RFT Part A – Conditions of Tendering

Reference Schedule

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

Capitalised terms used in this RFT have defined meanings which are explained in clause 17.1 (Interpretation) of this RFT Part A. Capitalised terms defined elsewhere in this RFT but not referred to in clause 17.1 have the same meaning wherever used throughout this RFT.

Tenderers are required to complete all sections.

Note to Tenderers:
The Tenderer's Response (RFT Part D) must be prepared in accordance with clause 6 (Tender Documents) and submitted in accordance with clause 5 (Submission of Tenders) of this RFT Part A.

1. Establishment Details
   1.1 Western Heights College
   1.2 Project Officer and Project Sponsor

<table>
<thead>
<tr>
<th>Project Officer</th>
<th>Name and title</th>
<th>Marlene Barker, Business Manager</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address for correspondence by post</td>
<td>PO BOX 784, GEELONG VIC 3220</td>
<td></td>
</tr>
<tr>
<td>Email Address</td>
<td><a href="mailto:barker.marlene.j@edumail.vic.gov.au">barker.marlene.j@edumail.vic.gov.au</a></td>
<td></td>
</tr>
</tbody>
</table>

| Project Sponsor | Name and title       | Western Heights Secondary College Council |

<table>
<thead>
<tr>
<th>1.3 Indicative timetable*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity</td>
</tr>
<tr>
<td>RFT period opens</td>
</tr>
<tr>
<td>Closing Time</td>
</tr>
<tr>
<td>(See clause 5.2)</td>
</tr>
<tr>
<td>Intended formal notification of successful Tenderer(s)</td>
</tr>
<tr>
<td>Intended execution of Proposed Contract(s)</td>
</tr>
<tr>
<td>Intended commencement date</td>
</tr>
</tbody>
</table>

*Note to Tenderers:
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 College in accordance with the Conditions of Tendering set out in RFT Part A of this RFT.

1.4 Lodgement of Tenders
1.4.1 Hardcopy lodgement

<table>
<thead>
<tr>
<th>Number of copies of Tender document required to be submitted</th>
<th>1 original and 4 copies</th>
</tr>
</thead>
<tbody>
<tr>
<td>All copies to be endorsed as true copies with one (1) original to be signed which will have precedence in any dispute.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Address of Tender box</th>
<th>Western Heights College - Quamby Campus</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quamby Campus</td>
<td></td>
</tr>
<tr>
<td>19 Quamby Avenue</td>
<td></td>
</tr>
<tr>
<td>Hamlyn Heights VIC 3215</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Hours of access to Tender box</th>
<th>8:30am to 4:15pm, Monday to Friday</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access restrictions (if any)</td>
<td>Not available on a Public Holiday</td>
</tr>
</tbody>
</table>

Information to be marked on package containing the Tender
Tender for Café and Canteen

Other requirements
Response to be lodged by hand in the College's Tender Box. DO NOT POST.
It is the responsibility of the Respondent to ensure that a response is lodged before the closing time. Late responses will be recorded as such, with the time and date of receipt on the envelope and returned to the Respondent.
No responsibility will be accepted for responses:
- Incorrectly addressed
- Delivered to an incorrect location
- Not lodged in accordance with these instructions.

NOTE: Respondents using couriers to lodge their response must ensure that couriers are instructed to deposit the response in the Tender Box.
2. **Rules governing this Request for Tender and the Tendering Process**

2.1 **Application of these Rules**

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

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

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

2.1.4 The rules contained in this RFT Part A apply to:

(a) the RFT and any other information given, received or made available in connection with the RFT, and any revisions or addenda;

(b) the Tendering Process; and

(c) any communications relating to the RFT or the Tendering Process.

3. **Request for Tender**

3.1 **Status of Request for Tender**

3.1.1 This RFT is an invitation for persons to submit a proposal for the provision of the Services set out in the Specification contained in Part B of this RFT. Accordingly, this RFT must not be construed, interpreted, or relied upon, whether expressly or impliedly, as an offer capable of acceptance by any person, or as creating any form of contractual, promissory, restitutionary or other rights.

3.1.2 No binding contract (including a process contract) or other understanding (including any form of contractual, promissory, restitutionary or other rights) for the supply of the Services will exist between the College and any Tenderer unless and until the College has signed a formal written contract as contemplated in clause 10.1 (No Legally Binding Contract) of this RFT Part A.

