

# TRANSPORT FOR NSW (TfNSW)

## CONTRACT DOCUMENT C73

### PROFESSIONAL SERVICES CONTRACT (CONSTRUCTION INDUSTRY) REQUEST FOR TENDER

#### REVISION REGISTER

Ed/Rev Number	Clause Number	Description of Revision	Authorised By	Date
Ed 2/Rev 0		Initial issue	Manager, Contracts Strategy	11.09.09
Ed 2/Rev 1	Details  1.1 1.2 2.4 3.2 5.27  Attachment B	New fields added in Details section for Pretender meeting details, Tender closing details and Tender Validity Period. Guidance notes to enable completion of details for these fields.  Clause amended.  Clause amended to rearrange and rename Attachments.  Clause added.  Clause amended.  Contract Terms deleted. Covering Letter amended. Scope of Works deleted and replaced with Description of Services.  Schedules renamed B1 to B7. Schedules B2, B4 and B5 amended. Schedule 7 - Scope of Works Compliance Table and references to it deleted deleted. Schedule B7 - Other Documentation added.	Manager, Contracts Strategy	16.02.10
Ed 2/Rev 2	Attachment C & E	The order of Attachments C and E have been switched	Manager, Contracts Strategy	19.04.10
Ed 2/Rev 3		RTA changed to RMS	Manager, Contracts Strategy	01.11.11
Ed 2/Rev 4		Definition of RTA and Roads and Traffic Authority added. RMS's Representative changed to RMS Representative.	Manager, Contracts Strategy	01.12.11
Ed 2/Rev 5	Attachment C	Reference to National Code of Practice for the new Construction Industry Implementation Guidelines May 2012	Manager, Contracts Strategy	27.04.12

<b>Ed/Rev Number</b>	<b>Clause Number</b>	<b>Description of Revision</b>	<b>Authorised By</b>	<b>Date</b>
Ed 2/Rev 6	5.7	Reference to RMS Customer Charter	Manager, Contracts Strategy	05.11.12
Ed 2/Rev 7		Reference to WHS instead of OHS	Manager, Contracts Strategy	03.12.12
Ed 2/Rev 8	5.18	Updated to include GIPA refernce	Manager, Contracts Strategy	31.01.13
Ed 2/Rev 9	Attachment C	Reference to National Code of Practice Changed to “Building Code”	Manager, Contracts Strategy	14.03.13
Ed 2/Rev 10	Details, Cls 1.2, 5.7 & Attachment D  Cl 2.4  Attachment C/Cl 5	Inserted requirements to comply with the NSW Government <i>Policy on Aboriginal Participation in Construction</i>  New clause re Ennis Road Tender lodgement requirement  Inserted requirement re FWBC letter of compliance	GM Commercial	20.06.16
Ed 2/Rev 11	5.7  Attachment C	Deletion of Para 6, reference to former Attachment C Building Code 2013  Deleted Building Code	Director Commercial Services	29.09.17
Ed 2/Rev 12	Cl 2.4	Reference to TfNSW instead of RMS Delete clause re Ennis Road Tender lodgement requirement	Director Commercial Services	01.12.19



Transport  
for NSW

**PROFESSIONAL SERVICES  
CONTRACT  
(CONSTRUCTION INDUSTRY)  
Request For Tender**

RFT Title: [insert RFT Title (same as eTender)]

RFT ID: [insert RFT ID (same as eTender)]



<b>DETAILS</b>	
<b>Dated:</b>	<i>[Insert the date of the last revision of the RFT]</i>
<b>Project:</b>	<i>[Insert a brief description of the services included in Attachment E - Professional Services Contract (C71), Annexure G - Services]</i>
<b>RFT Reference (Contract) Number:</b>	
<b>Prequalification requirements</b>	<b>[Insert the prequalification requirements to tender, e.g. "Tenderers must be a member of TfNSW's Technical Services Registration Scheme in the Complex Road Design Category to be able to tender for the Project"]</b> <b>[If no prequalification requirements, insert "Nil"]</b>
<b>RFT Manager:</b>	
<b>Pre-tender meeting date, time and location:</b>	<b><i>Insert one of the following options:</i></b> <b>[The tenderer must attend the mandatory pre-tender meeting at:[insert date, time and location.]]</b> <b>[A pre-tender meeting will be held at [[insert date, time and location]]. Attendance is not mandatory but tenderers are encouraged to attend.]</b> <b>[No pre-tender meeting will be held.]</b>
<b>Tender Closing Date and Time</b>	<i>If advertising via eTenders:</i> <i>[The Tender Closing Date and Time is as per the advertisement on the TfNSW (Roads and Maritime Projects) eTendering website.]</i> <i>If not issuing through eTenders:</i> <i>[Insert closing day, date and time]</i>
<b>Place of Lodgement:</b>	Tenders must be lodged electronically at the Transport for NSW (TfNSW) eTendering website
<b>Tender Validity Period:</b>	<i>[Insert appropriate period, typically 60 days]</i>
<b>Tender Evaluation Criteria used for assessment:</b>	<i>[Insert mandatory and comparative tender evaluation criteria here.</i> <i>If the NSW Government Policy on Aboriginal Participation in Construction applies to the project, insert here the following Evaluation Criterion:</i> <i>"Demonstrated capacity to meet the obligations of the NSW Government Policy on Aboriginal Participation in Construction, June 2018, including evidence of previous performance"</i> <i>Details requested by clause 6 of Attachment C of this RFT are to be evaluated against it]</i>

