Invitation for Expressions of Interest

November 2016

ISBN 978-1-925551-10-5 (online)

# Template

## Purpose

This template will be used by procuring agencies preparing an Invitation for Expressions of Interest (EOI) as part of the tender process for a public private partnership project. Using a template will ensure a consistent approach and streamline procurement processes. This can assist procuring agencies and give bidders predictability around the information requirements.

This template is publicly available and may be amended from time to time as required.

## Policy Requirement

The Partnerships Victoria Requirements 2016 state:

The invitation for expressions of interest should provide a clear description of the project including context, project scope, key project issues, governance and commercial framework.

Information should be sought that can be used to differentiate and short list respondents and is clearly linked to the evaluation criteria.

Procuring agencies must use the DTF expression of interest template, including terms and conditions.

All Victorian government tenders, including invitations for expressions of interest released for PPP projects, are to be advertised on the Victorian Government Tenders website in accordance with the requirements of the Victorian Government Purchasing Board.

## Template instructions

This template sets out the required form and recommended content of the Invitation for EOI.

This EOI template can be tailored to project specific circumstances. Guidance notes are included to assist with content, examples and issues to consider.

The EOI template includes approved standard terms and conditions. These must be included in the EOI and continue to apply throughout the procurement process. The terms and conditions are closely linked to the Partnerships Victoria Project Deed which is available at [www.partnerships.vic.gov.au](http://www.partnerships.vic.gov.au).

Invitation for Expressions of Interest

[Template]

# Message from the Minister [insert portfolio]

# Important Message

In reviewing this Invitation for Expression of Interest (EOI), please also review the Terms and Conditions which apply to it (Appendix B (Terms and Conditions)).

By submitting an EOI and executing the EOI Form, a Respondent and each Respondent Member:

* agrees to comply with the Terms and Conditions; and
* must ensure compliance by its Associates with the Terms and Conditions.

Capitalised terms are defined in the Glossary.

Version ***[insert number]*** - Issued ***[insert date]***.

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* + 1. Introduction
			1. The Opportunity

Guidance note: This Section is intended to provide a high level overview of the Project consistent with the Project Business Case and including reference to applicable policy, government funding commitments and benefits that the Project seeks to achieve (e.g. the creation of new jobs).

The high level overview should also be aligned with the Project Objectives.

It should be noted that this Section is intended to be an introductory section only and a more detailed Project summary is to be set out in Section 0 (Project Rationale).

***[Insert Procuring Agency]***, on behalf of the State, invites suitably qualified Respondents to submit Expressions of Interest (EOI) for the delivery of the ***[insert Project title]*** (the Project).

* + - 1. Purpose of this Invitation for EOI

The purpose of this Invitation for EOI is to:

* + - provide information to potential Respondents about the Project;
		- outline the Tender Process and procurement timetable for the Project;
		- invite potential Respondents to submit EOIs and inform them as to the information to be included in any EOIs;
		- set out the Evaluation Criteria against which the State will evaluate each EOI and select Shortlisted Respondents; and
		- elicit views and seek information from the market to assist the State’s decision making on certain key issues for the Project and the preparation of the Request for Proposal (**RFP**).
			1. Procurement Model

Guidance note: Outlined in the dot-points in this Section is a high level description of the procurement model which should be updated by Procuring Agencies to reflect any Project-specific requirements.

The procurement approach is further explained in Section 9 (Procurement Approach).

Delete references to any content not required/relevant, for example, removal of references to:

▪ “operations” where the Project is not a full service PPP (i.e. provision of additional ancillary and operational services); and

▪ Returned Works (i.e. works to be completed by Project Co during the Development Phase and progressively handed back to their respective facility owners / operators) where the Project scope does not include Returned Works.

The Project will be procured and delivered as an ‘availability based’ PPP. Under this model, Project Co (the party contracted to deliver the Project) will be responsible for:

* + - the design, construction and commissioning of the ***[insert Project asset(s)]***;
		- ***[the hand back of Returned Works to respective asset owners/operators;]***
		- the ***[operation and]*** maintenance of the ***[insert Project asset(s)]***;
		- the handover of the ***[insert Project asset(s)]*** to the State at the end of the Project term; and
		- the provision of private sector finance for the Project.

The Project will be delivered under the Partnerships Victoria Framework and in accordance with:

* + - National PPP Policy and Guidelines (October 2015); and
		- Partnerships Victoria Requirements (November 2016).
			1. Tender Process and Project Timeframes

The Tender Process seeks to engage the private sector to competitively develop integrated proposals that will meet the Project Objectives. The State intends to enter into contractual arrangements for the delivery of the Project with the Respondent that best meets this requirement.

Section 9.2 (Tender Process) outlines the Tender Process. Table 1 (EOI Phase Timetable) sets out the key dates for the EOI Phase and Table 2 (Indicative Tender Process and Project Timetable) sets out indicative dates for the Tender Process and Project timetable.

Table 1: EOI Phase Timetable

|  |  |
| --- | --- |
| Key Activity | Target Date / Period |
| **EOI Phase** |
| **Release of Invitation for EOI** | ***[insert date]*** |
| **EOI Industry Briefing Registration Closing Time and Date *[optional, delete if not required for the project]*** | ***[insert time and date]*** |
| **EOI Industry Briefing *[optional, delete if not required for the project]*** | ***[insert date]*** |
| **Clarification Closing Time and Date** | ***[insert time and date]*** |
| **EOI Closing Time and Date** | ***[insert time and date]*** |

Table 2: Indicative Tender Process and Project Timetable

| Phases | Target Date / Period |
| --- | --- |
| **Tender Process** |
| Release of RFP | ***[insert month/quarter(s) (as applicable) and year]*** |
| Proposals due | ***[insert month/quarter(s) (as applicable) and year]*** |
| Contract Close and Financial Close | ***[insert month/quarter(s) or year half (as applicable) and year]*** |
| **Development Phase** |
| ***[#insert key Development Phase milestones as required]*** |  |
| ***[#insert key Development Phase milestones as required]*** |  |
| **Operating Phase (maximum Operating Phase duration)** | ***[insert Operating Phase period]* years** |

The State reserves the right to amend the timetables outlined in Table 1 (EOI Phase Timetable) and Table 2 (Indicative Tender Process and Project Timetable) at any stage.

* + - 1. EOI Industry Briefing [#OPTIONAL. DELETE IF NOT APPLICABLE TO THE PROJECT]

Guidance note: Delete this Section and the variable in Table 1 (EOI Phase Timetable) if an EOI Industry Briefing will not be conducted in respect of the Project/Invitation for EOI.

