**Insert Lead Agency name**

**Request for Proposal (RFP) for**:The Supply of Energy Performance Contracting Services

**Reference number**:

**Issue** **Date**:

**Place for lodgement**:

Contents

**Introduction**

**RFP Part A – Conditions of Tendering**

**RFP Part B – The Specification**

**RFP Part C – Proposed Contract**

**RFP Part D – Tenderer’s Response**

**RFP Part E – Ethical Employment Statement**

**Introduction**

## The Opportunity

<Insert a short description of the opportunity, including:

* Scope inclusions for the overall opportunity of the EPC (e.g. types of buildings, number of sites, geographical location, list of site addresses, total energy consumption, total floor area)
* Scope inclusions for a reduced sample used for this RFP if applicable (e.g. types of buildings, number of sites, site addresses)
* Requirement for energy and water conservation measures to meet an average seven year simple payback period, in line with the Greener Government Buildings guidelines
* Other preferences in additional to standard EPC solutions that may be specific to the customer’s business (e.g. alignment with teaching and learning outcomes)>

***Example:***

As part of a commitment to reducing the ongoing energy and water consumption of its facilities, the Victorian Government Department of Treasury and Finance (DTF) is inviting responses to this Request for Proposal (RFP) for the Supply of Energy Performance Contracting (EPC) Services.

Initially, tenderers are expected to submit energy efficient solutions to the following sites at the RFP stage:

* Building 1, address
* Building 2, address

Upon reviewing proposals, the preferred tenderer will then be invited to the next stage at the Detailed Facility Study (DFS) to investigate further energy saving solutions across the broader DTF portfolio.

The combined Net Lettable Area (NLA) of these facilities is X m2.

Proposed works will be assessed based on return on investment as a blended simple payback period of seven years for the project as a whole, including all energy and water conservation measures.

Three tenderers from the Victorian Government Energy Performance Contracting (EPC) Services Panel have been issued with this Request for Proposal. Further details of the expected structure and evaluation criteria for the Proposals is provided in this document.

Proposals must be lodged via email to the address provided in item 7, by 2 p.m. on the closing date of 26 March 2008.

## Objectives

The Lead Agency is requesting the submission of Proposals in response to this RFP for Energy Performance Contracting (EPC) Services.

The Lead Agency’s specific requirements in relation to the Goods and/or Services are set out in Part B of this RFP (Specification).

In issuing this RFP, the Lead Agency seeks to identify a Tenderer who is:

#### able to provide the Goods and/or Services required by the Lead Agency in the manner set out in the Specification;

#### able to demonstrate a commitment and ability to working in collaboration with the Lead Agency over the term of any agreed contractual period to continuously seek improvements in value, efficiency and productivity in connection with the provision of the Goods and/or Services; and

#### prepared to work with the Lead Agency to continue to identify opportunities for improvement in the quality and level of service provided to the Lead Agency,

for the mutual benefit of both the Lead Agency and the Tenderer.

**Only Tenderers capable of providing all of the Goods and/or Services and complying in full with the conditions set out in this RFP should submit a Tenderer’s Response.**

**RFP Part A – Conditions of Tendering**

# Reference Schedule

The information contained in this Reference Schedule must be read in conjunction with the remainder of Part A of this RFP.

Capitalised terms used in this RFP have defined meanings which are explained in section 16 of this Part A. Capitalised terms defined elsewhere in this RFP but not referred to in section 16 of Part A have the same meaning wherever used throughout this RFP.

Item 1: Lead Agency

<Insert department or agency name>

Item 2: Tender reference number:

Item 3: Project Manager

|  |  |
| --- | --- |
| **Project Manager** | |
| Name and title |  |
| Address for correspondence by post |  |
| Email Address |  |

Item 4: Indicative Timetable\*

|  |  |
| --- | --- |
| **Activity** | **Date** |
| RFP issued |  |
| RFP Briefing and Site Visits | Allow approx. 2 weeks from RFP issue date |
| End of period for questions or requests for information (section 4.2) | Allow 1 week before tender closing date |
| **Closing Time** (section 5.2) | Allow 7 to 12 weeks from briefing date |
| Intended completion of evaluation of Tenders | Typically 3 weeks from close |
| Intended formal notification of successful Tenderer | Typically a week later |
| Intended Negotiation of Detailed Facility Study (DFS) Agreement with successful Tenderer |  |
| Intended DFS submission date | Approx. 3-6 months from signing of DFS agreement |
| Intended execution of Proposed Contract(s) |  |
| Intended (potential) commencement date |  |

\* Note: This timetable is provided to give Tenderers an indication of the timing of the Tendering Process. The timetable is indicative only and may be changed by the Lead Agency in accordance with the Conditions of Tendering set out in Part A of this RFP.

\*\* Amend to refer to Australian Eastern Daylight Savings Time where applicable.

Item 5: RFP Briefing and Site Visit details

|  |  |
| --- | --- |
| Briefing Date and time | Allow approx. 2 weeks from RFP issue date |
| Venue | Typically on a site included in scope as walk through audits may be conducted after briefing. |
| Confirmation of attendance |  |

Site visits for the purpose of auditing and preparation of Proposals will be scheduled by the Project Manager, and will include the following sites:

* List sites in scope

Further detail will be provided as to exact locations and times of site visits.

Item 6: Additional materials

The following information for each site may be made available where appropriate to the shortlisted Tenderers on confirmation of the signed acceptance of the Deed of Confidentiality as set out in Attachment B to this Part A of the RFP relating to use of the information provided:

<note: please delete from list below any materials that will not be provided to tenderers>

**General:**

* Building Description;
* Size of facility (e.g. GFA or NLA)
* Building Hours of Operation;
* Number of Occupants; and
* Previous energy audit reports. Note that site services may have changed since submission of these reports.

**Utilities:**

* Electricity 30min interval data (24 months);
* Gas and water consumption details from bills (24 months); and
* A copy of at least one recent electricity, gas and water bill.

**Drawings:**

* Current floor layouts;
* Reflective Ceiling Grids / Lighting Layout Plan;
* Electrical Services Schematics;
* BMS Schematics (if applicable);
* BMS Points List (if applicable);
* Mechanical Plant Layouts;
* Mechanical Services Schematics; and
* AutoCAD Drawing Files for above.

**Capital Expenditure Analysis:**

* Asset register; and
* Capital expenditure forecast (Mechanical, Lighting / Electrical, BMS).

**Operational Expenditure Analysis:**

* Planned Service Agreement (Mechanical, Lighting / Electrical, BMS).

**Maintenance History**

* Mechanical and electrical service breakdowns.

## Item 7: Lodgement of Tenders

**Email lodgement**

|  |  |
| --- | --- |
| Email address |  |
| Other requirements |  |

# Rules governing this RFP and the Tendering Process

## Application of these rules

Participation in the Tendering Process is subject to compliance with the rules contained in this Part A.

All persons (whether or not they submit a Proposal) having obtained or received this RFP may only use it, and the information contained in it, in compliance with the rules set out in this Part A.

All Tenderers are deemed to accept the rules contained in this Part A.

The rules contained in this Part A of the RFP apply to:

#### the RFP and any other information given, received or made available in connection with the RFP including any additional materials specified in **item 6** of the **Reference Schedule** and any revisions or addenda;

#### the Tendering Process; and

#### any communications (including any Tender Briefings, presentations, meetings or negotiations) relating to the RFP or the Tendering Process.

## Structure of RFP

This RFP consists of the following parts:

#### **Introduction** – contains an overview of the opportunity presented in, and the objectives of, this RFP.

#### **Part A** – **Conditions of Tendering** sets out the rules applying to the RFP documents and to the Tendering Process. These rules are deemed to be accepted by all Tenderers and by all persons having received or obtained the RFP.

#### **Part B** – **Specification** describes the Goods and/or Services in respect of which the Lead Agency invites Tenders from interested persons.

#### **Part C** – **Proposed Contract** contains the terms and conditions in compliance with which the Lead Agency desires the Goods and/or Services set out in Part B to be provided.

#### **Part D** – **Tenderer’s Response** specifies the information to be provided in a Proposal and may also specify any information to be provided by a Tenderer by other means. Part D may include templates to be completed and included in a Proposal.

#### **Part E** – **Ethical Employment Response** contains the statement to be completed by shortlisted Tenderers demonstrating their ability to satisfy the ethical employment standard. ***Tenderers should not complete and return Part E unless and until requested to do so by the Lead Agency.***

## RFP

### Status of RFP

This RFP is not an offer. This RFP is an invitation for persons to submit a proposal for the provision of the Goods or Services set out in the Specification contained in Part B of this RFP.

Nothing in this RFP is to be construed as creating any binding contract for the supply of the Goods or Services (express or implied) between the Lead Agency and any Tenderer unless and until the Lead Agency has accepted that Tenderer’s Proposal in the manner contemplated in section 9.1 of this Part A.

### Accuracy of RFP

While all due care has been taken in connection with the preparation of this RFP, the Lead Agency does not warrant the accuracy of the content of the RFP and the Lead Agency will not be liable for any omission from the RFP.