3.2 **Accuracy of Request for Tender**

3.2.1 While all due care has been taken in connection with the preparation of this RFT, the College makes no representations or warranties that the content in this RFT or any information communicated to or provided to Tenderers during the Tendering Process is, or will be, accurate, current or complete. The College and its officers, employees and advisors will not be liable with respect to any information communicated or provided which is not accurate, current or complete.

3.2.2 If a Tenderer finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in the RFT or any other information provided by the College (other than minor clerical matters), the Tenderer must promptly notify the College in writing of such discrepancy, ambiguity, error or inconsistency to give the College an opportunity to consider what corrective action is necessary (if any).

3.2.3 Any actual discrepancy, ambiguity, error or inconsistency in the RFT or any other information provided by the College will, if possible, be corrected by the College and provided (or the proper information made available) to all Tenderers without attribution to the Tenderer that provided the notice.

3.3 **Additions and amendments to Request for Tender**

3.3.1 The College reserves the right to change any information in, or to issue addenda to, this RFT before the Closing Time. The College and its officers, employees and advisors will not be liable in connection with either the exercise of, or failure to exercise, this right.

3.3.2 If the College exercises its right to change information under clause 3.3.1, it may seek amended Tenders from all Tenderers.

3.4 **Representations**

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

3.5 **Confidentiality**

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

3.5.2 Whether or not execution of a deed of confidentiality under clause 3.5.1 is required by the College, all persons (including Tenderers) obtaining or receiving this RFT and any other information in connection with the RFT or the Tendering Process must:

(a) keep the contents of the RFT and such other information confidential; and

(b) not disclose or use that information except as required for the purpose of developing a Tender in response to this RFT.

3.6 **Licence to use Intellectual Property Rights**

3.6.1 Persons obtaining or receiving this RFT and any other documents issued in relation to the Tendering Process may use the RFT and such documents only for the purpose of preparing a Tender.
3.6.2 Such Intellectual Property Rights as may exist in the RFT and any other documents provided to Tenderers by or on behalf of the College in connection with the Tendering Process are owned by (and will remain the property of) the College except to the extent expressly provided otherwise.

3.7 Availability of additional materials
3.7.1 Additional materials (if any) may be accessed in the manner set out in item 1.5 of the Establishment Details. Tenderers should familiarise themselves with these additional materials.

4. Communications during the Tendering Process
4.1 Project Officer
4.1.1 All communications relating to the RFT and the Tendering Process must be directed to the Project Officer.

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

4.2.2 Any communication by a Tenderer to the College will be effective upon receipt by the Project Officer (provided such communication is in the required format).

4.2.3 The College 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.

4.2.4 Except where the College is of the opinion that issues raised apply only to an individual Tenderer, questions submitted and answers provided will be made available to all Tenderers without identifying the person or organisation having submitted the question. In all other cases, the College 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 Officer).

4.2.5 A Tenderer may, by notifying the Project Officer in writing, withdraw a question submitted in accordance with this clause 4.2 (Requests for Clarification or Further Information) in circumstances where the Tenderer does not wish the College to publish its response to the question to all Tenderers.

4.3 Unauthorised communications
4.3.1 Communications (including promotional or advertising activities) with staff of the College or consultants assisting the College with the Tendering Process are not permitted during the Tendering Process except as provided in clause 4.2 (Requests for Clarification or Further Information) above, or otherwise with the prior written consent of the Project Officer. Nothing in this clause 4.3 (Unauthorised Communications) is intended to prevent communications with staff of, or consultants to, the College to the extent that such communications do not relate to this RFT or the Tendering Process.

4.3.2 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.

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

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

4.5 Anti-competitive conduct
4.5.1 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:
(a) the preparation or lodgement of their Tender;
(b) the evaluation and clarification of their Tender; and
(c) the conduct of negotiations with the College,
in respect of this Tendering Process.

4.5.2 For the purposes of clause 4.5.1, collusion, anti-competitive conduct or any other similar conduct may include disclosure, exchange and clarification of information whether or not such information is confidential to the College or any other Tenderer or any person or organisation.