The State will conduct an EOI Industry Briefing for potential Respondents. The purpose of the briefing will be to provide details in respect of the Project and afford an opportunity for potential Respondents to ask questions in respect of any aspect of this Invitation for EOI.

Attendance at the EOI Industry Briefing session is not mandatory and is not a prerequisite for the submission of an EOI. Further details are provided in Section 11.7 (EOI Industry Briefing).

* + 1. Project Rationale
			1. Project Background and Context

Guidance note: This Section is intended to provide context relevant to the sector in which the Project asset(s) to be delivered by Project Co will operate.

* + - 1. Strategic Alignment
				1. Policy Alignment

Guidance note: This Section is intended to describe the legislative and policy framework applicable to the sector (e.g. health / education sectors) or system (e.g. correctional services system) within which the asset(s) and services to be delivered by Project Co will function/operate.

This Section should be consistent with the relevant sections of the Business Case for the Project. Where a Business Case has been made publicly available, Procuring Agencies may cross-refer to the relevant sections of the Business Case rather than replicate relevant sections. A web address should be provided for Business Cases that have been made publicly available.

* + - * 1. The Service Need

Guidance note: This Section is intended to describe the gap or deficiency in infrastructure capacity and service delivery that the Project is seeking to address.

This Section should be consistent with the relevant sections of the Business Case for the Project. Where a Business Case has been made publicly available, Procuring Agencies may cross-refer to the relevant sections of the Business Case rather than replicate those sections. A web address should be provided for Business Cases that have been made publicly available.

* + - * 1. Funding Commitment

Guidance note: This Section is intended to provide details of any State funding commitments made with respect to the Project, including with reference to State Budgets, dates, and a brief description of the Project scope items included within, or excluded from, the funding commitment.

This Section should be consistent with the relevant sections of the Business Case for the Project. Where a Business Case has been made publicly available, Procuring Agencies may cross-refer to the relevant sections of the Business Case rather than replicate those sections. A web address should be provided for Business Cases that have been made publicly available.

* + - 1. Strategic Response

Guidance note: This Section is intended to describe how the proposed intervention (i.e. the Project) addresses the service need. This Section should be a summary of the relevant sections of the Business Case for the Project.

Where a Business Case has been made publicly available, Procuring Agencies may cross-refer to the relevant sections of the Business Case rather than replicate those sections of the Business Case. A web address should be provided for Business Cases that have been made publicly available.

* + - 1. Project Objectives

Guidance note: The Project Objectives should replicate those detailed in the Business Case for the Project, if available.

The Project Objectives should also be reflected in and be consistent with the Evaluation Criteria and Proposal Requirements detailed in Appendix D (EOI Returnables).

The following are the State’s Project Objectives for the Project:

* + - ***[insert objective]***
		- ***[insert objective]***
		- ***[insert objective]***
			1. Related Projects [#OPTIONAL. DELETE IF NOT APPLICABLE TO THE PROJECT]

Guidance note: This Section is intended to provide details of any related State projects that may impact or are related to the realisation of the Project Objectives, including any Early Works that will be delivered by Early Works Contractors.

Examples of Early Works from other Partnerships Victoria ‘availability’ PPP projects have included:

▪ utility service relocation works to relocate and protect services such as electricity, gas, sewer and water mains; and

▪ site preparation works including the removal of trees, relocation of monuments and demolition of existing buildings.

* + 1. Project Scope
			1. Overview

Guidance note: This Section is intended to provide a high level overview of the Project scope, including reference to design, construction, commissioning, operating and maintenance activities and financing of the Project.

The Project scope outlined below is a general summary and should be updated to reflect Project-specific requirements.

Project Co will be responsible for:

* + - the design and construction of ***[insert a description of the Project asset(s)]***;
		- delivery of defined ***[operational services / facilities management services / maintenance / lifecycle services]*** for the ***[insert Project asset(s)]*** over a ***[insert]*** year term (see Section 3.3 (Project Services)); and
		- the provision of private sector finance.

The State is seeking innovative proposals to deliver the Project.

* + - 1. Design and Construction
				1. Scope of Works

Guidance note: This Section is intended to provide a description of the key elements of the Project asset(s) to be delivered by Project Co during the Development Phase with reference to the design, construction, commissioning and testing.

The information in this Section will assist Respondents in formulating a response to Evaluation Sub-Criterion 2B (Project Delivery Strategy) Response Requirements.

Project Co will be responsible for the design and construction of:

* + - ***[insert Project-specific requirements]***
			* 1. Design Principles

Guidance note: This Section is intended to set out the key design principles for the Project asset(s).

Example key design principles may include:

▪ masterplanning principles;

▪ asset performance that will demonstrate the most beneficial life cycle cost;

▪ innovative solutions using proven technology; and

▪ sustainable, environmentally-friendly design solutions.

The information in this Section will assist Respondents in formulating a response to Evaluation Sub-Criterion 2B (Project Delivery Strategy) Response Requirements.

The key design principles for the ***[insert Project asset(s)]*** include:

* + - ***[insert key design principles]***;
			* 1. Packaging or Staging [#OPTIONAL. DELETE IF NOT APPLICABLE TO THE PROJECT]

Guidance note: This Section should provide a description of the packaging of Project scope bundles or distinct Project stages, if relevant.

Delete if not applicable to the Project.

The information in this Section will assist Respondents in formulating a response to Evaluation Sub-Criterion 2B (Project Delivery Strategy) Response Requirements.

* + - * 1. Equipment / ICT [#OPTIONAL. DELETE IF NOT APPLICABLE TO THE PROJECT]

Guidance note: This Section is an optional Section and should be included if the Project has complex equipment procurement and/or ICT requirements. For example, in social infrastructure procurements where Fixtures, Fittings and Equipment (FF&E) may be procured, supplied and maintained by the State.

Delete if not applicable to the Project.

* + - 1. Project Services

Guidance note: The Project Services scope outlined in the first paragraph below is a general summary of services categories and should be updated to reflect Project-specific requirements including the removal of any irrelevant variable.

Table 3 (Summary of Services) set out below should include all relevant operational services, facilities management services, maintenance and lifecycle services.

The information in this Section will assist Respondents in formulating a response to Evaluation Sub-Criterion 2C (Project Services Strategy) Response Requirements.

***[Operational services / facilities management services / maintenance / lifecycle services]*** for the Project will be delivered as detailed in the Table 3 (Summary of Services) below.