This document is strictly confidential to TfNSW. You must not disclose or provide this document to any person, other than to persons engaged in the preparation of your Tender. You may only use it for the purpose of responding to this Request for Tender.

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## 1 Introduction

### 1.1 Scope

Transport for NSW (TfNSW) seeks tenders for the supply of the products and/or services required for the Project.

The Project involves [provide an expanded (several paragraphs/1 page overview of the Project)].

Specific details of the products and/or services required are contained in Attachment E Professional Services Contract at Annexure G Services

### 1.2 Contents

This RFT consists of the following:

- Section 1 – Introduction
- Section 2 – Lodgement
- Section 3 – Tender content and format
- Section 4 – Evaluation of Tenders
- Section 5 – Other matters
- Attachment A – Covering Letter (Tender Form)
- Attachment B – Tender format
- Attachment C – NSW Government *Policy on Aboriginal Participation in Construction*
- Attachment D – Statement
- Attachment E – Professional Services Contract
- Attachment F – Information Documents (if attached)

### 1.3 Eligibility

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## 2 If the Details section specifies a prequalification requirement, you must hold that requirement at the date that we release the RFT. Lodgement

### 2.1 Date and Time and Place of Lodgement

You must submit your Tender to the Place of Lodgement by no later than the Tender Closing Date and Time.

If the Place of Lodgement is a webpage then your Tender must be lodged by uploading it electronically via that webpage and you will be deemed to have accepted the rules of conditions referred to on that webpage.

## **2.2 Medium of your Tender**

- (a) If the Place of Lodgement is a webpage then:
  - (i) files must not include macros, applets or executable code or files;
  - (ii) if files are compressed, then they must not be self-extracting (\*.exe) zip files;
  - (iii) file names must include your name (or abbreviated name, if your full name is too long);
  - (iv) file names must have an extension and not have invalid characters or file names/loading path names too long for the system; and
  - (v) documents must be in MS Word or pdf format (other than spreadsheets which may be in MS Excel format).
- (b) If the Details do not state that the Place of Lodgement is a webpage then you must submit 1 electronic and 2 paper copies of your Tender. Electronic versions must be on CD and comply with clause 2.2(a). All copies must be identical.
- (c) You must follow the Tender content and format requirements in clause 3.

## **2.3 Labelling**

You must label your Tender with the RFT Reference Number and the Tender Closing Date and Time.

## **2.4 Not used**

## **2.5 Pretender Meeting**

If a pre-tender meeting is specified in the Details section as being mandatory, then you or your representative must attend as a condition of tender submission..

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# **3 Tender content and format**

## **3.1 Tender content and format**

You must format your Tender according to the following guidelines and using the structure set out in Attachment B. We may regard your Tender as non-complying if you fail to adhere to these requirements.

You must provide any necessary explanatory or extra material with your Tender. Your Tender must be complete without cross references to information previously supplied to us. Where any previously submitted information is relevant, you must resubmit it to us with your Tender.

Your Tender must address this RFT clearly and concisely, and your Tender must be free of irrelevant marketing material. You must identify all products and services needed to meet our required outcomes, together with their costs.

You must base your Tender on the best information available at the time you submit your Tender. We rely on your knowledge and expertise as expressed in your Tender.

### **3.2 Covering Letter (Tender Form)**

A Covering Letter (Tender Form) in the form of Attachment A must accompany your Tender. You must print the letter on your letterhead and an authorised person from your organisation must sign it.

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## **4 Evaluation of Tenders**

### **4.1 Evaluation Panel**

We intend to establish an Evaluation Panel to evaluate Tenders. The Evaluation Panel may be assisted by external advisers.

In evaluating Tenders, the Evaluation Panel will initially assess compliance of each Tender with the requirement to provide the information requested in this RFT.