4.5.3 In addition to any other remedies available to it under law or contract, the College may, in its absolute discretion, immediately disqualify a Tenderer that it believes has engaged in any collusive, anti-competitive conduct or any other similar conduct in respect of this Tendering Process.
4.6 Complaints about Tendering Process

4.6.1 Any complaint about the RFT or the Tendering Process must be submitted to the Project Officer in writing immediately upon the cause of the complaint arising or becoming known to the Tenderer. The written complaint must set out:
(a) the basis for the complaint (specifying the issues involved);
(b) how the subject of the complaint (and the specific issues) affect the person or organisation making the complaint;
(c) any relevant background information; and
(d) the outcome desired by the person or organisation making the complaint.

4.6.2 If the matter relates to the conduct of a department official, the complaint should also be brought to the attention of the Project Sponsor.

4.7 Conflict of Interest

4.7.1 A Tenderer must not, and must ensure that its officers, employees, agents and advisers do not place themselves in a position that may or does give rise to actual, potential or perceived conflict of interest between the interests of the College and the Tenderer’s interests during the Tendering Process.

4.7.2 The Tenderer’s Response in RFT Part D requires Tenderers to provide details of any interests, relationships or clients which may or do give rise to a conflict of interest in relation to the supply of Services under any contract that may result from this RFT.

4.7.3 If the Tenderer submits its Tender and a conflict of interest arises, or is likely to arise, which was not disclosed in the Tender, the Tenderer must notify the College immediately in writing of that conflict.

4.7.4 The College may disqualify a Tenderer from the Tendering Process if the Tenderer fails to notify the College of the conflict as required.

5. Submission of Tenders

5.1 Lodgement
5.1.1 Tenders must be lodged only by the means set out in item 1.4 of the Establishment Details of RFT Part A.

5.1.2 Where the Reference Schedule requires or permits Tenders to be lodged in hard copy, packages containing the Tender must be marked with the information set out in clause 1.4.1 (Hardcopy lodgement) of RFT Part A and must be placed in the tender box at the address which is set out in clause 1.4.1 (Hardcopy lodgement) of RFT Part A.

5.2 Late tenders
5.2.1 Tenders must be lodged by the Closing Time. The Closing Time may be extended by the College in its absolute discretion by providing written notice to Tenderers.

5.2.2 Tenders lodged after the Closing Time or lodged at a location or in a manner that is contrary to that specified in this RFT will be disqualified from the Tendering Process and will be ineligible for consideration. However, a late Tender may be accepted where the Tenderer can clearly demonstrate (to the satisfaction of the College) that late lodgement of the Tender was caused because access was denied or hindered in relation to the physical tender box or that a major/critical incident hindered the delivery of their tender documents and, in either case, that the integrity of the Tendering Process will not be compromised by accepting a Tender after the Closing Time.

5.2.3 The determination of the College as to the actual time that a Tender is lodged is final. Subject to clause 5.2.2, all Tenders lodged after the Closing Time will be recorded by the College and will only be opened for the purposes of identifying a business name and address of the Tenderer. The College will inform a Tenderer whose Tender was lodged after the Closing Time of its illegibility for consideration. The general operating practice is for the late tender to be returned within 5 working days of receipt / within 5 working days after determination not to accept a late tender.

6. Tender Documents

6.1 Tenderers’ Responsibilities
6.1.1 Tenderers are responsible for:
(a) examining this RFT and any documents referenced or attached to this RFT and any other information made available by the College to Tenderers in connection with this RFT;
(b) fully informing themselves in relation to all matters arising from this RFT, including all matters regarding the College’s requirements for the provision of the Services;
(c) ensuring that their Tenders are accurate and complete;
(d) making their own enquiries and assessing all risks regarding the RFT, and fully incorporating the impact of any known and unknown risks into their Tender; and
(e) ensuring that they comply with all applicable laws in regards to the Tendering Process (including Part 2 of the Fair Trading Act 1999).

6.2 Preparation of Tenders
6.2.1 Tenderers must ensure that:
(a) their Tender is presented in the required format as set out in RFT Part D; and
(b) all the information fields in RFT Part D are completed and contain the information requested.

Note to Tenderers: The College may in its absolute discretion reject a Tender that does not include the information requested or is not in the format required.

...5
6.2.2 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.

6.2.3 Word limits where specified should be observed and the College reserves the right to disregard any parts of the Tender that significantly exceed the specified word limit.

6.3 Illegible content, alteration and erasures
6.3.1 Incomplete Tenders may be disqualified or evaluated solely on the information contained in the Tender.

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

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

6.4 Obligation to notify errors
6.4.1 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 Tender), the Tenderer must promptly notify the College of such error.