### Additions and amendments to RFP

The Lead Agency reserves the right to change any information in, or to issue addenda to, this RFP.

### Representations

No representation made by or on behalf of the Lead Agency in relation to the RFP (or its subject matter) will be binding on the Lead Agency unless that representation is expressly incorporated into the contract(s) ultimately entered into between the Lead Agency and a Tenderer.

### Confidentiality

All persons (including Tenderers) obtaining or receiving the RFP and any other information in connection with the RFP or the Tendering Process must keep the contents of the RFP and such other information confidential.

The Lead Agency may require persons and organisations wishing to access or obtain a copy of this RFP or certain parts of it, or any additional materials (as referred to below in section 3.7 of this Part A) to execute a deed of confidentiality (in a form required by, or satisfactory to, the Lead Agency) before or after access is granted.

### Licence to use and Intellectual Property Rights

Persons obtaining or receiving this RFP and any other documents issued in relation to the Tendering Process may use the RFP and such documents only for the purpose of preparing a Proposal.

Such Intellectual Property Rights as may exist in the RFP and any other documents provided to Tenderers by or on behalf of the Lead Agency in connection with the Tendering Process are owned by (and will remain the property of) the Lead Agency except to the extent expressly provided otherwise.

### Availability of additional materials

Additional materials (if any) may be accessed in the manner set out in **item 6** of the **Reference Schedule**.

## Communications during the Tendering Process

### Project Manager

All communications relating to the RFP and the Tendering Process must be directed to the Project Manager.

### Requests for clarification or further information

Any questions or requests for further information or clarification of the RFP (or any other document issued in connection with the Tendering Process) must be submitted to the Project Manager in writing, preferably by email.

Any communication by a Tenderer to the Lead Agency will be effective upon receipt by the Project Manager (provided such communication is in the required format).

The Lead Agency may restrict the period during which it will accept questions or requests for further information or for clarification and reserves the right not to respond to any question or request, irrespective of when such question or request is received.

Except where the Lead Agency is of the opinion that issues raised apply only to an individual Tenderer, questions submitted and answers provided will be provided to all Tenderers without identifying the person or organisation having submitted the question. In all other cases, the Lead Agency may deliver any written notification or response to a Tenderer by leaving or delivering it to the address of the Tenderer (as notified to the Project Manager).

A Tenderer may, by notifying the Project Manager in writing, withdraw a question submitted in accordance with this section 4.2 in circumstances where the Tenderer does not wish the Lead Agency to respond to the Tenderer’s question.

### Unauthorised communications

Communications (including promotional or advertising activities) with staff of the Lead Agency or consultants assisting the Lead Agency with the Tendering Process are not permitted during the Tendering Process except as provided in section 4.2 above, or otherwise with the prior written consent of the Project Manager. Nothing in this section 4.3 is intended to prevent communications with staff of, or consultants to, the Lead Agency to the extent that such communications do not relate to this RFP or the Tendering Process.

Tenderers must not otherwise engage in any activities that may be perceived as, or that may have the effect of, influencing the outcomes of the Tendering Process in any way.

Unauthorised communications with such persons may, in the absolute discretion of the Lead Agency, lead to disqualification of a Tenderer.

### Improper assistance

Tenderers must not seek or obtain the assistance of employees, agents or contractors of the Lead Agency or the State in the preparation of their Proposals. In addition to any other remedies available to it under law or contract, the Lead Agency may, in its absolute discretion, immediately disqualify a Tenderer that it believes has sought or obtained such assistance.

### Anti-competitive conduct

Tenderers and their respective officers, employees, agents and advisers must not engage in any collusion, anti-competitive conduct or any other similar conduct with any other Tenderer or any other person in relation to the preparation, content or lodgement of their Proposal. In addition to any other remedies available to it under law or contract, the Lead Agency may, in its absolute discretion, immediately disqualify a Tenderer that it believes has engaged in such collusive or anti-competitive conduct.

### Complaints about Tendering Process

Any complaint about the RFP or the Tendering Process must be submitted to the Project Manager in writing immediately upon the cause of the complaint arising or becoming known to the Tenderer. The written complaint must set out:

#### the basis for the complaint (specifying the issues involved);

#### how the subject of the complaint (and the specific issues) affect the person or organisation making the complaint;

#### any relevant background information; and

#### the outcome desired by the person or organisation making the complaint.

## Submission of Proposals

### Lodgement

Proposals must be lodged only by the means set out in **item 7** of the **Reference Schedule**.

### Late Proposals

Proposals must be lodged by the Closing Time. The Closing Time may be extended by the Lead Agency in its absolute discretion by providing written notice to Tenderers.

Proposals lodged after the Closing Time or lodged at a location or in a manner that is contrary to that specified in this RFP will be disqualified from the Tendering Process and will be ineligible for consideration, except where the Tenderer can clearly demonstrate (to the reasonable satisfaction of the Lead Agency) that late lodgement of the Proposal:

#### resulted from the mishandling of the Proposal by the Lead Agency; or

#### was hindered by a major incident and the integrity of the Tendering Process will not be compromised by accepting a Proposal after the Closing Time.

The determination of the Lead Agency as to the actual time that a Proposal is lodged is final. Subject to paragraphs (a) and (b) above, all Proposals lodged after the Closing Time will be recorded by the Lead Agency, and will only be opened for the purposes of identifying a business name and address of the Tenderer. The Lead Agency will inform a Tenderer whose Proposal was lodged after the Closing Time of its ineligibility for consideration. All such Proposals will be returned at the conclusion of the Tendering Process.

## Proposal documents

### Format and contents

Tenderers must ensure that:

#### their Proposal is presented in the required format as set out in Part D; and

#### all the information fields in Part D are completed and contain the information requested.

**The Lead Agency may in its absolute discretion reject a Proposal that does not include the information requested or is not in the format required.**

If the Lead Agency elects to shortlist any Tenderers, those shortlisted Tenderers may be required to provide the information requested in Part E of this RFP. Tenderers may wish to prepare Part E in order to ensure that they can respond to a request by the Lead Agency within the applicable timeframes, but should not submit those Parts unless and until required to do so by the Lead Agency.

Unnecessarily elaborate responses or other presentations beyond what is sufficient to present a complete and effective proposal are not desired or required. Elaborate artwork and expensive visual and other presentation aids are not necessary.

Word limits where specified should be observed and the Lead Agency reserves the right to disregard any parts of the Proposal exceeding the specified word limit.

Tenderers should fully inform themselves in relation to all matters arising from the RFP, including all matters regarding the Lead Agency’s requirements for the provision of the Goods and/or Services. Tenderers will be deemed to have made their own enquiries and assessed all risks regarding the RFP, and to have fully incorporated the impact of any unknown risks into their Proposal.

### Illegible content, alteration and erasures

Incomplete Proposals may be disqualified or evaluated solely on the information contained in the Proposal.

The Lead Agency may disregard any content in a Proposal that is illegible and will be under no obligation whatsoever to seek clarification from the Tenderer.

The Lead Agency may permit a Tenderer to correct an unintentional error in their Proposal where that error becomes known or apparent after the Closing Time, but in no event will any correction be permitted if the Lead Agency reasonably considers that the correction would materially alter the substance of the Tenderer’s Response.

### Obligation to notify errors

If, after a Tenderer’s Response has been submitted, the Tenderer becomes aware of an error in the Tenderer’s Response (including an error in pricing, but excluding clerical errors which would have no bearing on the evaluation of the Proposal) the Tenderer must promptly notify the Lead Agency of such error.

### Preparation of Proposals

The Lead Agency will not be responsible for, nor pay for, any expense or loss that may be incurred by Tenderers in the preparation of their Proposals.

### Disclosure of Proposal contents and Proposal information

Proposals will be treated as confidential by the Lead Agency. The State will not disclose Proposal contents and Proposal information, except:

#### as required by law (including, for the avoidance of doubt, as required under the *Freedom of Information Act* 1982 (Vic) (**FOI Act**));

#### for the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;

#### to external consultants and advisers of the Lead Agency engaged to assist with the Tendering Process; or

#### general information from Tenderers required to be disclosed by government policy.

### Use of Proposals

Upon submission in accordance with the requirements of section 5 of this Part A and **item 7** of the **Reference Schedule**, all Proposals become the property of the Lead Agency. Tenderers will retain all ownership rights in any intellectual property contained in the Proposal. The submission of a Proposal does not transfer to the Lead Agency any ownership interest in the Tenderer’s intellectual property rights, or give the Lead Agency any rights in relation to the Proposal, expect as expressly set out below.

Each Tenderer, by submission of their Proposal, is deemed to have licensed the Lead Agency to reproduce the whole, or any portion, of their Proposal for the purposes of enabling the Lead Agency to evaluate the Proposal.

Further, in submitting a Proposal, the Tenderer accepts that the Lead Agency may, in accordance with the requirements of applicable Victorian Government policy, publish (on the internet or otherwise):

#### the name of the successful or recommended Tenderer(s);

#### the value of the successful Proposal; and

#### the Tenderer’s name together with the provisions of the contract generally.

### Period of validity

All Proposals must remain valid for a minimum of 120 days from the Closing Time. The period of validity of a Proposal may be extended by mutual agreement between the Lead Agency and the Tenderer.

