notice on the Contractor. If the Contractor fails to remedy the default within 7 days from the date of service of a notice by the authority on the Contractor, the Contractor may immediately terminate the Contractor by written notice.

In the case of any default by the Contractor that is able to be remedied under this clause and that is not remedied to the satisfaction of the Authority within the relevant period, the Authority may itself perform or engage others to perform the Services and recover all costs of doing so from the Contractor as a debt due on demand. For this purpose, the Authority may retain the services of any of Contractor's sub-contractors (if any) engaged by it to carry out any part of the Services and the Contractor will facilitate the novation of such contracts to Authority if requested by Authority.

## **12.3 TERMINATION BY THE CONTRACTOR**

If the Authority commits a breach of this Agreement and fails to remedy that breach within 14 days of receipt of a written notice from the Contractor directing that the breach be remedied, the Contractor may forthwith terminate this Agreement by providing 14 days written notice to the Authority.

#### **12.4 CONTRACTOR'S CONTINUING LIABILITY**

Termination by the Authority will not release the Contractor from liability in respect of any breach of, nor non-performance of any obligation by the Contractor pursuant to, this Agreement.

#### **12.5 TERMINATION WITHOUT PREJUDICE**

- (a) Termination of this Agreement by either party is without prejudice to any accrued rights or remedies of each party.
- (b) Provisions of this Agreement which are capable of surviving the expiration or termination of this agreement shall survive the expiration or termination of this Agreement.

#### **12.6 PAYMENT ON TERMINATION**

- (a) If this Agreement is terminated the Contractor must cease performance of the Services upon receipt of the notice of termination and submit to Authority within 5 days of receipt of that notice, a proper tax invoice containing the details required by clause 6.6.
- (b) Within 14 days of receipt of the Contractor's invoice under clause 12.6(a), the Authority will pay the Contractor any amount outstanding for Services provided prior to the date of termination, being the amount payable if the Agreement had not been terminated and the Contractor had submitted an invoice on the date of termination.
- (c) The payment referred to in clause 12.6(b) is in full settlement of any claims of the Contractor for the termination of this Agreement.

### **13. GENERAL**

#### **13.1 INCONSISTENCIES**

If there are any inconsistencies between the schedules and this Agreement, to the extent of any inconsistency, the terms and conditions of this Agreement will have precedence.

#### **13.2 NOTICES**

Any notice given in relation to this Agreement must:

- (a) be in writing;
- (b) be addressed to the recipient at the the address of the relevant party set out in Schedule 2 or such address as may from time to time be specified in writing between the parties; and
- (c) will be taken to have been given or made (in the case of delivery in person or by fax or post) when delivered, received or left at the specified address.

If delivery or receipt of a notice occurs on a day on which business is not generally carried on in the place to which the communication is sent or later than 5.00 pm (local time), it will be taken to have occurred at the commencement of business on the next business day in that place.

### **13.3 WHOLE AGREEMENT**

This Agreement is the whole Agreement between the parties concerning the subject matter. It replaces any prior agreement, arrangement or understanding concerning the subject matter.

### **13.4 DISPUTE RESOLUTION**

Where any dispute arises between the parties as to any matter arising out of this Agreement and the Contractor's Representative and the Authority's Representative are unable to resolve the dispute by discussions between them, either party may refer the dispute for resolution to the Chief Executive Officer of the Authority and the Chief Executive Officer (or equivalent) of the Contractor.

### **13.5 GOVERNING LAW**

- (a) This Agreement is governed by the laws of the State of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales.

### **13.6 NO ASSIGNMENT**

The Contractor must not assign or encumber any right or interest under this Agreement without the prior written consent of the Authority.

### **13.7 JOINTLY AND SEVERAL LIABILITY**

If the Contractor comprises more than one person, those persons are jointly and severally liable for the performance and obligations of the Contractor.

### **13.8 SEVERANCE**

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

**EXECUTED** by M A Skewes  
Chief Executive Officer, for and on  
behalf of the State Property Authority  
but not so as to incur personal  
liability

)  
)  
)  
)

.....  
**M A Skewes**

in the presence of:

.....  
**Name of Witness**

.....  
**Signature of Witness**

DRAFT

Execution by {insert Contractor Name}

.....  
**Partner/Principal**

.....  
**Name of Witness**

.....  
**Signature of Witness**

DRAFT

**SCHEDULE ONE**  
**THE PRICE SCHEDULE**

*Insert Tenderer's Price Schedule fees as tendered*

DRAFT

**SCHEDULE TWO**  
**ADDRESS FOR SERVICE OF NOTICES**

State Property Authority  
Attention : David Nalty  
Level 9, 4-6 Bligh Street  
SYDNEY 2000  
Tel: 02 9338 7072  
Fax: 02 9338 .....

**Insert Contractor's Address Details**

DRAFT

### SCHEDULE 3

#### CONFIDENTIALITY UNDERTAKING

**This deed poll** is made on ..... by the following party:

1. **[INSERT NAME]** of **[insert address]** ("the Promisor").
- A. This deed poll is made in favour of the State Property Authority ("the Authority").
- B. The Authority has engaged **[insert name of Contractor]** ("the Contractor") to provide the Services under an agreement dated **[insert date]** ("the Agreement").
- C. It is a term of the Agreement that, if required by the Authority, any partner, employee or agent of the Contractor to whom Confidential Information is to be disclosed must provide this deed poll to the Authority.
- D. The Promisor is **[a partner/an officer/an employee/an agent]** of the Contractor.

**This deed poll witnesses:**

1. The Promisor must:
  - (a) not, without the Authority's prior written consent or otherwise in accordance with clause 4.9(b) of the Agreement, disclose any Confidential Information to any person other than the Authority or the Contractor;
  - (b) not use the Confidential Information for any purpose except that for which it was provided by the Contractor;
  - (c) not use the Confidential Information for any purpose other than for the purpose of enabling the Contractor to provide the Services; and
  - (d) on termination of the Agreement or on the Authority's earlier request, promptly return any Confidential Information in the Promisor's possession or under the Promisor's control to the Authority or as the Authority directs subject to the Contractor's right to retain material under clause 4.8(b) of the Agreement.
2. The term "Services" means the services provided or to be provided by the Contractor under the Agreement.
3. The term "Confidential Information" has the same meaning as it has under the Agreement.
4. The undertakings in this deed poll survive the termination of the Promisor's employment or engagement by the Contractor.

**Signed sealed and delivered by:**

[insert name]

in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name (please print)



**SCHEDULE 4**  
**KEY PERSONS**

As nominated in the Contractor's Tender

DRAFT