The Evaluation Panel may eliminate a non-complying Tender from further evaluation. However, we reserve the right to evaluate and accept a Tender that is incomplete or differs from the requirements of this RFT, even if another Tender has been submitted which is complete and does comply with those requirements.

### **4.2 Evaluation criteria**

- (a) The Evaluation Criteria are set out in the Details. The Evaluation Criteria are not set out in any order of priority.
- (b) We seek to obtain overall best value for money. We may allocate weightings to the Evaluation Criteria at our discretion.
- (c) We will not necessarily accept the lowest price offered.
- (d) In assessing your Tender we may have regard to information from any source (including reports on your performance under other contracts whether with us or not).
- (e) We may also at any time enquire into and assess your financial status and at our discretion determine whether we believe you have sufficient financial capacity. We reserve the right at any time to not proceed further with the consideration of your Tender where your financial capacity is not acceptable to us in our absolute discretion.

### **4.3 Discussions, inspections, references & negotiations**

- (a) Detailed evaluation may involve:
  - (i) preliminary discussions or negotiations with one or more tenderers (whether simultaneously or otherwise) including contract negotiations;
  - (ii) visits to reference sites, your operational sites or contact with referees (which may include sites and referees other than those provided by you);
  - (iii) tenderers presenting their Tender to us. Members of the Evaluation Panel and selected advisers may attend the presentation. The Evaluation Panel may record the presentation for reference during the evaluation process;
  - (iv) interviews with any of your personnel who you have nominated or who may deliver any part of the services; or

- (v) requests for you to submit additional information about, clarification of, or improvement to, your Tender at any time during the evaluation process.
- (b) We may at any time notify you of briefings, site inspections, meetings or workshops as part of the assessment process. Unless we tell you that participation is optional, you must attend any such briefings, site inspections, meetings or workshops in order to lodge a conforming Tender.
- (c) We may at any time and in our absolute discretion:
  - (i) shortlist one or more tenderers;
  - (ii) negotiate with any tenderer, or any other person;
  - (iii) request any tenderer to submit an improved or an alternative offer;
  - (iv) cease negotiations or recommence negotiations with any tenderer;
  - (v) accept a Tender by any tenderer;
  - (vi) separate components of the services and negotiate separately with any of the tenderers in respect of those separate components;
  - (vii) accept only part of a Tender by any tenderer;
  - (viii) accept Tenders from more than one tenderer; or
  - (ix) reject all Tenders.
- (d) The objective of the negotiations may include clarifying and agreeing commercial or technical conditions, settling the terms of the contract or finalising any other key documentation. Negotiations may be concurrent with more than one tenderer.
- (e) For the avoidance of doubt, a Tender is not accepted unless and until we execute a binding written contract for the provision of the services the subject of the Tender.

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## **5 Other matters**

### **5.1 Tender Validity Period**

The pricing and proposed terms set out in your Tender will be deemed to remain valid and open to acceptance for at least the Tender Validity Period.

### **5.2 Late Tenders**

You are solely responsible for ensuring that you submit your Tender in accordance with this RFT and in a legible and uncorrupted form, before the Tender Closing Date and Time. Delays caused by delivery methods are your responsibility.

We may exclude your Tender as non-complying if it is not received at the Place of Lodgement before the Tender Closing Date and Time. However, without any obligation to do so, where the integrity and competitiveness of the tendering process will not be compromised, we may determine in our absolute discretion that it is appropriate to consider a late Tender.

### **5.3 Extensions**

We may extend the Tender Closing Date and Time at our absolute discretion. You may request an extension in writing to the RFT Manager but we are under no obligation to grant an extension.

### **5.4 Change of control**

If you are a corporation and you undergo a change in control after you submit your Tender we may in our discretion exclude your Tender from further consideration. You will be taken to have undergone a change of control if, at any time following the submission of your Tender, the power (whether formal or informal, whether or not having legal or equitable force and whether or not based on legal or equitable rights):

- (a) to exercise or control the right to vote attached to 50% or more of the shares or stock in your corporation;
- (b) to dispose of or exercise a right of disposal in respect of 50% or more of the issued voting shares or stock in your corporation; or
- (c) to dominate or control your corporation or the financial or operating policies of your corporation (whether alone or in concert with others, and whether by any act or omission or otherwise),

resides with any person or persons other than those holding that power when your Tender is submitted.

### **5.5 No legal relationship**

This RFT does not create any legal relationship and is not a recommendation, offer or invitation to enter into a legal relationship, contract, agreement or other arrangement in respect of the services the subject of this RFT.

Nothing in this RFT or in the consideration of a Tender obliges us to enter into any agreement with anyone, creates a “process contract” or other implied contract, obliges us to consider or accept any Tender, stops us from considering a non-complying Tender, or prevents us from changing the way we manage this RFT or assess Tenders.