### Status of Proposal

#### Each Proposal constitutes an irrevocable offer by the Tenderer to the Lead Agency to provide the Goods and/or Services required under, and otherwise to satisfy the requirements of, the Specification (Part B of this RFP) on the terms and conditions of the Proposed Contract (subject to the Statement of Compliance contained in Part D of this RFP).

#### A Proposal must not be conditional on:

##### board approval of the Tenderer or any related body corporate of the Tenderer being obtained;

##### the Tenderer conducting due diligence or any other form of enquiry or investigation;

##### the Tenderer (or any other party) obtaining any regulatory approval or consent;

##### the Tenderer obtaining the consent or approval of any third party; or

##### the Tenderer stating that it wishes to discuss or negotiate any commercial terms of the contract.

##### The Lead Agency may, in its absolute discretion, disregard any Proposal that is, or is stated to be, subject to any one or more of the conditions detailed above.

#### The Lead Agency reserves the right to accept a Proposal in part or in whole or to negotiate with a Tenderer in accordance with section 8.3 of this Part A.

## Compliance with Specification and Proposed Contract

### Compliance with Specification

Under Part D of this RFP a Tenderer must submit a tabulated statement showing, in order of the relevant clauses, its level of compliance with the Specification contained in Part B of this RFP.

In particular, Tenderers must state if they will not comply with the Specification, or will only comply with the Specification subject to conditions. Full details of the non-compliance (including the nature and extent of the non-compliance and any reasons for such non-compliance) must be stated in the space provided in the tabulated statement contained in section 2 of Part D. No response is required in respect of a particular section of the Specification where Tenderers will comply with the Specification. Only sections that Tenderers will not comply with, or will only comply with subject to conditions, should be noted in the tabulated statement.

The Lead Agency is prepared to contemplate minor variations or departures from the Specifications proposed by Tenderers. However, Tenderers should note that significant or substantive variations or departures from the Specifications will **not** be viewed favourably unless the Tenderer is able to demonstrate to the satisfaction of the Lead Agency the necessity for such variations or departures.

***The Lead Agency will assume that a Tenderer’s Response complies in all relevant respects with the Specification unless the Tenderer states otherwise. Failure to notify the Lead Agency of any non-compliance may result in a Tenderer’s Response being disregarded.***

For the purposes of this section 7.1:

#### ***Complies*** means that in all respects the Tenderer’s Response meets or otherwise satisfies all specified outputs, characteristics or standards.

#### ***Will comply subject to conditions*** means that the specified outputs, characteristic or performance standard can only be met by the Tenderer subject to certain conditions.

#### ***Will not comply*** means that the specified outputs, characteristic or performance standard is not met by the Tenderer’s Response.

### Compliance with the Proposed Contract

Under Part D of this RFP, a Tenderer must also submit a tabulated statement, with numbering corresponding to the relevant clauses, detailing its level of compliance with the Proposed Contract contained in Part C of this RFP.

In particular, Tenderers must state if they will not comply with the Proposed Contract, or will only comply with the Proposed Contract subject to conditions. Full details of the non-compliance (including the nature and extent of the non-compliance and any reasons for such non-compliance) must be stated in the space provided in the tabulated statement contained in section 11 of Part D, together with any proposed amendments that would render the contractual provision acceptable to the Tenderer. No response is required in respect of a particular clause of the Proposed Contract where Tenderers will comply with the Proposed Contract. Only clauses that Tenderers will not comply with, or will only comply with subject to conditions should be noted in the tabulated statement.

The Lead Agency is prepared to contemplate minor variations or departures from the Proposed Contract proposed by Tenderers. However, Tenderers should note that significant or substantive variations or departures will **not** be viewed favourably unless the Tenderer is able to demonstrate the necessity for such variations or departures.

***The Lead Agency will assume that a Tenderer is able to and will in fact comply in all relevant respects with the Proposed Contract unless the Tenderer expressly states otherwise. Failure to notify the Lead Agency of any non-compliance may result in a Tenderer’s Response being disregarded.***

For the purposes of this section 7.2:

#### ***Complies*** means that the Tenderer accepts the contractual provision in every respect (including the wording of the provision).

#### ***Will comply subject to conditions*** means that the Tenderer will comply with the relevant contractual provision subject to certain specified conditions.

#### ***Will not comply*** means that the Tenderer does not accept the contractual provision.

### General

Indefinite responses such as “noted”, “to be discussed” or “to be negotiated” are not acceptable.

Where the Tenderer is unwilling to accept a specified condition, the non-acceptance must be clearly and expressly stated. Prominence must be given to the statement detailing the non-acceptance. It is not sufficient that the statement appear only as part of an attachment to the Proposal, or be included in a general statement of the Tenderer’s usual operating conditions.

An incomplete Proposal may be disqualified or assessed solely on the information received with the Proposal.

### Alternative Proposal

A Tenderer may submit an alternative proposal. An alternative proposal will only be accepted if:

#### the Tenderer also provides a conforming Tenderer’s Response; and

#### the alternative proposal is clearly identified as an “Alternative Proposal”.

An Alternative Proposal may:

#### not comply with the Specifications for the relevant Goods or Services due to inherent design or capability in the operation of the Goods or Services; or

#### provide the Goods or Services in a manner different to that specified in Part B of the RFP.

Tenderers are encouraged to offer options or solutions which may, in an innovative way, contribute to the Lead Agency’s ability to carry out its business in a more cost-effective manner. These may be related to:

#### the outputs, functional, performance and technical aspects of the requirement; or

#### opportunities for more advantageous commercial arrangements.

#### Any such options or solutions will be considered by the Lead Agency on a “commercial in confidence” basis if so requested by the Tenderer.

Where a Tenderer submits an offer which meets the requirements of the RFP in an alternative and practical manner, the Proposal must also include any supplementary material (including such pricing and costing details as may be necessary to enable the Lead Agency to fully assess the financial impact of the alternative proposal), which demonstrates in detail that such an alternative will fully achieve and/or exceed all the specified requirements, together with references as to why the additional features may be advantageous.

The Lead Agency reserves the right to consider such offers on their merits or not to consider them at all.

## Evaluation of Proposals

### Evaluation process

Following the Closing Time, the Lead Agency intends to evaluate the Proposals received. Proposals will be evaluated against the Evaluation Criteria specified in Attachment A to this Part A of the RFP.

Following the initial evaluation process, the Lead Agency may give notice to Tenderers that it wishes to:

#### shortlist one or more Tenderers to proceed to further negotiations;

#### commence or continue negotiations with all Tenderers without shortlisting any Tenderers; or

#### accept one or more of the Tenders.

Unless the Evaluation Criteria explicitly require, the Lead Agency may, but is not in any way bound to, shortlist, select as successful, or to accept the Proposal offering the lowest price.

Should the Lead Agency choose to include a shortlisting stage in its evaluation process, the Lead Agency is not, at any time, required to notify Tenderers or any other person or organisation interested in submitting a Proposal.

A Tenderer’s Response will not be deemed to be unsuccessful until such time as the Tenderer is formally notified of that fact by the Lead Agency. The commencement of negotiations by the Lead Agency with one or more other Tenderers is not to be taken as an indication that any particular Tenderer’s Response has not been successful.

### Clarification of Proposal

If, in the opinion of the Lead Agency, a Proposal is unclear in any respect, the Lead Agency may seek clarification from the Tenderer. Failure to supply clarification to the satisfaction of the Lead Agency may render the Proposal liable to disqualification.

The Lead Agency is under no obligation to seek clarification of anything in a Proposal and the Lead Agency reserves the right to disregard any clarification that the Lead Agency considers to be unsolicited or otherwise impermissible in accordance with the rules set out in this Part A.

### Negotiation and presentation

The Lead Agency may at any stage of the evaluation process elect to engage in detailed discussions and negotiations with any one or more Tenderers, with a view to maximising the benefits of the Proposals submitted.

As part of this negotiation process, the Lead Agency may request such Tenderer(s) to improve one or more aspects of their Proposal, including any technical, financial, corporate or legal components.

In its absolute discretion, the Lead Agency may invite some or all Tenderers to give a presentation to the Lead Agency in relation to their submissions, including (where the RFP relates in whole or in part to Goods), a demonstration of the Goods.

The Lead Agency is under no obligation to conduct any negotiations with, or to invite any presentations from, Tenderers.

In addition to presentations and negotiation, the Lead Agency may request some or all Tenderers to:

#### conduct a site visit;

#### provide references; and/or

#### make themselves available for panel interviews.

### Best and final offers

Tenderers or, where the Tendering Process involves a shortlisting process, shortlisted Tenderers, may be invited by the Lead Agency to submit a best and final offer in relation to all or certain aspects of their respective Proposals.