6.5 Responsibility for Tendering Costs
6.5.1 The Tenderer’s participation or involvement in any stage of the Tendering Process is at the Tenderer’s sole risk, cost and expense. The College will not be responsible for, nor pay for, any expense or loss that may be incurred by Tenderers in relation to the preparation or lodgement of their Tenders.

6.5.2 In addition to clauses 3.1.1 and 3.1.2, the College is not liable to the Tenderer for any costs on the basis of any contractual, promissory or restitutionary grounds whatsoever as a consequence of any matter relating to the Tenderer’s participation in the Tendering Process, including without limitation, instances where:
(a) the Tenderer is not engaged to perform under any contract; or
(b) the College exercises any right under this RFT or at law.

6.6 Disclosure of Tender contents and Tender information
6.6.1 Tenders will be treated as confidential by the College. The College will not disclose Tender contents and Tender information, except:
(a) as required by law (including, for the avoidance of doubt, as required under the Freedom of Information Act 1982 (Vic) (FOI Act));
(b) for the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;
(c) to external consultants and advisers of the College engaged to assist with the Tendering Process; or
(d) general information from Tenderers required to be disclosed by government policy.

6.7 Use of Tenders
6.7.1 Upon submission in accordance with the requirements of clause 5 (Submission of Tenders) of RFT Part A, all Tenders become the property of the College. Tenderers will retain all ownership rights in any intellectual property contained in the Tender. The submission of a Tender does not transfer to the College any ownership interest in the Tenderer’s intellectual property rights, or give the College any rights in relation to the Tender, expect as expressly set out below.

6.7.2 Each Tenderer, by submission of their Tender, is deemed to have licensed the College to reproduce the whole, or any portion, of their Tender for the purposes of enabling the College to evaluate the Tender.

6.7.3 Further, in submitting a Tender, the Tenderer accepts that the College may, in accordance with the requirements of applicable Victorian Government policy, publish (on the internet or otherwise):
(a) the name of the successful or recommended Tenderer(s);
(b) the value of the successful Tender; and
(c) the Tenderer’s name together with the provisions of the contract generally.

6.8 Period of validity
6.8.1 All Tenders must remain valid and open for acceptance for a minimum of 120 days from the Closing Time. This period may be extended by mutual agreement between the College and the Tenderer.

6.9 Status of Tender
6.9.1 Each Tender constitutes an irrevocable offer by the Tenderer to the College to provide the Services required under, and otherwise to satisfy the requirements of, the Specification (RFT Part B of this RFT) on the terms and conditions of the Proposed Contract (subject to the Statement of Compliance contained in RFT Part D of this RFT).

6.9.2 A Tender must not be conditional on:
(i) board approval of the Tenderer or any related body corporate of the Tenderer being obtained;
(ii) the Tenderer conducting due diligence or any other form of enquiry or investigation;
(iii) the Tenderer (or any other party) obtaining any regulatory approval or consent;
(iv) the Tenderer obtaining the consent or approval of any third party; or
(v) the Tenderer stating that it wishes to discuss or negotiate any commercial terms of the contract.
6.9.3 The College may, in its absolute discretion, disregard any Tender that is, or is stated to be, subject to any one or more of the conditions detailed above (or any other conditions).

6.9.4 The College reserves the right to accept a Tender in part or in whole or to negotiate with a Tenderer in accordance with clause 8.3 (Unreasonable disadvantage) of RFT Part A.

7. **Compliance with Specification and Proposed Contract**

7.1 **Compliance with Specification**

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

7.1.2 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 3 (Compliance with the Specification) of RFT 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.

7.1.3 The College 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 College the necessity for such variations or departures.

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

7.1.4 For the purposes of this clause 7.1:

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

(b) **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.

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

7.2 **Compliance with the proposed contract**

7.2.1 Under RFT Part D of this RFT, 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 RFT Part C of this RFT.

7.2.2 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 10 (Risk and insurance) of RFT 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.

7.2.3 The College 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.

**Note to Tenderers:** The College 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 College of any non-compliance may result in a Tenderer’s Response being disregarded.

7.2.4 For the purposes of this clause 7.2:

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

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

(c) **Will not comply** means that the Tenderer does not accept the contractual provision.

7.3 **General**

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

7.3.2 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 Tender, or be included in a general statement of the Tenderer’s usual operating conditions.