Table 3: Summary of Services

|  |  |
| --- | --- |
| Service Bundle | Description |
| **Services to be provided by Project Co** |
| ***[Insert category/type]*** | ***[Insert dot point summary of the Services to be provided within this category.]*** |
| **Services to be provided by *[Other Party i.e. State]*** |
| ***[Insert category/type]*** | ***[Insert dot point summary of the Services to be provided within this category.]*** |

* + 1. The Site[s]
			1. Site Description

Guidance note: This Section is intended to provide an overview of the Site(s) including location and project specific land related matters such as:

▪ any Site complexities which may impact the Project;

▪ availability and acquisition. For example, whether the Project has been declared as a project to which the *Major Transport Projects Facilitation Act 2009* (Vic) applies for land acquisition and delivery purposes;

▪ Site ownership (e.g. where the Site is freehold land and owned by a procuring agency) or leasing arrangements;

▪ local government area and location coordinates; and

▪ any masterplanning considerations, particularly where the Project involves multiple sites and masterplanning principles need to be applied across each site.

For linear infrastructure projects, this Section will need to cover the “Project Area” including multiple sites. Accordingly, Procuring Agencies may substitute “Site” with “Project Area” in the Section headings above.

Where available, an indicative Site/Project Area map should be included.

* + - 1. Planning and Environment
				1. Environmental Assessments, Permits and Approvals

Guidance note: This Section is intended to provide details of all relevant legislation under which planning and environmental approvals will be sought to facilitate the construction and maintenance activities including any Environment Effects Statement.

Procuring Agencies should:

▪ identify the party responsible for obtaining approvals and provide indicative timeframes for when the approvals are expected to be finalised; and

▪ provide details of any other relevant legislation under which permits may be required to be obtained and identify the responsible party.

* + - * 1. Site Investigations and Information

Guidance note: This Section is intended to provide details of:

▪ any investigations, assessments and works that have been or will be undertaken by the State in relation to the Site(s);

▪ where applicable, the purpose of the Site investigations, assessments and works (e.g. to assess ground conditions in order to inform design and planning);

▪ information that has been collected and/or collated to date; and

▪ whether the results of any investigations, assessments and works have been, or will be made available, and any conditions of release (e.g. results are available in the Data Room for those parties who have signed confidentiality undertakings or assessments and site investigation reports will be included in the Data Room during the RFP Phase of the Tender Process).

Where the State is proposing to transfer geotechnical and contamination risk to Project Co, Procuring Agencies should seek to procure third party reliance in respect of any Site information reports that will be obtained by Procuring Agencies to support the risk transfer to Project Co.

* + - * 1. Community Consultation

Guidance note: This Section is intended to provide details of any community and stakeholder consultation/engagement that has been or is proposed to be undertaken in respect of the Project (including reference to groups and dates, where applicable).

The website for any relevant community groups should be provided.

* + - 1. Utilities and Local Infrastructure [#OPTIONAL. DELETE IF NOT APPLICABLE TO PROJECT]

Guidance note: This Section is intended to provide details of any significant existing utilities or local infrastructure that will need to be accommodated during design and construction (if relevant). For example, where the Project is located in an area that contains underground (e.g. main drains or sewer lines) or overground utilities infrastructure that may require adjustment to accommodate the Project.

This Section should be deleted if not applicable to the Project.

* + 1. Key Project Issues

Guidance note: This Section is intended to set out an overview of material issues that may impact the delivery of the Project. A sub-heading should be inserted for each Key Project Issue. In determining Key Project Issues, Procuring Agencies should consider the materiality of an issue and the potential to differentiate responses when evaluating Evaluation Criterion 3 (Understanding of Key Project Issues and Proposed Approach).

Examples of Key Project Issues from other Partnerships Victoria availability PPP projects have included:

▪ key Project interfaces. Note: If the successful delivery of the Project is dependent on significant coordination and cooperation between other contractors (e.g. early works contractor), projects and third parties, the Procuring Agency may consider addressing ‘interfaces’ in a stand-alone Section;

▪ Returned Works, being works to be completed by Project Co during the Development Phase and progressively handed back to their respective third party facility owners / operators in accordance with the State Project Documents;

▪ third-party disruption minimisation and management (including traffic and transport management);

▪ requirements in respect of spoil material testing and removal;

▪ utilities and local infrastructure impacts;

▪ State delivery program, including early completion and staging;

▪ stakeholder engagement;

▪ sustainability (e.g. whether the Project has an endorsed sustainability policy or sustainability targets);

▪ accreditation requirements to deliver and maintain the Project asset(s);

▪ occupational health and safety;

▪ ICT requirements and integration with existing systems; and

▪ site issues, including any brownfield constraints/impacts.

The information in this Section will assist Respondents in formulating a response to Evaluation Criterion 3 (Understanding of Project Issues and Proposed Approach) Response Requirements.

* + - 1. [Insert Key Project Issue]

***[insert Project-specific information]***

* + - 1. [Insert Key Project Issue]

***[insert Project-specific information]***

* + - 1. [Insert Key Project Issue]

***[insert Project-specific information]***

* + 1. Commercial Framework
			1. Overview

The Project will be procured and delivered as an ‘availability based’ PPP.

Service Payments made by the State to Project Co for the delivery of ***[insert description of services]*** will be subject to abatement for ***[insert high level description of the performance regime]****.*

* + - 1. Proposed Commercial Structure

Guidance note: The proposed commercial structure depicted in Figure 1 (Proposed Commercial Structure) reflects a typical availability-PPP structure and should be updated to reflect Project-specific arrangements (e.g. where a project is a full service PPP or has franchising arrangements).

Table 4 (Principal Agreements) outlines the State Project Documents and other key-Project agreements. The table currently reflects key Project agreements typical of an availability-PPP but should be updated to reflect Project-specific arrangements (e.g. where a project is a full service PPP or has franchising arrangements). The Project Legal Advisor should be consulted when finalising document references.

The information in this Section will assist Respondents in formulating a response to Evaluation Sub-Criterion 2A (Project Co Equity and Governance Strategy) Response Requirements.

The State is seeking to contract with a single corporate entity (Project Co) to deliver the Project. The contractual framework for the Project will adopt a typical document structure as used for availability ‘based’ PPPs in Victoria under the PartnershipsVictoria Framework.

Figure 1 (Proposed Commercial Structure) sets out a high-level overview of the proposed commercial structure for the Project.

Figure 1: Proposed Commercial Structure



Respondents may propose contractual arrangements between Project Co and its Respondent Members that differ from the indicative commercial structure outlined in Figure 1 (Proposed Commercial Structure) above.

The principal Project agreements, including State Project Documents, are summarised in Table 4 (Principal Agreements) below.