Without limiting the foregoing, the Principal’s Statement of Business Ethics and the Code of Practice are statements of policy only and do not give rise to any legally enforceable obligations on our part.

### **5.6 Tender risks and costs**

Participation in any stage of this RFT process, or in relation to any matter concerning your Tender, will be at your sole risk. All costs, losses and expenses incurred by you (or your employees, agents, contractors or advisors) in any way associated with this RFT will be borne entirely by you and we will not under any circumstances compensate you for them.

### **5.7 Compliance with Codes and Policies**

The NSW Government has issued a Supplier Code of Conduct (the **NSW Code**). You must comply with the NSW Code that is current at the date two weeks before the Tender Closing Date and Time. A copy of the NSW Code is available at [https://buy.nsw.gov.au/\\_data/assets/pdf\\_file/0017/600371/nsw\\_supplier\\_code\\_of\\_conduct\\_v1.1.pdf](https://buy.nsw.gov.au/_data/assets/pdf_file/0017/600371/nsw_supplier_code_of_conduct_v1.1.pdf).

You must comply with the Principal's Statement of Business Ethics. A copy of the Principal's Statement of Business Ethics can be obtained from us.

Your attention is also drawn to the Principal's Customer Charter which is available from <http://www.rms.nsw.gov.au/customercharter/index.html>. You should follow this charter in dealing with TfNSW customers under the contract.

Lodgement of a Tender will itself be an acknowledgment and representation by you that:

- (a) you are aware of the requirements of the NSW Code and the Principal's Statement of Business Ethics;
- (b) you will comply with them; and
- (c) you agree to promptly provide periodic evidence of, and access to, all relevant information to demonstrate your compliance with them during the RFT process and for the duration of any contract that may be awarded to you as a result of your Tender if required by TfNSW.

If you fail to comply with the Code of Practice or the Principal's Statement of Business Ethics, this failure may be taken into account by us when considering your Tender or any subsequent tender and may result in your Tender or any subsequent tender being passed over without prejudice to any other rights of action or remedies available to us.

Where required in Attachment C to this schedule you must demonstrate your commitment and capacity to comply with the NSW Government *Policy on Aboriginal Participation in Construction* (June 2018 or any later update).

## **5.8 No collusion**

In preparing your Tender, you must not communicate (verbally or otherwise), have any arrangement or arrive at any understanding with any other tenderer or potential tenderer concerning the work the subject of this RFT. You must not engage in practices that might be regarded as collusive or anti-competitive.

Where the involvement of another party or parties will provide a more substantial and complete solution for us, you may involve that other party or parties in proposing that solution. You should disclose the nature of the relationship with the other party or parties to us and the Tender must include the details specified in Attachment B Schedule B3 to this RFT.

As part of your Tender, you must provide us with a statement, in the form of Attachment D, signed by a duly authorised person.

If your Tender is successful, TfNSW will require you to contract as prime contractor to provide all of the services the subject of this RFT (or, if this RFT expressly allows you to submit a Tender for part of the services, then the part that your Tender covers). If there are other parties involved which you have disclosed to us in your Tender, then you may be required to subcontract with them and will be responsible for the performance of those parties.

## **5.9 Communication during the RFT process**

You must nominate a contact person in your organisation who will be the only person authorised to contact (and be contacted by) the RFT Manager. You must not otherwise initiate contact with us or any of our staff or advisers in relation to your Tender.

All communications between you and us relating to this RFT must be in writing and made through the RFT Manager. Any oral explanation or response provided to you will not form part of the RFT.

#### **5.10 Advice to tenderers & debriefing**

We do not intend to comment on or disclose the progress of the evaluation of Tenders before giving formal final notice of the outcome of the RFT process but if we prepare a shortlist of tenderers we may notify those not on the shortlist that they were not successful.

At the conclusion of the RFT process we will advise all unsuccessful tenderers of the name(s) of the successful tenderer(s) with whom we enter into a contract for the provision of the services the subject of this RFT.

If an unsuccessful tenderer requests a debriefing, we will meet with the unsuccessful tenderer to explain how that tenderer scored on each Evaluation Criterion.

#### **5.11 Clarifications, further information & addenda**

All requests for further information or clarification of the RFT must be directed in writing by your contact person to the RFT Manager.

If you find a discrepancy, error or omission in this RFT or other information issued by us or you have a query, you should notify the RFT Manager immediately. Queries concerning this RFT should be sent to us as soon as possible. However, you should not send us queries in the 7 calendar days leading up to the Tender Closing Date and Time and we reserve the right to decline to answer any or all queries sent to us during that time.

We may issue an amendment, addition, information or instruction relating to this RFT in writing at any time up to the Tender Closing Date and Time.