The Lead Agency is under no obligation to give Tenderers the opportunity to submit a best and final offer. If the Lead Agency chooses to give Tenderers the opportunity to submit a best and final offer, it is under no obligation to give notification before the Closing Time that such opportunity will be given.

Notwithstanding the possibility that the Lead Agency may give Tenderers the opportunity to submit a best and final offer, Tenderers should be aware that the Lead Agency will, in conducting its evaluation of Proposals, rely on all information (including all representations) contained in such Proposals. Tenderers are therefore encouraged to submit their best and final offers in the first instance.

Any one or more Tenderers may be required to submit an executed contract based on the Proposal as part of their best and final offer. Unless and until the Lead Agency executes such contract, submission of a contract capable of acceptance by the Lead Agency does not and will not be taken to give rise to a binding contract (express or implied) between a Tenderer and the Lead Agency.

## Successful Proposals

### No legally binding contract

Selection as a successful Tenderer does not give rise to a contract (express or implied) between the successful Tenderer and the Lead Agency for the supply of the Goods or Services. No legal relationship will exist between the Lead Agency and a successful Tenderer for the supply of the Goods or Services until such time as a binding contract is executed by them.

Successful Tenderers will be required to enter into a contract based on the Proposed Contract (contained in Part C of this RFP).

### Pre-contractual negotiations

The Lead Agency may, in its absolute discretion, decide not to enter into pre-contractual negotiations with a successful Tenderer.

A Tenderer is bound by its Proposal (including the Statement of Compliance to the Proposed Contract forming part of the Tenderer’s Response) and, if selected as a successful Tenderer, must enter into a contract on the basis of the Proposal without negotiation.

### No obligation to enter into contract

The Lead Agency is under no obligation to appoint a successful Tenderer or Tenderers (as the case may be), or to enter into a contract with a successful Tenderer or any other person, if it is unable to identify a Proposal that complies in all relevant respects with the requirements of the Lead Agency, or if to do so would otherwise not be in the public interest. For the avoidance of any doubt, in these circumstances the Lead Agency will be free to proceed via any alternative process.

#### The Lead Agency may conduct a debriefing session for all Tenderers (successful and unsuccessful). Attendance at such debriefing session is optional.

## Ethical Purchasing Policy

The Victorian Government's Ethical Purchasing Policy applies to tendering processes and contracts for the purchase of goods and services valued at or above $100,000 (including the establishment of State Purchase Contracts) which commenced on or were entered into after 1 January 2004. The policy will also be applied to purchases under $100,000 for goods and services in industries which are considered by DEECD to be high risk, such as textiles, clothing and footwear, cleaning and security services. Further information about the Ethical Purchasing Policy is detailed in Part E of this RFP and on the Victorian Government Purchasing Board web site at [www.vgpb.vic.gov.au](http://www.vgpb.vic.gov.au).

It is a condition of all tendering processes to which the Ethical Purchasing Policy applies that Tenderers complete an **Ethical Employment Statement** (RFP Part E).

A Tenderer who does not submit an Ethical Employment Statement will be disqualified from the Tendering Process.

Once a Tenderer is offered a contract to which the Ethical Purchasing Policy applies, it must continue to satisfy the ethical employment standard during the period of the contract. Contract conditions will allow the Lead Agency to request further ethical employment statements from the Tenderer. The contract will also permit the termination of a contract if a Tenderer does not satisfy its disclosure obligations or maintain the ethical employment standard during the term of the contract.

## Victorian Industry Participation Policy Statement

Tenders for projects in metropolitan Melbourne in excess of $3m and projects in regional Victoria in excess of $1m are subject to the Victorian Industry Participation Policy (**VIPP**). Information in relation to this policy is detailed on the Department of Business and Innovation (**DBI**) website http://www.dbi.vic.gov.au/projects-and-inititatives/victorian-industry-participation-policy

If requested to do so by the Lead Agency, the successful Tenderer will be required to submit a VIPP Plan certified by the Industry Capability Network (ICN) during the Detailed Facility Study phase.

## Tenderer warranties

By submitting a Proposal, a Tenderer warrants that:

#### in lodging its Proposal it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the Lead Agency, its officers, employees, agents or advisers other than any statement, warranty or representation expressly contained in the RFP;

#### it did not use the improper assistance of Lead Agency employees or information unlawfully obtained from the Lead Agency in compiling its Proposal;

#### it has examined this RFP, and any other documents referenced or referred to herein, and any other information made available in writing by the Lead Agency to Tenderers for the purposes of submitting a Proposal;

#### it has sought and examined all necessary information which is obtainable by making reasonable enquiries relevant to the risks and other circumstances affecting its Proposal;

#### it has otherwise obtained all information and advice necessary for the preparation of its Proposal;

#### it is responsible for all costs and expenses related to the preparation and lodgement of its Proposal, any subsequent negotiation, and any future process connected with or relating to the Tendering Process;

#### it otherwise accepts and will comply with the rules set out in this Part A of the RFP;

#### it will provide additional information in a timely manner as requested by the Lead Agency to clarify any matters contained in the Proposal; and

#### it is satisfied as to the correctness and sufficiency of its Proposal, including, where relevant, Part E of this RFP.

## Lead Agency rights

Notwithstanding anything else in this RFP, and without limiting its rights at law or otherwise, the Lead Agency reserves the right, in its absolute discretion at any time, to:

#### cease to proceed with, or suspend the Tendering Process;

#### alter the structure and/or the timing of the RFP or the Tendering Process;

#### vary or extend any time or date specified in this RFP for all or any Tenderers or other persons;

#### terminate the participation of any Tenderer or any other person in the Tendering Process;

#### require additional information or clarification from any Tenderer or any other person or provide additional information or clarification;

#### negotiate with any one or more Tenderers and allow any Tenderer to alter its Proposal;

#### call for new Proposals;

#### reject any Proposal received after the Closing Time;

#### reject any Proposal that does not comply with the requirements of this RFP; or

#### consider and accept or reject any alternative Proposal.

## Governing law

This RFP and the Tendering Process is governed by the laws applying in the State of Victoria.

Each Tenderer must comply with all relevant laws in preparing and lodging its Proposal and in taking part in the Tendering Process.

## Interpretation

### Definitions

In this Request for Proposal, unless a contrary intention is apparent:

**Closing Time** means the time specified as such in **item 4** of the **Reference Schedule** by which Proposals must be received.

**Evaluation Criteria** means the criteria set out in Attachment A to this Part A of the RFP.

**Goods** means the goods or other products required by the Lead Agency, as specified in Part B of this RFP.

**Intellectual Property Rights** includes copyright and neighbouring rights, and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Lead Agency** means the government department or agency (as specified in **item 1** of the **Reference Schedule**) responsible for the Tendering Process.

**Project Manager** means the person so designated in **item 3** of the **Reference Schedule**.

**Proposed Contract** means the agreement and any other terms and conditions contained in or referred to in Part C of this RFP.

**Reference Schedule** means the schedule so designated forming part of Part A of the RFP.

**Request For Proposal** or **RFP** means this document (comprising each of the parts identified in section 2 of this Part A) and any other documents so designated by the Lead Agency.

**Services** means the services required by the Lead Agency, as specified in Part B of this RFP.

**Specification** means any specification or description of the Lead Agency’s requirements contained in Part B of this RFP.

**State** means the Crown in right of the State of Victoria.

**Statement of Compliance** means the statement forming part of a Proposal indicating the Tenderer’s compliance with the Specification and the Proposed Contract.

**Proposal** means a document lodged by a Tenderer in response to this RFP containing an offer to provide Goods and/or Services in accordance with the Specification.

**Tenderer** means a person or organisation that submits a Proposal.

**Proposal Briefing** means a meeting (the details of which are specified in **item** **5** of the **Reference Schedule**) that may be held by or on behalf of the Lead Agency to provide information about the RFP and the Tendering Process.

**Tendering Process** means the process commenced by the issuing of this Request for Proposal and concluding upon formal announcement by the Lead Agency of the selection of a successful Tenderer(s) or upon the earlier termination of the process.