Table 4: Principal Agreements

| Project Documents | Description |
| --- | --- |
| **State Project Documents** |
| **Project Deed** | The Project Deed is between Project Co and the State and is the primary legal document that sets out the rights and obligations of the parties for the delivery of the Project, including: * the term of the Project;
* the design, construction and management requirements;
* the minimum availability and performance standards;
* site access and occupancy rights;
* default, step-in and termination rights of the State;
* payment mechanism and performance regime; and
* the handover requirements at the end of the Project term.
 |
| **State Security** | The State Security is between the State and Project Co and provides the State with a security interest over all of Project Co’s assets and undertakings as security for performance of Project Co’s obligations under the State Project Documents. It sits together with the security required by the Financiers. |
| **Finance Direct Deed** | The Finance Direct Deed is between the State, Project Co, the Facility Agent and the Security Trustee on behalf of the Financiers. This document sets out, amongst other things, the respective rights and obligations of the State and the Financiers in the event of default by Project Co under the Project Deed and certain defaults by Project Co under its financing documents. |
| **D&C Contractor Direct Deed** | The D&C Contractor Direct Deed is between the State, Project Co, the D&C Contractor and the Parent Guarantor of the D&C Contractor and allows, amongst other things, for step-in by the State or novation of the D&C Contract to the State in the event of default by Project Co.  |
| **Services Contractor Direct Deed** | The Services Contractor Direct Deed is between the State, Project Co, the Services Contractor and the Parent Guarantor of the Services Contractor and allows, amongst other things, for step-in by the State or novation of the Services Contract to the State in the event of default by Project Co.  |
| **Independent Reviewer Deed of Appointment** | The Independent Reviewer Deed of Appointment is between the State, Project Co and the Independent Reviewer. The Deed sets out the terms and conditions for the appointment of the Independent Reviewer by the State and Project Co. It will include detail as to the scope of the work to be undertaken by the Independent Reviewer. The Independent Reviewer will be appointed for a period covering the Development Phase and any defects liability period.  |
| ***[#Insert additional documents which the State is a party to (e.g. franchise agreements, interface and coordination deeds)]*** |  |
| **Other Project Documents** |
| **Finance and Equity Documents** | These documents will govern the terms and conditions associated with the provision of private sector debt and equity finance to Project Co. |
| **Project Co Contracts** | These agreements will contain the construction and service delivery contracts that Project Co will enter into with its key contractors, including the D&C Contractor the Services Contractor, to deliver the ***[#insert scope consistent with Project scope (e.g. deliver, operate and maintain the Project asset(s)].*** |
| **Management Services Contract*****[#Delete if not applicable to the Project]*** | The Management Services Contract is between Project Co and the Management Services Contractor under which the Management Services Contractor undertakes management services for Project Co in respect of the Project. |
| ***[#Insert additional documents as applicable (e.g. Direct Interface Deeds where the Project scope includes Returned Works)]*** |  |

* + - 1. Tenure Arrangements

Guidance note: This Section is intended to provide details of the proposed tenure and access arrangements that will apply to both the Development Phase and the Operating Phase with reference to the construction licence and maintenance/operating licence/lease and any other tenure and access arrangements that will be granted by the State to facilitate the delivery of the Project by Project Co.

The Project will be delivered under appropriate tenure arrangements that follow an approach typical of availability-PPPs in Australia. Under this approach, the State will provide Project Co with:

* + - ***[insert Project-specific information]***
			1. Commercial Considerations
				1. Commercial Principles

The commercial principles to be adopted for the Project will be consistent with the National PPP Policy and Guidelines and the Standard Partnerships Victoria Project Deed (November 2016), except to the extent necessary to reflect Project-specific issues.

An indicative risk allocation matrix for the Project between the State and Project Co is included at Appendix C (Risk Allocation Summary). Respondents are required to confirm the extent to which they accept this risk allocation as part of their EOIs.

* + - * 1. Financial Capacity and Security

As part of the consideration Evaluation Sub-Criterion 4B (Financial Capacity and Commercial Arrangements), the State will assess the financial capacity of Respondent Members to meet their respective obligations under subcontractor arrangements with Project Co.

Respondents are required, as part of the Evaluation Sub-Criterion 4B (Financial Capacity and Commercial Arrangements) Response Requirements, to demonstrate that Respondent Members have the financial capacity, capability and track record, and the level of parent company support, to successfully deliver their aspect of the Project and contribute to the overall robustness and sustainability of the consortium.

At the RFP Phase, a more rigorous financial capacity and security assessment will be undertaken by the State which will assess the appropriateness of security arrangements (including parent company guarantees) and the monitoring and cure regimes proposed to address subcontractor performance and default events.

* + - * 1. Handover Requirements

The Operating Phase for the Project will be ***[insert number of years]*** from the date for ***[insert relevant acceptance milestone]***.

Project Co will be required to meet handover obligations at the end of the Project term, which are likely to include the following requirements:

* + - ***[Insert details of assets to be handed over at the end of the Project term and associated residual life requirements.]***
			1. Payment Mechanism and Performance Regime
				1. Payment Mechanism

Guidance note: Table 5 (Overview of Service Payment) below should provide an overview of the Service Payment.

Payments to Project Co during the Operating Phase will be structured as Service Payments encompassing capital and services elements of the Project. The payment mechanism is being developed to drive performance, innovation and value for money. The payment structure’s performance will be:

* + - clearly linked to the achievement by Project Co of the availability and performance requirements in the Project Deed;
		- set at realistic and achievable levels; and
		- capable of objective measurement, effective monitoring and accurate and timely reporting.

The payment mechanism is described in Table 5 (Overview of Service Payment) below.

Table 5: Overview of Service Payment

|  |  |
| --- | --- |
| Service Payment | Description |
| ***[insert]*** | ***[insert]*** |
| ***[insert]*** | ***[insert]*** |
| ***[insert]*** | ***[insert]*** |

* + - * 1. Performance Regime

Guidance note: Table 6 (Components of Performance Regime) should provide the expected components of the performance regime.

All Service Payments will be subject to abatement for failure to achieve specified performance levels and Key Performance Indicators (**KPIs**).

The performance regime is expected to comprise the components described in Table 6 (Components of Performance Regime) below.

Table 6: Components of Performance Regime

|  |  |
| --- | --- |
| Abatement/Adjustment | Description |
| ***[insert]*** | ***[insert]*** |
| ***[insert]*** | ***[insert]*** |

* + - 1. Project Finance

The State intends that:

* + - it will require fully private sector financed Proposals. A State contribution may be considered and made available at the conclusion of, or during, the Development Phase. Further details in relation to a State contribution (if any), including the proposed amount and timing, will be provided in the RFP;
		- Respondents’ proposed financing structures should seek to optimise the level of efficiently priced private sector finance; and
		- private sector finance (debt and equity) required for the Project will need to be fully committed and unconditional upon submission of a Proposal.
			1. Commercial Development Opportunities [#OPTIONAL. DELETE IF NOT APPLICABLE TO THE PROJECT]

Guidance note: To the extent that there is scope to incorporate associated commercial development opportunities, this should be outlined in this Section 6.7 (Commercial Development Opportunities). Examples include integrated private medical suites, car parks, retail, and food outlets.