7.3.3 An incomplete Tender may be disqualified or assessed solely on the information received with the Tender.
7.4 Alternative Tender

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

(a) the Tenderer also provides a conforming Tenderer’s Response; and
(b) the alternative proposal is clearly identified as an “Alternative Tender”.

7.4.2 An Alternative Tender may:

(a) not comply with the Specifications for the relevant Services due to inherent design or capability in the operation of the Services; or

(b) provide the Services in a manner different to that specified in RFT Part B of the RFT.

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

(a) the outputs, functional, performance and technical aspects of the requirement; or

(b) minimisation of environmental impact;

(c) opportunities for more advantageous commercial arrangements.

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

7.4.5 Where a Tenderer submits an offer which meets the requirements of the RFT in an alternative and practical manner, the Tender must also include any supplementary material (including such pricing and costing details as may be necessary to enable the College 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.

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

8. Contract Disclosure Requirements

8.1 Freedom of Information

8.1.1 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, if by agreement certain clauses are excised from public contracts, the Government cannot pre-empt the workings of the FOI Act or constrain the Auditor General’s powers to secure and publish documents as he or she sees fit.

8.1.2 The Conditions of Tendering include a provision for the disclosure of contract information (refer clause 6.7 (Use of Tender) in RFT Part A dealing with “Use of Tenders”).

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

8.1.4 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.

8.1.5 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.

8.2 Environmental claims

The College wishes to be informed of any claims made by Tenderers about the benefit, including environment benefits, of the Services that are offered by them.

The environmental benefits of the Services being offered and/or the environmental benefits in their sourcing, production and manufacture, should be brought to the attention of the College.

8.3 Trade secrets

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

(a) the extent to which it is known outside of the Tenderer’s business;

(b) the extent to which it is known by the persons engaged in the Tenderer’s business;

(c) any measures taken to guard its secrecy;

(d) its value to the Tenderer’s business and to any competitors;

(e) the amount of money and effort invested in developing the information; and

(f) the ease or difficulty with which others may acquire or develop this information.

8.4 Unreasonable disadvantage

8.4.1 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:

(a) whether the information is generally available to competitors; and

(b) whether it could be disclosed without causing substantial harm to the competitive position of the business.

8.4.2 The College will consider these applications in the Tender evaluation and any negotiations with Tenderers.
9. Evaluation of Tenders

9.1 Evaluation process

9.1.1 Following the Closing Time, the College intends to evaluate the Tenders received. Tenders will be evaluated against the Evaluation Criteria specified in clause 9.2 (Evaluation Criteria Format) of RFT Part A.

9.1.2 Without limiting the College's rights in the RFT, the College may at any time during the Tendering Process choose to:
(a) shortlist one or more Tenderers;
(b) commence or continue discussions with all or some Tenderers without shortlisting any Tenderers; or
(c) accept one or more of the Tenders.

9.1.3 Unless the Evaluation Criteria explicitly require, the College may, but is not in any way bound to, shortlist, to select as successful.

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

9.1.5 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 College. The commencement of negotiations by the College with one or more other Tenderers is not to be taken as an indication that any particular Tenderer's Response has not been successful.

9.2 Evaluation criteria format

9.2.1 The evaluation criteria can be weighted to reflect the importance of project requirements noted in RFT Part B of the Specifications.

9.2.2 In evaluating Tenderer's Responses, the College will have regard to:
(a) specific evaluation criteria identified in the list below;
(b) the overall value for money proposition presented in the Tenderer's Response; and
(c) particular weighting assigned to any or all of the criteria specified in the table below (noting that any criteria for which a weighting has not been assigned should be assumed to have equal weighting).

9.2.3 For the purposes of clause 9.2.2, “value for money” is a measurement of financial and non financial factors, including:
(a) quality levels;
(b) performance standards; and
(c) environmental benefits/impacts.

9.2.4 Value for money will be assessed on a ‘whole of life’ basis (including the transitioning-in, the contract term and the transitioning-out phases of the relationship between the College and a Tenderer), with a view to long-term sustainability of the value for money proposition and with a focus on ensuring that value for money outcomes are promoted and protected following the conclusion of any contract that may result from this RFT.