Only the RFT Manager is authorised to vary any conditions or arrangements relating to the RFT process.

The RFT Manager may contact you requesting clarification of your Tender during the evaluation period. You must respond to that request according to the timing we instruct.

#### **5.12 Errors by you**

If we consider that there is an unintentional error of form in your Tender, we may, but are not required to, request that you correct or clarify the error. We will not permit any material alteration or addition to your Tender that would, in our view, improve it.

#### **5.13 Changes to the RFT process**

The processes and procedures set out in this RFT represent the manner in which we currently intend to conduct this RFT. However, we will not be under any legal obligation to conduct the RFT in that manner and we may change the procedures set out in this RFT from time to time. We will generally try to notify you of any material changes that may affect you but will not necessarily provide reasons.

Without limiting the previous paragraph, we reserve the right, in our absolute discretion, to do all or any of the following at any stage of the RFT process:

- (a) request information from a tenderer;

- (b) change the format, structure or timing of the RFT process;
- (c) change the scope or requirements of the services the subject of this RFT;
- (d) vary, amend, suspend or terminate the RFT process or your participation in it; or
- (e) evaluate any alternative or non-conforming or partially conforming Tender regardless of whether or not other fully conforming or more conforming Tenders were submitted by that tenderer or other tenderers.

#### **5.14 Sole traders and Partnerships**

Our usual approach is that we will not engage with sole traders or partnerships as they generally do not satisfy our workers compensation insurance requirements. We reserve the right to exclude from further consideration a Tender submitted by a sole trader or a partnership.

#### **5.15 Our confidential information**

Our confidential information includes all information contained in this RFT or subsequently provided by us other than information which is or becomes public knowledge (unless through a breach of confidentiality by you).

You may disclose our confidential information to your employees, agents, contractors and advisors strictly on a need to know basis and solely for the purposes of evaluating the contents of this RFT, preparing your Tender and participating in the RFT process. You must ensure the recipients are bound by similar confidentiality obligations in respect of the information.

You are also permitted to disclose our confidential information to the extent you are required to disclose it by law.

You must not otherwise use or disclose our confidential information.

You must not make any announcement or release any information regarding this RFT (including that it has been sent to you) without our written consent.

#### **5.16 Return and destruction of our confidential information**

We may require you to return or destroy all copies of this RFT and any other confidential information we have provided to you. You must promptly comply with this request and provide us with a written certification of destruction (if applicable).

#### **5.17 Your confidential information**

You should clearly identify any confidential information in your Tender such as information you provide about your company, products, services and customers. Such information will not be confidential if we already know the information, it is public knowledge or we have already obtained the information on a non-confidential basis.

You must not mark the whole or a substantial part of your Tender as confidential. You must not claim confidentiality for any part of your Tender which is not genuinely confidential.

We will keep your confidential information confidential. You agree that we may disclose any information in your Tender (including your confidential information) to our



employees, agents, contractors or advisors on a need to know basis and for the purpose of evaluating or clarifying your Tender or otherwise conducting the RFT process.

If there is any conflict between our obligations of confidentiality to you and our obligations of disclosure, as referred to in clause 5.18 below, our obligations of disclosure will prevail to the extent of the inconsistency.

#### **5.18 Disclosure of details of TfNSW contracts with the private sector**

Notwithstanding anything else, we may disclose any information in your Tender and any resulting contract to the extent that we are required to do so by law, including under the *Government Information (Public Access) Act 2009* or by a valid requirement of a government agency.

#### **5.19 Ownership of Tender document and licence to use**

- (a) We may retain a copy of your Tender (including any samples and drawings) and all correspondence and other materials received from you in the course of the RFT process. This includes all materials with any intellectual property rights that are owned by you or a third party.
- (b) You grant to TfNSW, its officers, employees, agents, solicitors and advisers a licence to use, copy, adapt, amend, disclose or do anything else necessary (in our sole discretion) to any material contained in your Tender or other response to this RFT (including material in your Tender over which other persons have intellectual property rights), for TfNSW's internal business purposes including, without limitation, for the purposes of:
  - (i) evaluating Tenders;
  - (ii) negotiating with the tenderers;
  - (iii) reference during management of any resulting contract; and
  - (iv) anything else related to the above purposes, including governmental and parliamentary reporting purposes.
- (c) Despite the above, ownership of all intellectual property rights in the material contained in your Tender will remain unchanged.

#### **5.20 Disclaimer**

This RFT contains statements based on information or data that at the date it was obtained by us, we believed to be reliable. We make no representation or warranty, express or implied, as to the accuracy or completeness of any information or data or statement given or made in this RFT. You are responsible for forming your own independent judgements, interpretations, conclusions and deductions about any information or data in this RFT, and you should examine all information relevant to the risks, contingencies and other circumstances that could affect your Tender. We will not be liable to you if you rely on any information or data in this RFT.