* + - 1. Strategic Value Creation Opportunities [#OPTIONAL. DELETE IF NOT APPLICAPLE TO THE PROJECT]

Guidance note: To the extent that the Project feasibility or Business Case has identified any strategic value creation opportunities, the Invitation for EOI should:

▪ outline the scope of the strategic value creation opportunities; and/or

▪ provide flexibility for Respondents to identify any strategic value creation opportunities.

Procuring Agencies can seek guidance from the Department of Treasury and Finance on this Section 6.8 (Strategic Value Creation Opportunities). This Section 6.8 (Strategic Value Creation Opportunities) is optional and is distinct from the defined commercial development opportunities in Section 6.7 (Commercial Development Opportunities).

* + - 1. Independent Reviewer

Consistent with the National PPP Policy and Guidelines and precedent transactions of this size and type, an Independent Reviewer will be jointly appointed by the State and Project Co prior to the Development Phase of this Project.

The Independent Reviewer will have a significant role in relation to the Project, specifically during the design, construction, ***[manufacturing,]*** commissioning and acceptance stages of the Development Phase. Amongst other things, the Independent Reviewer will be responsible for:

* + - reviewing Project Co’s design documentation for compliance with the requirements of the Project Deed;
		- reviewing management plans;
		- reviewing test procedures, and witnessing and certifying completion testing;
		- certifying the completion of the ***[insert Project asset(s)]***;
		- reviewing the delivery program; and
		- assessing any time delay claims.

Further details of the scope of the role of the Independent Reviewer, and the procurement process will be included in the RFP.

The State acknowledges that Respondents for the role of the Independent Reviewer may eventually come from Respondent Members or Associates but notes that a Respondent Member (and any Associate of a Respondent Member) who is part of the Successful Respondent is not eligible for the role of the Independent Reviewer.

* + 1. Project Governance and Stakeholders
			1. Project Delivery Governance

Guidance note: This Section is intended to provide an outline of the Project governance structure to provide transparency of the decision-making process.

Figure 2 (Project Governance) is intended to illustrate the high level Project governance under which the Project will be delivered.

Responsibility for the Tender Process on behalf of the State lies with **[insert Procuring Agency]**.

The Minister for **[insert details of applicable Minister]** is the lead Minister for this Project. As such, primary accountability for ensuring that the State’s Project Objectives are met rests with **[insert applicable Victorian Government Department]**.

**[insert Procuring Agency]** will lead the delivery of the Project in accordance with the Partnerships Victoria Framework. The Department of Treasury and Finance will also play a key role given its oversight of the Partnerships Victoria Framework.

Within **[insert Procuring Agency]**, the State Representative reports to a Steering Committee. The Steering Committee has been established to provide recommendations to the Minister and comprises representatives from:

* + - ***[insert represented Departments and organisations]***

The governance structure is illustrated in Figure 2 (Project Governance) below.

Figure 2: Project Governance

***[Insert Project governance diagram]***

* + - 1. Project Stakeholders

A list of key stakeholders who will be affected by the Project (in no particular order) are identified in the lists below.

* + - ***[insert Project Stakeholders]***
		- ***[insert Project Stakeholders]***
		- ***[insert Project Stakeholders]***
		- ***[insert Project Stakeholders]***
		1. Government Policy Requirements
			1. Local Jobs First - Victorian Industry Participation Policy (VIPP)

Guidance note: The local content requirements for the Project should be specified in the Invitation for EOI.

Procuring Agencies should refer to the Department of Economic Development, Jobs, Transport and Resources website found at [www.economicdevelopment.vic.gov.au/victorian-industry-participation-policy](http://www.economicdevelopment.vic.gov.au/victorian-industry-participation-policy) for any updates to the Victorian Industry Participation Policy Agency Guidelines to be reflected in this Section 8.1 (Local Jobs First - Victorian Industry Participation Policy (VIPP)).

This Section 8.1 (Local Jobs First - Victorian Industry Participation Policy (VIPP)) has been drafted on the basis that a project has been declared a ‘Strategic Project’ for the purposes of VIPP.

The Local Jobs First - Victorian Industry Participation Policy (**VIPP**) seeks to maximise opportunities for Australian, New Zealand and Victorian suppliers (local suppliers) to compete for government business on the basis of best value for money over the life of the goods or services. The VIPP is implemented by Victorian Government departments and agencies to help drive local industry development.

***[Insert Project title]*** has been declared a ‘Strategic Project’ for the purposes of the VIPP. As a result, all Shortlisted Respondents will be advised, in the RFP Phase, of the minimum Local Content requirements for the Project. Proposals will require the submission of a Local Industry Development Plan (**LIDP**) outlining how the Local Content requirements will be achieved. Information contained in the LIDP will be assessed as part of the evaluation criteria for the RFP Phase.

More information on the VIPP can be accessed online at www.economicdevelopment.vic.gov.au/victorian-industry-participation-policy.

* + - 1. Major Projects Skills Guarantee

The Victorian Government is committed to creating job opportunities and promoting a strong and sustained vocational training culture through the employment of apprentices, trainees and engineering cadets within the Victorian building and construction industry.

To implement this commitment, the Victorian Government, through its Major Projects Skills Guarantee (**Skills Guarantee**), will use the awarding of Victorian Government building, construction, infrastructure, civil engineering and other capital projects to stimulate job opportunities and enhance vocational training in these sectors.

Under the Skills Guarantee, all principal contactors awarded contracts for Victorian Government funded building, construction, infrastructure, civil engineering and other capital projects which have a pre-tender estimated value at or over $20 million must utilise Victorian registered apprentices, Victorian registered trainees or engineering cadets for at least 10 per cent of the project's total estimated labour hours. The Skills Guarantee will also apply to public-private partnership (PPP) project contracts valued over the applicability threshold.

The Skills Guarantee operates separately to VIPP. Shortlisted Respondents will be required to prepare a Major Projects Skills Guarantee Compliance Plan at the RFP Phase.

A copy of the Skills Guarantee is available at http://economicdevelopment.vic.gov.au/about-us/strategies-and-initiatives/major-projects-skills-guarantee.

* + - 1. Other Relevant State Policies and Requirements [#OPTIONAL. DELETE IF NOT APPLICABLE TO THE PROJECT]

Guidance note: This Section should provide details of any other policies and State requirements that may impact the delivery of the Project that Respondents should be made aware of.