<table>
<thead>
<tr>
<th>EVALUATION CRITERIA</th>
<th>WEIGHTING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PROFESSIONAL COMPETENCE</strong></td>
<td></td>
</tr>
<tr>
<td><strong>1.1 Compliance to Specifications</strong></td>
<td>5</td>
</tr>
<tr>
<td>- meets specification requirements</td>
<td></td>
</tr>
<tr>
<td>- meets standards</td>
<td></td>
</tr>
<tr>
<td><strong>1.2 Customer Service</strong></td>
<td>5</td>
</tr>
<tr>
<td>- policy and practice</td>
<td></td>
</tr>
<tr>
<td>- surveys customers</td>
<td></td>
</tr>
<tr>
<td>- systems to measure customer satisfaction</td>
<td></td>
</tr>
<tr>
<td>- backup and advice</td>
<td></td>
</tr>
<tr>
<td><strong>1.3 Quality system for deliverables</strong></td>
<td>4</td>
</tr>
<tr>
<td>- certification</td>
<td></td>
</tr>
<tr>
<td>- documented system</td>
<td></td>
</tr>
<tr>
<td><strong>1.4 Capability</strong></td>
<td>4</td>
</tr>
<tr>
<td>- staffing structure</td>
<td></td>
</tr>
<tr>
<td>- availability of experienced staff</td>
<td></td>
</tr>
<tr>
<td>- previous work</td>
<td></td>
</tr>
<tr>
<td>- state of technology</td>
<td></td>
</tr>
<tr>
<td><strong>1.5 Past Performance</strong></td>
<td>4</td>
</tr>
<tr>
<td>- experience in the industry</td>
<td></td>
</tr>
<tr>
<td>- previous public sector experience</td>
<td></td>
</tr>
<tr>
<td>- referee’s view</td>
<td></td>
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<tr>
<td><strong>1.6 Strategic</strong></td>
<td>4</td>
</tr>
<tr>
<td>- location</td>
<td></td>
</tr>
<tr>
<td>- networking</td>
<td></td>
</tr>
<tr>
<td><strong>1.7 Innovation</strong></td>
<td>4</td>
</tr>
<tr>
<td>- leading technology</td>
<td></td>
</tr>
<tr>
<td>- creativity</td>
<td></td>
</tr>
</tbody>
</table>
COMMERCIAL

2.1 Financial viability
- satisfies key financial ratios for industry

2.2 Risk and Insurance
- adequate insurance
- allocate and acceptance of risk

2.3 Compliance to Conditions of Contract
- complies to the terms and conditions
- ease of legal recourse

2.4 Conflict of Interest
- existing or potential
- process for protection against

This criterion is not weighted and scored. Tenders either comply or do not comply.

FINANCIAL

• Tendered price
• Disbursements
• Price variations (through contract period)
• Contingencies
• Any other factors

This criterion is not weighted and scored. A ‘value for money’ assessment will be undertaken if short listed.

Weighting and Scoring of Evaluation Criteria

<table>
<thead>
<tr>
<th>WEIGHTING</th>
<th>SCORING</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 = Minimum</td>
<td>0 Not acceptable. Has not met the minimum requirement</td>
</tr>
<tr>
<td>2 = Of benefit</td>
<td>1 - 4 Has only met some minimum requirements and may not be acceptable</td>
</tr>
<tr>
<td>3 = High levels</td>
<td>5 Acceptable</td>
</tr>
<tr>
<td>4 = Superior level</td>
<td>6 - 9 Acceptable, has met all requirements and exceeded some</td>
</tr>
<tr>
<td>5 = Absolutely</td>
<td>10 Acceptable, has far exceeded all requirements</td>
</tr>
</tbody>
</table>

A score of ‘0’ will result in that Tender no longer being considered.

Tenders will be evaluated against the criteria detailed above.

9.3 Clarification of Tender

9.3.1 The College may seek clarification from and enter into discussions with any or all of the Tenderers in relation to their Tender. The College may use such information in interpreting the Tender and evaluating the cost and risk to the Lead Departing of accepting the Tender. Failure to supply clarification to the satisfaction of the College may render the Tender liable to disqualification.

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

9.4 Discussion with Tenderers

9.4.1 The College may elect to engage in detailed discussions with any one or more Tenderers, with a view to maximising the benefits of the RFT as measured against the evaluation criteria set out in clause 9.2 and fully understanding a Tenderer’s offer, including risk allocation.

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

9.4.3 In its absolute discretion, the College may invite some or all Tenderers to give a presentation to the College in relation to their submissions.

9.4.4 The College is under no obligation to undertake discussions with, or to invite any presentations from, Tenderers.

9.4.5 In addition to presentations and discussions, the College may request some or all Tenderers to:
- (a) conduct a site visit;
- (b) provide references or additional information; and/or
- (c) make themselves available for panel interviews.