### Instruction

In this Request for Proposal, unless expressly provided otherwise:

#### a reference to:

##### “includes” or “including” means includes or including without limitation; and

##### “$” or “dollars” is a reference to the lawful currency of the Commonwealth of Australia; and

#### if a word or phrase is defined its other grammatical forms have corresponding meanings.

# Attachment A: Evaluation Criteria

In evaluating Tenderer’s Responses, the Lead Agency will have regard to:

#### each of the specific evaluation criteria identified in the table below; and

#### the overall value for money proposition presented in the Tenderer’s Response.

#### In this context, “value for money” is a measurement of benefits represented by a Tenderer’s Response, including quality levels, performance standards and environmental impacts.

|  |  |
| --- | --- |
| **Evaluation criteria** | **Weighting** |
| **1. Hurdle Criteria** | Yes/No |
| * 1. Compliance with Part B (Specification)   2. Compliance with Part C (Proposed Contracts)   3. Provision of details of three (3) referees   4. Provision of pricing principles   5. Conflict of interest statement |  |
| **2. Detailed Facility Study** | 5% |
| * 1. Quoted DFS fee   2. Timeframe to deliver DFS   3. List of additional solutions to be investigated (other than those proposed) |  |
| **3. Greenhouse Gas Savings** | 60% |
| * 1. Proposed greenhouse savings (tonnes per annum)   2. Benefits and risks associated with proposed energy efficiency solutions |  |
| **4. Water Savings** | 5% |
| * 1. Proposed water savings (kilolitres per annum)   2. Benefits and risks associated with proposed water efficiency solutions |  |
| **5. Other Benefits and Risks** | 10% |
| * 1. Proposed additional cost savings (other than from energy and water efficiencies)   2. Benefits and risks associated with proposed additional cost savings solutions   3. Other benefits and risks (financial, environmental, social) |  |
| **6. Capability** | 20% |
| * 1. Past experience implementing the proposed solutions   2. Capability of internal and subcontracted resources   3. Proposed installation process   4. Proposed training and maintenance offering   5. Proposed communications plan   6. Proposed measurement & verification process |  |

# Attachment B: Deed of Confidentiality

The following Deed of Confidentiality should be completed and returned to the Lead Agency in order for the respondent to receive the additional materials as listed in Item 6 of Part A of this Document.

**<INSERT LEAD AGENCY NAME>**

and

[ ]

**DEED OF CONFIDENTIALITY**

# **Deed of Confidentiality**

# By

[ ] (“the Confidant”)

# in favour of

[insert Lead Agency name] (the “Lead Agency”)

# Date

[ ]

# Recitals

A. The Confidant is in the process of developing an Energy Performance Contracting proposal in response to a request for proposals by the Lead Agency dated [insert date].

B. As part of preparing its proposal the Confidant will be furnished with information by the Lead Agency including confidential energy and water consumption data, building schematics and other confidential details in relation to State Government buildings involved in the Energy Performance Contracting project.

C. Information of a secret and confidential nature may be provided to the Confidant by the Lead Agency or otherwise become known to the Confidant as part of the Energy Performance Contracting project.

# Operative Provisions

1. **Interpretation**
   1. For the purposes of this Deed—

**“Information”** includes anything capable of being known, communicated, obtained or coming into the possession of the Confident as part of the Lead Agency’s Energy Performance Contracting project and includes without limitation —

* + 1. each and every item, part and component of such information; and
    2. any copy (in whatever form) of such information, including any form in which the information is recorded or stored, whether or not it is the same form in which it was first conveyed to or came into the possession of the Confidant;
    3. any information relating to any building, including but not limited to:
       1. electricity and water consumption and pricing details;
       2. electricity interval energy data;
       3. previous energy audits;
       4. previous site inspection data; and
       5. plans of floor lay-outs.

“**Lead Agency’s Representative**” means [representative’s name] of the Lead Agency or any person (being an employee of the Lead Agency) for the time being occupying the position of the Lead Agency’s Energy Performance Contract Project Manager (permanently or temporarily), or any other person nominated as the Lead Agency’s Representative for the purpose of this Deed.

1. **When Deed does not apply**
   1. This Deed does not apply to Information—
      1. that, when it is provided to or obtained by the Confidant, is in the public domain through having been published or otherwise made available to the public;
      2. that becomes available to the public after the date on which it is provided to the Confidant, other than through a breach by the Confidant of its obligations, whether those obligations arise under this Deed, at common law, or in any other way;
      3. that was known to the Confidant as at the date of this Deed and was not derived either directly or indirectly from the Lead Agency or any instrumentality of the Lead Agency;
      4. that is required to be disclosed by an Order of a court of competent jurisdiction;
      5. that is disclosed pursuant to the requirements of a law; or
      6. that is disclosed for the purposes of any dispute or difference between the Confidant and the Lead Agency for the purpose of obtaining advice from professional advisers in connexion with any such dispute or difference.
2. **Duty to protect information**
   1. The Confidant will protect all Information from unauthorized access or use, and will take and enforce proper and adequate precautions at all times to preserve the secrecy and the confidentiality of all Information.
3. **Limitations on distribution, disclosure and use**
   1. Except as otherwise provided in this Deed or agreed beforehand in writing by the Lead Agency, the Confidant will not—
      1. distribute Information or cause or allow it to be made available to any person or third party, unless required for the purposes of developing the Confidant's Energy Performance Contract proposal and where prior to any such distribution the Confidant has established appropriate confidentiality deeds with those persons or third parties, and where evidence of such deeds are made available to the Lead Agency upon request;
      2. disclose to any person that it has the Information or the terms on which it has access to or has been supplied with Information; or
      3. use the Information for its own purposes, or for the purposes of any other person.
   2. In particular, the Confidant will not represent to any other person that it is able to use Information for the benefit of that person, or enter into a contract by which it agrees to use Information for the benefit of another person.
   3. The Confidant will not—
      1. copy or reproduce;
      2. make available any reproductions of; or
      3. store, to enable reproduction of (in any form)—

any document, or other record which contains, is based on or uses, Information, unless it is expressly permitted to do so by the Lead Agency or the Lead Agency’s Representative.

1. **Limitations on retention**
   1. Upon request by the Lead Agency or the Lead Agency’s Representative the Confidant will immediately—
      1. deliver to the Lead Agency all Information in its possession that is capable of being delivered; and
      2. delete, erase, or otherwise destroy all Information contained in computer memory, magnetic, optical, laser, electronic, or other media in its possession or control which is not capable of delivery to the Lead Agency and certify by way of statutory declaration to the Lead Agency that such Information has been deleted, erased or otherwise destroyed.
   2. Without in any way limiting the scope and meaning of sub-clause 5.1 and the words and expressions in that sub-clause, and for the purposes only of clarification, the Confidant—
      1. will not retain in any form any note, report, summary, memorandum or other document containing or referring to Information; and
      2. will institute and use a system to enable all copies, notes, reports, summaries, memoranda and other documents containing, pertaining to or referring to Information to be traced and returned.
2. **Non Derogation**
   1. The provisions of this Deed shall not derogate from but shall be in addition to the obligations of the Confidant at law or in equity.
3. **Damages not Sufficient**
   1. If there is any conduct or threatened conduct which is or will be a breach of this Deed, the Confidant acknowledges that damages may be inadequate compensation for such a breach and the Lead Agency shall be entitled to apply to any court of competent jurisdiction for interim and permanent injunctive relief restraining the Confidant from committing any breach or threatened breach of this Deed without showing or proving any actual damage sustained by the Lead Agency, which rights and remedies shall be cumulative and in addition to any other rights or remedies to which the Lead Agency may be entitled at law or in equity.
4. **No Waiver**
   1. The Confidant acknowledges that no failure on the part of the Lead Agency to enforce at any time any of the provisions of this Deed shall be construed as a waiver of any of the rights of the Lead Agency under this Deed nor shall any failure affect the validity of any of the provisions of this Deed or otherwise prejudice the Lead Agency in any manner whatsoever.
5. **Duration of Deed**
   1. The terms, undertakings and agreements in this Deed commence on the date of this Deed and continue so long as they are relevant indefinitely during and after the completion of the Proposal.
6. **Deed binds successors in law**
   1. The provisions of this Deed bind, to the fullest extent permitted by law, every executor, administrator, successor and assignee of the Confidant.
7. **Severability**
   1. If any provision of this Deed is held invalid, unenforceable or illegal for any reason, this Deed shall remain otherwise in full force apart from such provision which shall be deemed deleted.
8. **Governing Law**
   1. This Deed is governed by the laws of the state of Victoria.
   2. The Confidant irrevocably submits to the non-exclusive jurisdiction of the courts of the state of Victoria.

EXECUTED as a Deed

|  |  |
| --- | --- |
| Signed Sealed and Delivered by [ ]  in the presence of:  [ ] | }  } |

**RFP Part B – Specification**

<Insert Lead Agency name>

Specification for

The Supply of Energy Performance Contracting Services

1. **The Request for Proposal (RFP)**

Three tenderers from the Victorian Government’s Energy Performance Contracting Services Panel have been issued with this RFP document, and are invited to prepare a Proposal that addresses energy and water efficiency at the following <number of sites> facilities:

* List sites included in RFP scope

The Proposals are an opportunity for Tenderers to demonstrate their ability to provide the services required. The Proposals should include details of the tenderer’s abilities, and methods utilised to design, document, install, project manage, commission, and monitor and verify the Energy and Water Conservation Measures (ECMs and WCMs) and Demand-Side Response (DSR) opportunities.

Proposals should clearly list and describe the ECMs, WCMs and other opportunities that were identified through the RFP process.

Proposals should be structured as described in Part D of this RFP document.

Proposals will be evaluated by the categories listed in Part A of this RFP document.

1. **Objectives of the RFP**

The requested Proposals are intended to provide the Lead Agency with the ability to select the most suitable Tenderer to provide EPC services addressing energy and water efficiency at all <number of> facilities.

The most suitable Tenderer, determined by evaluation of the Proposals as described in Part A of this document, will be invited to perform a Detailed Facility Study (DFS) of all <number of facilities>, with the expectation that the Tenderer will subsequently implement all proposed works that meet the Lead Agency’s criteria under an Energy Performance Contract.