Procuring Agencies are requested to liaise with the Project Legal Advisor regarding any State policies and requirements that may apply to the Project and should be addressed in this Invitation for EOI.

***[Insert Project-specific information/requirements.]***

* + - 1. Commonwealth Building Code 2013 [DELETE IF NOT APPLICABLE TO THE PROJECT]

Guidance note: The Building Code applies to all construction projects *indirectly* funded by the Australian Government through grants and other programs where:

▪ the value of the Australian Government contribution to a project is at least $5 million and represents at least 50% of the total construction project value, or

▪ the Australian Government contribution to a project is at least $10 million (irrespective of its proportion of the total construction project value).

Where the Building Code applies to the Project, please liaise with the Project Legal Advisor in respect of the Building Code requirements to be specified in the Invitation for EOI.

If the Australian Government is not providing funding to the Project, then the requirements of the Building Code 2013 will not apply to the Project and this Section 8.4 (Commonwealth Building Code 2013) can be removed from the Invitation for EOI.

* + 1. Procurement Approach
			1. Partnerships Victoria Framework

The State will procure the Project as an ‘availability based’ PPP under the Partnerships Victoria Framework, subject to the Successful Respondent’s Proposal providing value for money and otherwise satisfying relevant criteria under the framework.

This overarching framework requires compliance with both the:

* + - National PPP Policy and Guidelines (October 2015); and
		- Partnerships Victoria Requirements (November 2016).

Information on the National PPP Policy and Guidelines and the Partnerships Victoria Requirements are available at https://infrastructure.gov.au/infrastructure/ngpd and http://www.dtf.vic.gov.au/Infrastructure-Delivery/Public-private-partnerships respectively.

Respondents should be aware of the following key elements of the Partnerships Victoria Framework.

* + - * 1. Public Sector Comparator

The State will develop a Public Sector Comparator (PSC) for the Project based on a reference design that will be developed for the Project.

The PSC will be developed in accordance with the National PPP Policy and Guidelines and will be a key element in determining whether the PPP procurement model achieves value for money for the Project, alongside the qualitative aspects of the Proposals.

The PSC will be used as an affordability benchmark for the Project. There is no longer an assumption that the State will revert to traditional delivery if PSC cost expectations are not met.

* + - * 1. Scope Ladder [#OPTIONAL. DELETE IF NOT APPLICABLE TO THE PROJECT]

Guidance note: Procuring Agencies must consult with the Department of Treasury and Finance on the development and use of a scope ladder for a project.

If it is determined that a Scope Ladder will not be developed for a project, then this Section and all references to the Scope Ladder in the Invitation for Expressions of Interest should be deleted.

The State may also develop a scope ladder for approval alongside the PSC. The purpose of the scope ladder is to identify any scope items Respondents can either remove or add should Proposals be over or under the affordability benchmark. Developing the scope ladder concurrently with the PSC and the RFP documents means that priorities will be clearly communicated to Respondents and the State Representative will have a pre-agreed mandate to negotiate with Respondents in order for ***[insert Procuring Agency]***to present scope options to the State Government for decision.

Any scope ladder items will be clearly defined and limited as it is not the intention for the scope ladder to be used to request multiple options from Respondents as part of their Proposals.

* + - * 1. Tender Process Participant Costs

Guidance note: Any partial reimbursement of Tender Process participation costs incurred by unsuccessful Respondents will be determined on a project-by-project basis, in consultation with the Department of Treasury and Finance.

The Project position in respect to Tender Process participation cost reimbursement should be detailed in this Section.

If no Tender Process participation costs are to be paid by the State, insert the following:

“The State does not intend to reimburse or contribute to costs incurred by Respondents in preparing Proposals or in relation to participation in this Tender Process more generally.”

* + - 1. Tender Process

The Tender Process for the Project is expected to comprise the following phases:

* + - * 1. Phase 1 (EOI)

Guidance note: Procuring Agencies must consult with the Department of Treasury and Finance on the shortlisting strategy including in relation to the number of Shortlisted Respondents.

The issue of this Invitation for EOI represents the first stage of the Tender Process.

Respondents’ EOIs will be assessed against the Evaluation Criteria for the purpose of shortlisting Respondents to participate in the RFP Phase.

Following EOI evaluation, the State will notify the Shortlisted Respondents selected to participate in the RFP Phase of the Tender Process. The State anticipates it will shortlist ***[#two or three Respondents / #no more than two Respondents /#no more than three Respondents]***, based on the quality of the EOIs and the value to the State in maximising competition.

The State also seeks information from Respondents to assist the State in addressing certain key issues in the preparation of the RFP as set out in Section 10.4 (Additional Information).

* + - * 1. Phase 2 (RFP)

The second stage of the Tender Process will involve the release of an RFP to the Shortlisted Respondents. The RFP will require Shortlisted Respondents to submit a fully costed, fully financed binding Proposal based on the requirements set out in the RFP.

To ensure that Shortlisted Respondents have the opportunity to clarify the requirements of the RFP, the RFP Phase will include an Interactive Tender Process (ITP). During this period, Shortlisted Respondents will be encouraged to meet with the State to discuss the development of their proposed solutions and to seek clarification and feedback to better understand the requirements of the RFP. These sessions will be coordinated in accordance with an ITP Plan which will set out the process and protocols for the conduct of the ITP.

Following detailed evaluation of submitted Proposals, the State may select a Preferred Respondent or Preferred Respondents with whom to enter into negotiations to resolve any outstanding matters and as a precursor to the execution of the Project Deed and other relevant State Project Documents.

* + - * 1. Phase 3 (Negotiation and Completion)

Following the RFP Phase, the State will undertake an efficient negotiation phase and work towards timely execution of the Project Documents.

During this Phase, it is the State’s preference:

* + - to select only one Preferred Respondent for negotiations, provided that to do so would not compromise value for money or probity principles; and
		- not to employ a ‘best and final offer’ or other extended resubmission process.

However, whether the State is required to conduct such a process will be dependent on the quality and pricing of Proposals received from the Shortlisted Respondents.

The State may vary the above phases in accordance with the Terms and Conditions.

* + 1. Evaluation and Assessment
			1. Information Required

Respondents are requested to ensure that their EOI reflects the structure set out in, and contains the information requested by, Appendix D (EOI Returnables).

Respondents are required to comply with the specified page limits as indicated in the EOI Returnable Schedules. Where page limits have not been specified, Respondents are requested to provide concise responses that clearly address the information requested.