9.5 Best and final offers

9.5.1 Tenderers or, where the Tendering Process involves a short listing process, shortlisted Tenderers, may be invited by the College to submit a best and final offer in relation to all or certain aspects of their respective Tenders.

9.5.2 The College is under no obligation to give Tenderers the opportunity to submit a best and final offer. If the College 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 College may give Tenderers the opportunity to submit a best and final offer, Tenderers should be aware that the College will, in conducting its evaluation of Tenders, rely on all information (including all representations) contained in such Tenders. 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 Tender as part of their best and final offer. Unless and until the College executes such contract, submission of a contract capable of acceptance by the College does not and will not be taken to give rise to a binding contract (express or implied) between a Tenderer and the College.

9.5.3

10. Successful Tenders

10.1 No legally binding contract

10.1.1

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

10.2 Pre-contractual negotiations

10.2.1

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

10.2.2

A Tenderer is bound by its Tender (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 Tender without negotiation.

10.3 No Obligation to enter into contract

10.3.1

The College 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 Tender that complies in all relevant respects with the requirements of the College, or if to do so would otherwise not be in the public interest. For the avoidance of any doubt, in these circumstances the College will be free to proceed via any alternative process.

11. Tenderer Warranties

11.1.1

By submitting a Tender, a Tenderer warrants that:

(a) in lodging its Tender 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 College, its officers, employees, agents or advisers other than any statement, warranty or representation expressly contained in the RFT;

(b) it did not use the improper assistance of College employees or information unlawfully obtained from the College in compiling its Tender;

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

(d) it otherwise accepts and will comply with the rules set out in this RFT Part A of the RFT; and

(e) it will provide additional information in a timely manner as requested by the College to clarify any matters contained in the Tender.

12. College’s Rights

12.1.1

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

(a) cease to proceed with, or suspend the Tendering Process prior to the execution of a formal written contract;

(b) alter the structure and/or the timing of the RFT or the Tendering Process;

(c) vary or extend any time or date specified in this RFT for all or any Tenderers or other persons;

(d) terminate the participation of any Tenderer or any other person in the Tendering Process;

(e) require additional information or clarification from any Tenderer or any other person or provide additional information or clarification;

(f) negotiate with any one or more Tenderers and allow any Tenderer to alter its Tender;

(g) call for new Tenders;

(h) reject any Tender received after the Closing Time;

(i) reject any Tender that does not comply with the requirements of this RFT; or

(j) consider and accept or reject any alternative tender.

13. Governing Law

13.1.1

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

13.1.2

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

14.1 Definitions

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

Business Day means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the Public Holidays Act 1993 (Vic)) in Melbourne.

Closing Time means the time specified as such in clause 1.4 (Indicative Timetable) of RFT Part A by which Tenders must be received.

Evaluation Criteria means the criteria set out in clause 9.2 (Evaluation Criteria Format) of RFT Part A.

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.

Project Officer means the person so designated in clause 1.3 (Project Officer and Project Sponsor) of RFT Part A.

Project Sponsor means the person so designated in clause 1.3 (Project Officer and Project Sponsor) of RFT Part A.

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

Reference Schedule means the schedule so designated forming part of RFT Part A of this RFT.

Request For Tender or RFT means this document (comprising each of the parts identified in clause 2 Rules Governing this RFT and the Tendering Process of this RFT Part A) and any other documents so designated by the College.

Services means the services required by the College, as specified in RFT Part B of this RFT.

Specification means any specification or description of the College’s requirements contained in RFT Part B of this RFT.

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

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

Tender means a document lodged by a Tenderer in response to this RFT containing an offer to provide Services in accordance with the Specification.

Tenderer means a person or organisation that submits a Tender.

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

14.2 Interpretation

14.2.1 In this RFT, unless expressly provided otherwise:

(a) a reference to:

i) “includes” or “including” means includes or including without limitation; and

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

(b) if a word or phrase is defined its other grammatical forms have corresponding meanings.

14.3 Inconsistency

14.3.1 If there is any inconsistency between any part of this RFT, a descending order of precedence must be accorded to:

(a) the conditions of tendering in Part A of this RFT and any annexes or attachments;

(b) the Tenderer’s response in Part D of this RFT;

(c) the Proposed Contract in Part C of this RFT;

(d) any other part of this RFT,

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