1. **Evaluation of Proposals**

Proposals will be assessed on compliance with this Specification and in accordance with the Evaluation Criteria listed in Part A of this RFP document.

As with the eventual EPC project scope, the total of all proposed solutions **must meet an average simple payback period of 7 years** or less for the project as a whole.

Tenderers are encouraged to **maximise the scope of savings,** in particular greenhouse gas and water savings, delivered by the proposed solutions whilst remaining compliant with the required 7 year payback period.

It should be noted that tenderers who offer a lower payback period, but with less greenhouse gas and water savings, will not be shown preference.

The preparation of Proposals submitted in response to this RFP should be based on the conducted site audits and other relevant information provided by the Lead Agency to the tenderers during the RFP stage.

Proposals are to be structured as shown in Part D of this RFP document.

1. **Financial Calculation**

The required average seven year payback period (see Part B s3) is to be calculated using the **simple payback method**:

*Total Cost divided by Total Annual Savings must be equal or less than seven (years).*

Where,

1. Total Cost must be inclusive the total cost of all proposed ECMs, WCMs and other technologies, the DFS fee, M&V fees, all associated project costs, any increase in annual costs associated with the project (e.g. additional maintenance costs) and applied margins. Total project costs must not include any requirement for further expenditure or additional works paid for by the Lead Agency.
2. Total Annual Savings represents the sum of all guaranteed annual cost savings derived from proposed ECMs, WCMs, maintenance savings, and other technologies.
3. Total Cost and Total Annual Savings must be inclusive of GST.

Note that the simple payback calculation should not use discounting and escalations of project costs or savings, and does not require calculation of Net Present Value or Internal Rate of Return.

The tenderer is required to provide ‘open book’ pricing, clearly stating applied margins, to ensure that consistency of pricing principles is maintained between the RFP and DFS stages of the project. The Proposal should include details of the pricing principles used and how they will be managed and communicated throughout the project.

Tenderers should ensure that pricing for works implementation reflect the requirement for Proposals to minimise disruption to normal operations (which may require works to be scheduled after hours or with additional supervision) at the facilities included in this RFP. Contractors should liaise with the Lead Agency to confirm implementation timelines and other requirements for works implementation.

1. **Calculation of Greenhouse Gas Emissions**

Calculation of greenhouse gas emissions should refer to Victorian emissions factors and include the sum of Scope 1, Scope 2 and Scope 3 emissions for each fuel type.

The table below shows the emission factors that should be used by Tenderers for calculating greenhouse gas emission savings in their proposals.

**Table 1: Greenhouse gas emission factors**

|  |  |
| --- | --- |
| **Fuel Type** | **Emission Factor** |
| Electricity (kWh) | 1.35 kg CO2- e/kWh |
| Natural Gas distributed in a pipeline (GJ) | 55.33 kg CO2-e/GJ |
| Diesel (kL) | 2.90268 tonnes CO2-e /kL |
| LPG (kL) | 1.7082 tonnes CO2-e/kL |

*Source: National Greenhouse Accounts (NGA) Factors, July 2011.*

1. **Calculation of Utility Cost Savings**

When determining solutions, the consumption data provided in Table 6.1 should be used as a guide when preparing proposals. Calculations for energy cost savings should be based on the electricity, gas and water rates provided by the Lead Agency in item 6.2 below.

Tenderers should use the appropriate rate for energy savings (e.g. peak or off peak depending on when the savings are achieved) to ensure both the proposed energy savings (e.g.in kWh) and the proposed energy cost savings (in $) are accurate.

Note: Tenderers should not rely on a ‘blended’ electricity rate (i.e. an average of peak and off peak) to determine cost savings from proposed initiatives.

For gas rates, tenderers should apply the correct band rates to determine gas savings. Initial gas savings should be calculated using the upper band rates and move towards the lower level band rates as further gas savings reach band limits. This is to ensure financial savings are accurate.

**Peak demand reductions**

Tenderers should separately account for any cost savings resulting from a reduction in site demand and should explain the methodology by which demand reduction savings will be achieved and verified. E.g. as a result of various energy efficiency upgrades, the Tenderer may propose to negotiate a reduced peak demand with the energy retailer on behalf of the lead agency, and will guarantee that this new peak demand is not exceeded.

Note: Tenderers should not include peak demand costs within a blended electricity rate to determine cost savings.

* 1. **Baseline Utility Consumption**

Values represent the consumption from <insert time of data> and have been calculated based on the <insert source>provided.

**Table 1: Baseline utility consumption**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Site name/ address** | **Electricity** | | | **Gas Consumption (GJ)** | **Water (kL)** |
| **Peak (kWh)** | **Off-peak (kWh)** | **Total (kWh)** |
| Site 1 |  |  |  |  |  |
| Site 2 |  |  |  |  |  |
| Site 3 |  |  |  |  |  |
| Site 4 |  |  |  |  |  |

* 1. **Baseline Utility Rate**

Calculations for utility cost savings should be based on the electricity and gas rates shown in the table below. All variable rates are included for each source (e.g. supply, network, greenpower, carbon price). All rates include GST.

**Table 2: Baseline utility rates**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Site name/ address** | **Electricity (all variable rates)** | | | | **Natural Gas** | | | **Water** | | |
| **Peak (c/kWh)** | **Off-peak (c/kWh)** | **Max demand rate ($/kW/ mth)** | **Max demand (kW)** | **Band 1 0 – X GJ**  **($/GJ)** | **Band 2 X – X**  **($/GJ)** | **Band 3 X+ GJ ($/GJ)** | **Supply ($/kL)** | **Sewage ($/kL)** | **Disch. Factor** |
| Site 1 |  |  |  |  |  |  |  |  |  |  |
| Site 2 |  |  |  |  |  |  |  |  |  |  |
| Site 3 |  |  |  |  |  |  |  |  |  |  |
| Site 4 |  |  |  |  |  |  |  |  |  |  |

1. **Calculation of Maintenance or other Cost Savings**

Calculations for maintenance cost savings should be based on real costs incurred by the Lead Agency. If tenderers are including maintenance cost savings within their proposals, they should confirm with the Lead Agency any proposed baseline maintenance costs or assumed unit rates for maintenance (e.g. labour rates for changing lamps). These rates or baseline figures used as the basis for savings should also be stated clearly in their proposals.

Similarly, Tenderers should confirm any assumptions used as the basis for calculating other cost savings proposed by Tenderers and clearly state the baseline assumptions within their proposals.

1. **Best Practice Guide to Energy Performance Contracts**

The intended format of the RFP, DFS and subsequent EPC may be sought from *A* *Best Practice Guide to Energy Performance Contracts*, produced by the Energy Efficiency Council. It is recommended that tenderers become familiar with this document.

1. **Measurement and Verification (M&V) of Energy Savings**

While M&V strategies will be project and site specific, in general, the Victorian Government has a preference to use the following M&V options for common scenario types:

* **Options A and B:** A single or representative sample of multiple ECMs that may be isolated and are independent of the rest of the equipments or systems in the facility (e.g. lighting retrofit).
* **Option C:** For large scale or multiple ECMs that represents a majority proportion of the overall facility’s energy consumption or causes energy interactions between the ECMs (e.g. central HVAC systems that include multiple chillers and boilers).
* **Option D:** Unless baseyear data does not exist, or the use of all other options is agreed with the Lead Agency to be too difficult or costly, this option is not appropriate for any proposed ECM.

The successful Tenderer will be required as part of the DFS to submit an initial site-specific M&V Plan for each ECM proposed as part of the project. The M&V Plan must be regularly updated during the design phase and prior to implementation to reflect any changes in the design, intended functionality or operation of each ECM.

A final M&V Plan should be prepared and submitted with the works specification.

The M&V Plan should be developed to comply with the following best practice guidelines for M&V:

* *A* *Best Practice Guide to Measurement and Verification of Energy Savings*, produced by the Energy Efficiency Council.
* *International Performance Measurement and Verification Protocol* (IPMVP), prepared by the Efficiency Valuation Organisation.

It is recommended that tenderers become familiar with these documents.

**RFP Part C – Proposed Contract**

The Agency <Insert customer name> intend to use standard Victorian Government contract templates as agreed by the EPC Services Panel organisations. The two (2) separate contracts are:

1. The Detailed Facility Study (DFS) agreement
2. The Energy Performance Contract (EPC)

The DFS Contract template, included in Schedule 1 of the Whole of Victorian Government Energy Performance Contracting Services Panel Agreement, sets out the terms and conditions under which the DFS will be provided.

The Energy Performance Contract, included in Schedule 1 of the Whole of Victorian Government Energy Performance Contracting Services Panel Agreement, sets out the terms and conditions under which any subsequent services will be provided.

The contract templates may be obtained directly from the Department of Treasury and Finance.

**RFP Part D – Tenderer’s Response**

## Proposal document

#### Tenderers must provide an electronic copy of the Tenderer’s Response, submitted in accordance with the Conditions of Tender (Part A).