#### **5.21 Limitation of liability**

To the extent permitted by law, we are not liable for:

- (a) any incorrect or misleading information, or omission to disclose information;

- (b) anything arising out of our exercise, or failure to exercise, any rights under this RFT;
- (c) any decision by us to discontinue or otherwise vary the RFT documents or process;
- (d) any decision by us to reject any or all Tenders, or to shortlist or negotiate with one or more tenderers (irrespective of whether any other Tender complies with the requirements of this RFT);
- (e) any decision by us to enter into a contract in respect of the subject matter of this RFT with any tenderer (irrespective of whether that tenderer's Tender complies with the requirements of this RFT or whether any other Tender complies);
- (f) any costs, losses or expenses incurred by any tenderer in relation to the development, preparation or submission of its Tender; or
- (g) any misunderstanding arising from the failure by a tenderer to observe the requirements of this RFT.

#### **5.22 Reliance on your statements**

We may rely on any statements made by you (including your employees, contractors, advisors and agents). The statements we may rely on include those contained in your Tender, those made in any written or verbal communications and in any negotiations with us. If we believe you have made any false or misleading statements, we may, in our absolute discretion, exclude your Tender from the evaluation process at any time.

#### **5.23 Inclusion of this RFT and Tender in contract**

We may include any part or the whole of this RFT, your Tender and any other written or verbal statements made by you (including by your employees, contractors, advisors or agents) in any resulting contract that we may enter into in respect of the subject of your Tender.

#### **5.24 Inducement, coercion & improper assistance**

You (and your employees, contractors, advisers and agents) must not offer any form of inducements to us or exhibit undue pressure (including any duress) on us, our employees or advisors in connection with this RFT process.

We may exclude your Tender from further consideration where we consider that it has been compiled:

- (a) with the improper assistance of any person now or previously associated with us;
- (b) utilising information unlawfully or improperly obtained from us;
- (c) in breach of an obligation of confidentiality to us; or
- (d) contrary to the terms of this RFT.

#### **5.25 Conflict of interest**

You must notify us of any potential or actual conflict of interest or duty in the Tender that may affect your ability to provide the proposed services to us. If we request, you will meet with us and discuss in good faith our concerns regarding any such conflict of interest or

duty. In any event, you must ensure that you act impartially in preparing your Tender and without regard to any conflict of interest.

## **5.26 Precedence of documents**

If there is any inconsistency between this Section 5 of the RFT and any of the other sections or attachments, then the terms of this Section 5 will prevail to the extent of that inconsistency.

## **5.27 Definitions**

In this RFT, terms explained in the Details have the meaning given there and, except where the context otherwise requires:

**Covering Letter (Tender Form)** means the letter from the tenderer in the form set out in Attachment A.

**Description of Services** means the document provided in **Attachment E** Professional Services Contract - **at** Annexure G.

**Details** means the information on page 2 of this RFT under the heading Details.

**Evaluation Criteria** mean each of the criterion listed in the Details.

**Evaluation Panel** means the panel referred to in clause 4.1.

**NSW Code** means the NSW Government Supplier Code of Conduct and referred to in clause 5.7.

**Our, us** and **we** means TfNSW.

**Place of Lodgement** is defined in the Details.

**Project** means the products and/or services described in the Details which constitute the subject matter of this RFT.

**RFT** means this Request for Tenders.

**RFT Manager** is defined in the Details. This is the person to whom all communications with TfNSW are to be directed under clauses 5.9 and 5.11.

**RFT Reference Number** is defined in the Details.

**RMS** means the Roads and Maritime Services, established under the *Transport Administration Act 1988* (NSW).

**RMS or Roads and Maritime Services** means TfNSW or Transport for NSW, and a reference to "RMS" in a document (including an RMS specification or other document) is to be read as a reference to TfNSW or Transport for NSW.