* + - 1. Evaluation Criteria

Guidance note: The Evaluation Criteria and Evaluation Sub-Criteria set out below are a guide only and should be updated to reflect Project-specific requirements. Procuring Agencies should ensure that the Evaluation Criteria and Evaluation Sub-Criteria closely align with the EOI Returnables.

It is also recommended that Procuring Agencies assign priorities to the Evaluation Criteria using a three star-priority rating which is disclosed to Respondents in the Invitation for Expressions of Interest.

The State will undertake a qualitative evaluation of each submitted EOI to determine the Shortlisted Respondents using the Evaluation Criteria presented in Table 7 (Evaluation Criteria) below.

Table 7: Evaluation Criteria

| Evaluation Criteria / Sub-Criteria | Priority1 |
| --- | --- |
| **Criterion 1: Demonstrated experience and capability to deliver the Project** | **[##-star]** |
| **Sub-Criterion 1A** | **Joint Capability and Experience**Experience and demonstrated ability of Respondent Members to jointly develop a suitable organisational and management structure and demonstrated capability to successfully perform and support all aspects of the Project, across the Tender, Development and Operating Phases. |  |
| **Sub-Criterion 1B** | **Project Delivery Capability and Experience**Experience and demonstrated ability of Respondent Members to ***[insert description of project delivery activities, including design and construction activities, and a description of the Project asset(s)]*** |
| **Sub-Criterion 1C** | **Project Services Capability and Experience**Experience and demonstrated ability of Respondent Members to ***[insert description of the Project Services to be delivered by Project Co]*** |
| **Sub-Criterion 1D** | **Project Financing Capability and Experience**Experience and demonstrated ability of Respondent Members to effectively raise finance for projects of a similar risk profile. |
| **Criterion 2: Proposed approach** | **[###-star]** |
| **Sub-Criterion 2A** | **Project Co. Equity and Governance Strategy**The proposed organisational and management structure and capability to successfully perform and support all aspects of the Project across the Tender, Development and Operating Phases. |  |
| **Sub-Criterion 2B** | **Project Delivery Strategy**The proposed approach to ***[insert description of project delivery activities, including design and construction activities, and a description of the Project asset(s)]*** |
| **Sub-Criterion 2C** | **Project Services Strategy**The proposed approach to ***[insert description of the Project Services to be delivered by Project Co]*** |
| **Sub-Criterion 2D** | **Project Financing Strategy**The proposed approach to securing debt and equity, including driving cost efficiencies through innovative financing solutions. |
| **Criterion 3: Understanding of Key Project Issues and Proposed Approach** | **[###-star]** |
| **Sub-Criterion 3A** | ***[name of Key Project Issue]***Understanding of and approach to addressing Key Project Issue Number 1 ***[insert name of Key Project Issue]*** |  |
| **Sub-Criterion 3B** | ***[name of Key Project Issue]***Understanding of and approach to addressing Key Project Issue Number 2 ***[insert name of Key Project Issue]*** |
| **Sub-Criterion 3C** | ***[name of Key Project Issue]***Understanding of and approach to addressing Key Project Issue Number 3 ***[insert name of Key Project Issue]*** |
| **Sub-Criterion 3#** | ***[Insert additional Sub-Criteria if required]*** |
| **Criterion 4: Financing and Commercial Structure** | **[###-star]** |
| **Sub-Criterion 4A** | **Commitment** The level of commitment of all Respondent Members to the Project. |  |
| **Sub-Criterion 4B** | **Financial Capacity and Commercial Arrangements**The financial capacity of Respondent Members to sustain their proposed obligations (including the effectiveness of the proposed security arrangements). |
| **Sub-Criterion 4C** | **Risk Allocation**Understanding and acceptance of the State’s Risk Allocation Summary. |
| *1. Definition of Priorities:****Three-star Priority****: Evaluation Criteria assigned a three-star priority are those that are relatively of higher importance than two-star and one-star Evaluation Criteria;****Two-star Priority****: Evaluation Criteria assigned a two-star priority are relatively more important than one-star Evaluation Criteria but of relatively lower importance than three-star Evaluation Criteria; and****One-star Priority****: Evaluation Criteria assigned a one-star priority are those that are relatively of lower importance than three-star and two-star Evaluation Criteria.**The assignment of priorities to Evaluation Criteria are intended to provide guidance to Respondents in relation to the relative importance of each Evaluation Criteria to the State to assist in the preparation of EOIs. Respondents are to note that the priority framework is not intended to be rigid or imply a set relativity between priority allocations.*  |

* + - 1. Additional Evaluation Considerations

The State may also consider any or all of the following issues when evaluating EOIs:

* + - **Past behaviour**: The State may consider past conduct, behaviour and corporate history of any Respondent Member;
		- **Probity investigations**: The State reserves the right to evaluate any matters revealed as a result of its probity and security investigations in evaluating EOIs; and
		- **Conflict of interest**: The State will consider the nature of any actual or perceived conflicts of interest and the way in which Respondents propose to manage any such conflicts.
			1. Additional Information

Respondents are requested to complete their response to the Evaluation Criteria set out in Appendix D (EOI Returnables). However, Respondents are also encouraged to provide feedback or comments on any other issues relating to the Project as detailed in the Additional Information section of Appendix D (EOI Returnables).

The Additional Information responses provided by Respondents will not be considered in the evaluation of EOIs. However, they may be taken into account by the State for the purpose of developing the scope of the Project and other elements of, or requirements for, the Project to be set out in the RFP.

* + - 1. Evaluation Process

The EOI evaluation process will include an evaluation of the EOIs and may include an evaluation of:

* + - structured and confidential interviews or meetings with Respondents;
		- presentations by Respondents on request from ***[insert Procuring Agency]***; and/or
		- requests for EOI clarification from ***[insert Procuring Agency]***.

In accordance with the Terms and Conditions, the State may also have regard to information obtained through its own investigations. This may include conducting reference checks or other verification of Respondents’ EOIs.

* + 1. General
			1. Terms and Conditions

Guidance note: References to obligations imposed by the Terms and Conditions should only be contained in this Section.

The Terms and Conditions apply to the whole of the Tender Process. Respondents are bound by these Terms and Conditions by submitting an EOI.

This means that the State does not require Shortlisted Respondents to execute a separate probity and process deed prior to receiving the RFP, as these matters are now covered in the Terms and Conditions. This approach is in line with the State’s desire to simplify documentation and reduce bid costs.

The State reserves the right, however, to impose additional terms and conditions applicable to the RFP Phase on Shortlisted Respondents.

* + - 1. Project Team and Project Advisors

Guidance note: Table 8 (Project Advisors) below should be completed with all advisors engaged for the purpose of the Project in accordance with the definition of Project Advisor.