#### All responses must respond to the Specification (Part B) and Proposed Contract (Part C) in accordance with the Conditions of Tendering (Part A).

#### The Proposal document should follow the structure as detailed in the following pages.

#### Include the name of the Tenderer in the footer of the Proposal.

<Insert Lead Agency name>

Request for Proposal

for the provision of Energy Performance Contracting Services

**I accept the provisions contained in the Conditions of Tendering.**

|  |  |
| --- | --- |
| **Tenderer’s Information** | |
| **Name of Tenderer and address of registered office:** |  |
| **Place of registration:** |  |
| **Australian Company Number:** |  |
| **Australian Business Number:** |  |
| **Principal office in Victoria (if any):** |  |
| **Telephone:** |  |
| **Facsimile:** |  |
| **Email:** |  |
| **Name and title of Tenderer’s authorised agent:** |  |
| **Date:** |  |

**Structure of the Proposal**

Proposals are to be structured as described below.

Please keep within word limits.

## Executive Summary

Provide a two page summary of the overall offering, briefly covering all elements described in the Specification (see Part B of this document). Include at least the following:

### A financial summary of total project costs and savings for the project, as shown in below. Please include GST in all figures:

Table 1

|  |  |  |
| --- | --- | --- |
|  |  | **$** |
| **Costs** | Project costs (including cost of energy and water saving solutions) |  |
|  | Measurement & Verification cost (total over length of contract) |  |
|  | Detailed Facility Study fee (applicable to RFP sites only) |  |
|  | Additional Operational and Maintenance costs (total over length of contract) |  |
|  | **Total Cost** |  |
| **Savings** | Annual Electricity savings |  |
|  | Annual Natural Gas savings |  |
|  | Annual Water savings |  |
|  | Annual Operational and Maintenance savings |  |
|  | Annual other savings |  |
|  | **Total Annual Savings** |  |

|  |  |  |
| --- | --- | --- |
|  |  | Years |
| **Payback** | **Total Cost divided by Total Annual Savings** |  |

### A summary of project costs and savings by facility, as shown in below. Please include GST in all figures:

Table 2 – Site summary

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Site** | **Project Cost ($)** | **Annual Project Savings ($)** | **Annual GHG Savings (t)** | **Annual Electricity Savings** | | **Annual Gas Savings** | | **Annual Water Savings** | | **Oper. & Maint. Savings ($)** | **Other Savings ($)** |
| **($)** | **(kWh)** | **($)** | **(GJ)** | **($)** | **(kL)** |
| Site 1 |  |  |  |  |  |  |  |  |  |  |  |
| Site 2 |  |  |  |  |  |  |  |  |  |  |  |
| Site 3 |  |  |  |  |  |  |  |  |  |  |  |
| Site 4 |  |  |  |  |  |  |  |  |  |  |  |
| **TOTAL** |  |  |  |  |  |  |  |  |  |  |  |

### Brief list of the Proposed Scope of Works as part of this RFP, dot pointing all ECMs and WCMs (maximum 300 words).

## Hurdle Criteria

Note: This section will be used by the lead agency to assess ‘hurdle’ evaluation criteria listed under section 1 of the evaluation criteria table (attachment A of Part A).

### Confirmation of compliance to Part B Specification.

### Confirmation of acceptance of Part C Proposed Contract terms.

### The names and contact details of three (3) referees must be provided, along with details of the capacity in which the referee was associated with the Tenderer.

### Provide a summary of financial details, including:

#### Details of the average applied gross margin of the proposal, as requested in Part B of this document.

#### Confirmation that the Tenderer has correctly applied the utility rates as provided in the RFP document, e.g. correct application of peak or off peak electricity rates, correct use of band rates for gas, inclusion of demand charges, etc.

#### Methodology in calculating Operation & Maintenance savings including assumptions, e.g. unit cost of lamp replacement, hourly rate of maintenance labour, etc.

#### Methodology in calculating “Other” savings including assumptions

#### Describe any other known or expected costs associated with the project that are not included in the total project costs

#### Proposed length of contract

#### Provide details of all relevant insurances maintained by the Tenderer.

Tenderers are required to demonstrate that they have the financial capacity to provide, over the term of the contract, all the requirements specified in this RFP.

### Provide details of any interests, relationships or clients which may or do give rise to a conflict of interest and the area of expertise in which that conflict or potential conflict does or may arise and details of any strategy for preventing conflicts of interest. Outline the processes you have in place to handle any future conflict of interest, actual or perceived (maximum 150 words).

## Detailed Facility Study Offering

Note: This section will be used by the lead agency to assess evaluation criteria listed under section 2 of the evaluation criteria table (attachment A of Part A).

### Provide the following details relating to the proposed Detailed Facility Study (DFS) offering:

#### The fixed total DFS fee (GST inclusive) for all sites included in the DFS.

#### The fixed total DFS fee (GST inclusive) for sites included in the RFP (if RFP scope is smaller than DFS scope).

#### The expected duration (in weeks) for the tenderer to perform the DFS across the proposed DFS scope.

#### Details of any other proposed fees associated with subsequent works.

#### A list of additional solutions (i.e. not included within the base proposal) that the tenderer will investigate further as part of the DFS. Please dot point(maximum 200 words).

## Proposed Solutions

Note: This section will be used by the lead agency to assess evaluation criteria listed under sections 3, 4 and 5 of the evaluation criteria table (attachment A of Part A).

This section contains details on the proposed scope of works identified by the Tenderer, based on the audits and subsequent analysis of sites. For each site included as part of this RFP, include the following:

### Complete table 3 below listing each proposed solution, its costs and resultant savings. Please include GST in all figures.

Table 3: Solution summary

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Site:** | **Site Address** | | | | | | | | | | |
|  |  |  |  |  |  |  |  |  |  |  |  |
| **Solution** | **Project Cost ($)** | **Annual Project Savings ($)** | **Annual GHG Savings (t)** | **Annual Electricity Savings** | | **Annual Gas Savings** | | **Annual Water Savings** | | **Oper. & Maint. Savings ($)** | **Other Savings ($)** |
| **($)** | **(kWh)** | **($)** | **(GJ)** | **($)** | **(kL)** |
| Solution 1 |  |  |  |  |  |  |  |  |  |  |  |
| Solution 2 |  |  |  |  |  |  |  |  |  |  |  |
| Solution 3 |  |  |  |  |  |  |  |  |  |  |  |
| Solution 4 |  |  |  |  |  |  |  |  |  |  |  |
| **TOTAL** |  |  |  |  |  |  |  |  |  |  |  |

Note: Project costs included in must allow for works to be undertaken at times that will minimise disruption to normal facility operations. This may require works to be scheduled after hours or with additional supervision. Include in an Appendix sample calculations used to estimate savings, showing any principle assumptions.

### Summary of proposals for each site/building, including:

#### Proposed energy and water conservation measures and other proposed solutions

#### Details of any risks or dependencies associated with the proposed solutions

#### Details of any potential benefits related to the proposed solutions (financial, environmental, social) – i.e. other than those quantified in table 3 above.

#### (maximum1 A4 page per site/building – excluding table 3)

## Capability

Note: This section will be used by the lead agency to assess evaluation criteria listed under section 6 of the evaluation criteria table (attachment A of Part A).

This section includes the details regarding the Tenderer’s proposed method of delivering the Works under a performance contract. It should include the following:

### Provide details of any past experiences where the Tenderer has implemented the proposed works. E.g. If the Tenderer’s response proposes to install a specific lighting control system, describe one or more previous projects where this system has been designed and installed by the tenderer.

### Please provide this for all major project solutions.

### Provide details of internal and external resources in the format below.

### Provide details of nominated project manager who will be the key contact person and take responsibility for all stages of the EPC project, from design to implementation and measurement and verification.

### Provide a chart illustrating the project team and governance structure that will be used to deliver this project.

### Provide a brief curriculum vitae (maximum 75 words each) of all internal resources named in 5.2 (A) and (B). Please specify which discipline each will be accountable for (e.g. electrical, mechanical, etc.).

### Where relevant, include a list of all sub-contracted organisations that will contribute to the delivery of the proposed works. Provide details of their relevant capabilities (maximum 150 words)

### Describe the proposed works installation process, including timing of works, such as after hours, weekends, etc (maximum 300 words).

### Provide details of the proposed training and maintenance offering, specifically detailing:

* What level of training will be provided to maintenance staff
* Whether any proposed solutions are expected to require a specific maintenance regime that differs from the current maintenance regime.
* Whether any proposed solutions are expected to result in an increase in maintenance requirements, or require additional resources to operate them.
* Have all costs to maintain and operate the buildings as a result of the proposed solutions been accounted for and included within the proposal?

### Provide details of the proposed communications plan; relating to customer service and communications, and systems in place to respond to customer enquiries, service issues, etc (maximum 300 words).

### Complete table 4 below describing the proposed methodology for measuring and verifying each proposed solution, in line with the International Performance Measurement and Verification Protocol.