**Tender** means the documents you submit in response to this RFT.

**Tender Closing Date and Time** is defined in the Details.

**Tender Validity Period** is defined in the Details.

**TfNSW** means Transport for NSW (ABN 18 804 239 602) a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW).

**You** and **your** means the tenderer.

## **5.28 Interpretation**

Unless the contrary intention appears:

**(a) Statutes**

A reference to a statute, regulation, statutory instrument, order, proclamation, ordinance or by-law (“legislation”) includes all legislation amending, consolidating or replacing it, and a reference to a statute includes all regulations, statutory instruments, orders, proclamations, ordinances and by-laws issued under that statute;

**(b) Law**

A reference to a law includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);

**(c) Singular includes plural**

A reference to the singular includes the plural and vice versa;

**(d) Person**

A reference to a “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;

**(e) Group of persons**

A reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually;

**(f) Dollars**

A reference to an amount of money is a reference to the lawful currency of Australia;

**(g) Time**

A reference to a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day;

**(h) Day**

A reference to a day is to a calendar day and is to be interpreted as the period of time commencing at midnight and ending 24 hours later;

**(i) Meaning not limited**

The words “include”, “including”, “for example” or “such as” are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind;

**(j) Time of day**

A reference to time is a reference to Sydney time;

**(k) Headings**

Headings are only for convenience and do not affect the construction of any provision; and

**(l) Grammatical forms of defined words**

Where a word is defined then other grammatical forms of that word are to be interpreted in the same manner with the necessary grammatical change.

# Attachment A - Covering Letter (Tender Form)

**[Print on your company's letterhead]**

[Date]

Transport for NSW  
20-44 Ennis Road  
Milsons Point NSW 2061  
Attention: **[insert name of RFT Manager]**

Dear Sir/Madam

**[INSERT NAME OF RFT & RFT REF NO]**

In accordance with the terms of the above Request for Tender (RFT) we offer to provide the services the subject of this RFT. The terms of our offer are set out in our tender which is constituted by the following documents:

- (a) this letter;
- (b) a Professional Services Contract (Construction Industry) Deed Form and all schedules, annexures and attachments referred to in it;
- (c) the following addenda:
  - (i) *[respondent to insert the list of all of the addenda issued by TfNSW].*

We acknowledge that we have received the addenda listed above and that we have taken them into account in preparing this tender. We confirm that the information provided in our tender is accurate at the date of this statement and has been provided after making all due enquiries.

## **Acceptance**

Our tender remains open for acceptance until the end of the Tender Validity Period referred to in the Details in the RFT. We understand that TfNSW is not bound to accept the lowest priced tender, or any tender, it may receive.

## **Compliance with RFT and NSW Code**

We confirm that, having made diligent inquiries of all relevant personnel, we have complied with all applicable requirements of the RFT and the NSW Government Supplier Code of Conduct.

## **No Collusion**

We warrant that in preparing our Tender we did not communicate (verbally or otherwise) or have any arrangement or arrive at any understanding with any other tenderer which in any way reduced, or could have the effect of reducing, the competitiveness of the assessment process.

## **Our confidentiality obligations**

We confirm that we have complied with our confidentiality obligations in relation to this RFT.

## **No further revisions**

In reviewing the RFT and in preparing our tender, we confirm that we have sought appropriate legal advice and guidance.

## **Acknowledgment**

We acknowledge and agree that:

- the RFT does not create any legal relationship or obligations on TfNSW and we submit our tender fully understanding and accepting all of the terms of the RFT;
- TfNSW does not warrant or assume any responsibility for, or make any representations about, the accuracy, suitability or completeness of the RFT;
- TfNSW does not owe any duty of care or other responsibility to us with respect to the RFT;
- we have examined all information relevant to the risks, contingencies and other circumstances having an effect on our tender and our tender reflects those risks, contingencies and circumstances; and
- TfNSW will be relying upon each of the representations and warranties given by us in our tender in selecting the successful tenderer.

Yours sincerely

---

Signature

**[insert name], [insert title]**

as authorised signatory for **[insert your company's full company name and ABN]**





# Attachment B - Tender format

Your Tender is to consist of the documents set out in the Covering Letter (Tender Form) (refer to Attachment A) and the schedules set out below. You must use the same Schedule names and numbers and paragraph headings and numbers given below.

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## Schedule B1 - Executive summary

This section should include a high-level summary of your Tender, including:

- (a) an overview of your approach;
- (b) factors which you consider important for TfNSW to consider; and
- (c) any other relevant information to assist TfNSW to better understand your tender.

---

## Schedule B2 - Company profile

This section must include full details of your company including information regarding your track record in supplying relevant services, financial stability and future direction. You must include at least the following details:

- (a) full name and ABN (and ACN if a company or ARBN if a foreign company);
- (b) brief company history;
- (c) overview of products and services provided by the company;
- (d) number of years carrying on a business providing services the subject of this RFT;
- (e) financial stability of the company and annual revenue over the last 3 years of your business providing services similar to those sought in this RFT;
- (f) the name, title, address, direct telephone and fax numbers and email address of the designated person in the company who will be TfNSW's primary contact during the evaluation process;
- (g) details regarding the ownership and control of your company to assist TfNSW to make any assessment necessary under clause 5.4; and
- (h) any other relevant information to assist TfNSW to better understand your tender.