Table 4 – M&V summary

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **ECM/WCM name or number** | **Proposed M&V option (A, B, C or D)** | **Measured variables** | **Assumed variables** | **Duration and regularity (e.g. once, 4 weeks before and after; ongoing for 7 years)** |
| Solution 1 |  |  |  |  |
| Solution 2 |  |  |  |  |

### State the annual Measurement & Verification fee (GST inclusive) covering all proposed measurement and verification activities described in table 4.

## Appendices:

**Data and engineering calculations**

Where appropriate, include data used to establish baseline conditions (e.g. electricity, gas, and water consumption,

**Other Relevant Information**

Include any other relevant information referred to within, or supplementing the proposal.**Attachment A**

**Contract disclosure**

The Government has a strong presumption in favour of disclosing contracts and, in determining whether any clauses should be confidential, specific freedom of information principles (including a public interest test) will apply. However, even if certain clauses are excised from public contracts, the Government cannot pre-empt the workings of the *Freedom of Information* *Act* 1982 (Vic)or constrain the Auditor General's powers to secure and publish documents as he or she sees fit.

The Conditions of Tendering include a provision for the disclosure of contract information (refer section in Part A of the RFP dealing with “Use of Proposals”).

The provisions of the Proposed Contract in regard to confidentiality and disclosure should also be noted.

This provision is consistent with the Government's presumption of the full disclosure of contracts. Any non-disclosure of contract provisions must be justified by the successful Tenderer by applying the principles for exemption under the provisions of the FOI Act*.* Section 34(1) of the FOI Act provides that information acquired by an agency or a Minister from a business, commercial or financial undertaking is exempt under the FOI Act if the information relates to trade secrets or other matters of a business, commercial or financial nature and the disclosure would be likely to expose the undertaking unreasonably to disadvantage.

If a Tenderer wishes to withhold the disclosure of specific contract information, the Tenderer must clearly outline how the release of this information will expose trade secrets or expose the business unreasonably to disadvantage.

**Trade secrets**

In considering whether specific information should be categorised as a trade secret, Tenderers should assess:

* the extent to which it is known outside of the Tenderer’s business;
* the extent to which it is known by the persons engaged in the Tenderer’s business;
* any measures taken to guard its secrecy;
* its value to the Tenderer’s business and to any competitors;
* the amount of money and effort invested in developing the information; and
* the ease or difficulty with which others may acquire or develop this information.

**Unreasonable disadvantage**

In determining whether disclosure of specific information will expose a Tenderer’s business unreasonably to disadvantage, you should consider section 34(2) of the FOI Act. Broadly, you should consider:

* whether the information is generally available to competitors; and
* whether it could be disclosed without causing substantial harm to the competitive position of the business

The Lead Agency will consider these applications in the Proposal evaluation and negotiations with Tenderers.

**RFP Part E – Ethical Employment Response**

**Note to Tenderers:**

Only complete and submit this Part E if you have been expressly requested to do so by the Lead Agency.

The information sought in this RFP Part E relates to section 11 of RFP Part A (Conditions of Tendering) and is subject to the warranties contained in section 14 of that document.

|  |  |
| --- | --- |
| ***Name of the Tenderer*** |  |
| ***ABN of the Tenderer*** |  |
| ***Name of the Lead Agency*** |  |
| ***RFP Number*** |  |
| ***Description of the RFP*** |  |
| ***Date of submission of this RFP Part E*** |  |

**Ethical Purchasing Policy**

For a tendering process to which the Ethical Purchasing Policy applies, shortlisted Tenderers are required to complete an Ethical Employment Statement.

The Ethical Purchasing Policy provides that the State will not enter into a contract to which the policy applies with any Tenderer that cannot satisfy the ethical employment standard.

The ethical employment standardis the requirement for persons that supply or propose to supply goods and services to the Victorian Government to demonstrate to the reasonable satisfaction of the Lead Agency, and in accordance with the requirements of the Ethical Purchasing Policy, that the relevant contracting or tendering entity meets its obligations to its employees under Applicable Industrial Instruments and Legislation at the time a contract is awarded and continues to meet such obligations during the term of that contract.

Details of Applicable Industrial Instruments and Legislation are set out in the Ethical Purchasing Policy located at [**www.procurement.vic.gov.au**](http://www.vgpb.vic.gov.au).

When notified by the Lead Agency, shortlisted Tenderers are required to complete sections 1 to 5 of this RFP Part E within the timeframe specified by the Lead Agency.

The Lead Agency will assess whether a Tenderer satisfies the ethical employment standard in accordance with the Process Guidelines for Government Buyers. The assessment will be based on:

* any findings against the Tenderer by a court, tribunal, commission or board of a breach of an applicable industrial instrument (award or agreement binding on the Tenderer), including a finding of a breach of a non-confidential consent order, in the preceding 24 months;
* any convictions under applicable legislation (detailed in the Ethical Purchasing Policy) in the preceding 24 months;
* any current proceedings or prosecutions in respect of a breach of an applicable industrial instrument or an offence under applicable legislation;
* remedial measures implemented to ensure future compliance with applicable industrial instruments and legislation.
* The assessment will consider:
* the seriousness of breaches or offences which are the subject of an adverse finding or conviction;
* the number of adverse findings or convictions;
* whether there is a pattern of continued breaches or convictions (including, for the purposes of determining a pattern of continued breaches only, whether there are any current proceedings or prosecutions before a court, tribunal, commission or board);
* whether remedial measures are commensurate with the breach or offence and in the reasonable opinion of the Lead Agency, can be reasonably expected to prevent such breach or offence from recurring.

The name of the disqualified Tenderer will be placed on a register maintained by the Department of Treasury and Finance (the **Ethical Employment Reference Register**) for a period of 24 months from the date the Tenderer is disqualified from the Tendering Process.

The information in a Tenderer's Ethical Employment Statement will be used to assess whether the Tenderer satisfies the ethical employment standard. The Lead Agency may request further details about the information provided by the Tenderer in this Ethical Employment Statement.

The Lead Agency will not enter into contracts with Tenderers who do not satisfy the ethical employment standard. Such Tenderers will be disqualified from the Tendering Process and their names will be placed on the Ethical Employment Reference Register for a period of 24 months from the date the Tenderer is disqualified from the Tendering Process. Victorian Government departments may access the Ethical Employment Reference Register for the purpose of determining whether the Tenderer has not met the ethical employment standard for other Tendering Processes, ie has not satisfied the standard in the past.

**A Tenderer whose name is on the Ethical Employment Reference Register will not be excluded from other government business opportunities solely on the basis that its name appears on the register.**

The Tenderer will be informed if, in the assessment by the Lead Agency, it has failed to satisfy the ethical employment standard before disqualification occurs. The Tenderer will have an opportunity to provide additional information at that time.

**Definitions**

For the purposes of sections 1 to 5 of this Ethical Employment Statement:

**Full Details** meansdetails of:

* the nature of the breach or offence or alleged breach or offence;
* any conviction recorded or adverse finding made in respect of the breach or offence;
* any penalty or orders imposed by a court, tribunal, commission or board in respect of the breach or offence and the maximum penalty that could have been imposed under the Applicable Industrial Instruments and Legislation;
* the name of the court, tribunal, commission or board, the State or Territory in which the proceeding or prosecution is brought, the date on which the proceeding or prosecution was commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, commission or board;
* the name of the entity against which the finding or conviction was made or the proceeding or prosecution was initiated;
* this Contract; and
* further information about any of the above, if required by the Lead Agency.

**Tendering Entity** means the legal entity (individual or company) that would (if successful) enter into a contract with the State at the end of the Tendering Process. Partnerships, unincorporated joint ventures or consortia planning to enter into a contract with the State will need to complete an Ethical Employment Statement for each entity forming part of the bidding team.

|  |  |  |
| --- | --- | --- |
| **1** | **Provide details of any industrial instrument (award or agreement) that specifically applies to the employees of the Tendering Entity and is binding on it (applicable industrial instruments).** |  |
| **2** | **Provide Full Details of any findings against the Tendering Entity by a court, tribunal, commission or board of a breach of an applicable industrial instrument, including a finding of a breach in a non-confidential consent order, in the preceding 24 months.** |  |
| **3** | **Provide Full Details of any convictions under the following legislation (applicable legislation) in the preceding 24 months:**   * **Dangerous Goods Act 1985 (Vic)** * **Equipment (Public Safety) Act 1994 (Vic)** * **Federal Awards (Uniform System) Act 2003 (Vic)** * **Long Service Leave Act 1992 (Vic)** * **Occupational Health and Safety Act 2004 (Vic)** * **Outworkers (Improved Protection) Act 2003 (Vic)** * **Workplace Relations Act 1996 (Cth)** * **Any other legislation designated by the Victorian Government as applicable legislation under the Ethical Purchasing Policy from time to time.** |  |
| **4** | **Provide Full Details of any current proceedings or prosecutions in respect of a breach of an applicable industrial instrument or an offence under applicable legislation.** |  |
| **5** | **Provide details of remedial measures implemented to ensure future compliance with applicable industrial instruments and applicable legislation.** |  |