---

## Schedule B3 - Other parties

If your Tender involves other parties, you must include the following information about those other parties in this section:

- (a) full legal name, ACN/ARBN and ABN of the company;
- (b) description of the involvement of that company in your Tender;

- (c) description of your relationship with that company;
- (d) details of that company's track record in performing the role envisaged in your Tender; and
- (e) any other relevant information to assist TfNSW to better understand your tender.

**If your Tender does not involve other parties then you must state so.**

## **Schedule B4 - Pricing**

You must provide pricing information in the format set out below. You must provide individual prices on a **GST exclusive** basis and include all other taxes. GST is to be included as a separate item and added to form the contract sum. You must state all amounts in Australian dollars.


## **Schedule B5 – Non- Price Evaluation Criteria**

Here you must address each of the Evaluation Criteria listed in the Details section of this RFT (except price which is to be covered in Schedule B4 **Pricing**).

## **Schedule B6 - References**

In this section, you should list organisations who are prepared to provide a reference for you and to whom you have provided services of a similar nature and scope as those the subject of this RFT. It is preferable if these referees include customers who have recently acquired those services.

You must provide the following information for each referee:

- (a) name of the organisation;
- (b) name, title, address and telephone number of the person we can contact;
- (c) services provided;
- (d) organisation's industry;
- (e) scale of operations in terms of quantity of services, dollar value and any other relevant factors; and
- (f) any other relevant information to assist TfNSW to better understand your tender.

Please note that we may contact your nominated referees or other customers for reference checking without advising you.

---

## **Schedule B7 - Other documentation**

*[Insert requirements for submission of other documentation to be submitted by the tenderers eg  
“Provide Curriculum Vitae for proposed personnel in the following roles: . . .” or delete Schedule B7 if  
not applicable]*





# Attachment C – NSW Government *Policy on Aboriginal Participation in Construction*

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**The Policy on Aboriginal Participation in Construction applies**

*Yes / No*

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1. The Tenderer's attention is drawn to the requirements of the NSW Government *Policy on Aboriginal Participation in Construction*.
2. The Policy is available at:  
<https://www.procurepoint.nsw.gov.au/policy-and-reform/nsw-procurement-reform/construction/policy-framework-construction>.
3. Where the Policy applies as stated in the Reference Schedule, the Contractor will be required to comply with relevant Category requirements of the Policy. The Minimum Aboriginal Participation Spend (MAPS) on Aboriginal participation is as stated in the Reference Schedule.
4. TfNSW will determine the MAPS before the Deed is executed or Order issued, as relevant. The MAPS will be included in the executed Deed or in issued Order, where relevant. The MAPS will remain fixed until the date of Completion of Services or work under the Order as relevant, except where TfNSW and the Contractor agree to re-set it (e.g. where legitimate exclusions were overlooked at tender time).
5. Where stated in the Reference Schedule, the Contractor will be required to provide the Aboriginal Participation Plan and the Aboriginal Participation Reports, at the times specified in the Deed or Order, and in the format prescribed by the NSW Procurement Board. Templates are available at:
6. <https://buy.nsw.gov.au/policy-library/policies/aboriginal-participation-construction>  
.
7. As part of its tender response, the Tenderer must submit the following Aboriginal Participation in Construction details:
  - (a) an undertaking that, in the event that it becomes the Contractor, it is prepared to provide an Aboriginal Participation Plan and the Aboriginal Participation Reports, which must comply with the Policy;
  - (b) evidence of its ability to meet the obligations under the Policy on the Contract;
  - (c) details of its Aboriginal participation in construction performance outcomes on other TfNSW or NSW Government contracts; and
  - (d) proposed exclusions for determining the MAPS.

# Attachment D - Statement

**Project (Title):**

**Tenderer:**

**RFT Reference (Contract)  
Number:**

I ..... of ..... *[insert address]* state that, in respect of the tender lodged in relation to the RFT:

1. I hold the position of .....*[insert position]* and am duly authorised by the Tenderer to make this statement on its behalf.
2. To the best of my knowledge, the tender was prepared by the Tenderer (including the Tenderer's employees and agents) in accordance with the standard of ethical behaviour set out in the Principal's Statement of Business Ethics.
3. As at the date of this statement, the Tenderer intends to do the work that is the subject of the tender in accordance with the standard of ethical behaviour set out in the Principal's Statement of Business Ethics.

I make this statement conscientiously believing the same to be true and correct.

**Signed:**

**Witness:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

**on:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print name

**by:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# Attachment E - Professional Services Contract (C71/C72)

*[Insert here C71, C72 or reference to relevant existing PSC Panel Deed C72, as applicable]*



Attachment F – Information Documents (if used)