A dedicated project team has been established by ***[insert Procuring Agency]***to manage the Tender Process including the ***[insert relevant Project phases]*** of the Project.

***[insert Procuring Agency]*** has also appointed advisors on an exclusive basis for this Project including those set out in Table 8 (Project Advisors).

Table 8: Project Advisors

|  |  |
| --- | --- |
| Role | Project Advisor |
| ***[Insert]*** | ***[Insert]*** |
| ***[Insert]*** | ***[Insert]*** |
| ***[Insert]*** | ***[Insert]*** |
| ***[Insert]*** | ***[Insert]*** |
| ***[Insert]*** | ***[Insert]*** |
| ***[Insert]*** | ***[Insert]*** |

* + - 1. Probity

***[Insert Procuring Agency]*** has appointed ***[insert Probity Advisor]*** as the Probity Advisor in respect of the Project.

Respondents may contact the Probity Advisor by email at the address set out in Table 9 (Probity Advisor) below in circumstances where they have concerns as to probity or the conduct of the Tender Process.

Table 9: Probity Advisor

|  |  |
| --- | --- |
| Item | Information  |
| **Name** |  |
| **Firm** |  |
| **Address** |  |
| **Telephone** |  |
| **Email** |  |

If a Respondent becomes aware of a probity issue, the Respondent should immediately contact the Probity Advisor and provide details of:

* + - the proposed probity issue or concern;
		- how the probity issue or concern impacts on the Respondent’s interest;
		- any relevant background information; and
		- the Respondent’s proposals for the resolution of the probity issue or concern.

The Respondent should not delay in contacting the Probity Advisor. Any contact or communication with the Probity Advisor will be disclosed by the Probity Advisor to the State.

* + - 1. Communications
				1. Project Contact and State Representative

Guidance note: A generic dedicated project email address should be provided for all communications during the EOI Phase.

In accordance with the Terms and Conditions, all contact in respect of the Project is to be directed in writing to the State Representative:

***[Insert State Representative’s contact details]***

* + - * 1. EOI Enquiries and Clarifications

All enquiries and clarification questions in relation to this Invitation for EOI should be submitted in writing via email to the State Representative prior to the Clarification Closing Time and Date. The email should be from the Lead Respondent Member and include the following information:

* + - name of Respondent;
		- name of primary contact person; and
		- contact email address.

Respondents should note that responses to clarification questions and any addenda will be made available to all potential Respondents via ***[insert a link to the communication platform]***, subject to the paragraph below.

If a Respondent is of the view that a clarification question relates to proprietary aspects of a Respondent’s EOI, the Respondent may identify that question as such. If ***[insert Procuring Agency]*** agrees that a question or issue relates to proprietary aspects of the Respondent’s EOI, the response will not be made available to other potential Respondents. If, however, ***[insert Procuring Agency]*** is of the view that the question or issue is not proprietary, ***[insert Procuring Agency]*** will advise the relevant Respondent, who will then have the option to withdraw the question (if applicable). If the Respondent continues to request a response to a clarification question, the clarification question and the State response will be made available to all potential Respondents.

A person with a complaint about the Invitation for EOI that they have not been able to first resolve with the State Representative may make a complaint. The complainant must provide written notice to the Probity Advisor setting out the complaint, how the complainant’s interests have been affected, relevant background information, and the complainant’s desired outcome.

* + - 1. EOI Closing Time and Date

Guidance note: Clear guidance on tender box access and tender receipting requirements should be provided. The use of a tender box location map is recommended.

The EOI Closing Time and Date for submission of EOIs is ***[insert Closing Time and Date]*** (***[#AEST / #AEDT]***).

EOIs are to be submitted by hand and deposited in the Tender Box.

The Tender Box is open during Business Hours and is located at:

***[insert Tender Box address]***

An EOI is deemed to have been submitted in the Tender Box at the time and date that is received and recorded by ***[insert Procuring Agency]*** staff. In accordance with the Terms and Conditions, the State reserves its right, in its absolute discretion, to accept or reject any EOI submitted after this time.

* + - 1. EOI Lodgement Requirements

Guidance note: This Section 11.6 (EOI Lodgement Requirements) provides for hard-copy submission of EOIs. Procuring Agencies may consider “electronic only” submission.

A Respondent’s EOI must be submitted in accordance with the instructions provided in Appendix D (EOI Returnables) and must contain:

* + - four bound hard copies (one of which marked as the original);
		- one unbound hard copy; and
		- one electronic soft copy (on a USB stick formatted to Microsoft Windows).

The EOI should be endorsed with the contract number ***[insert contract number]*** and title shown on the front cover of this Invitation of EOI. The EOI should be submitted in a sealed package(s) marked:

**Strictly Private and Confidential**

***[Insert Project title]***

**Expression of Interest**

* + - 1. EOI Industry Briefing [OPTIONAL. DELETE IF NOT APPLICABLE TO THE PROJECT]

Guidance note: This Section is intended to provide details of any EOI Industry Briefing, including details of registration requirements and maximum attendee numbers.

* + - 1. Useful References

The following references may be of assistance for Respondents in the preparation of EOIs:

* + - Partnerships Victoria policy www.dtf.vic.gov.au/Infrastructure-Delivery/Public-private-partnerships;
		- The Government’s High Value High Risk framework www.dtf.vic.gov.au/Investment-Planning-and-Evaluation/High-Value-High-Risk; and
		- Local Jobs First - Victorian Industry Participation Policy (including the VIPP Supplier Guide): http://economicdevelopment.vic.gov.au/victorian-industry-participation-policy/guidelines-and-templates.

Appendix A – Glossary

Note: This Glossary provides the meaning of terms used in this Invitation for EOI.

| Term | Meaning |
| --- | --- |
| **Addendum** | Means any modifications or clarifications to this Invitation for EOI or the RFP issued by the State in accordance with the Terms and Conditions. |
| **Associate** | Means any officer, employee, agent, consultant, contractor, nominee, licensee, or advisor and:▪ in the case of a Respondent, includes any Financier and its Associates but excludes the State and its Associates; and▪ in the case of the State includes: - ***[Insert Project-specific information]***, but does not include Respondents and Respondent Members. |
| **Associate Obligations** | Has the meaning given in Clause 7.10 (Associates) of the Terms and Conditions. |
| **Business Day** | Means a day in Melbourne that is not a Saturday, Sunday or a public holiday gazetted in the *Public Holidays Act 1994* (Vic). |
| **Business Hours** | Means between 9:00am and 5:00pm on a Business Day. |
| **Claim** | Means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) made:▪ in connection with the Project Documents or the Project;▪ at law or in equity; or▪ for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief. |
| **Clarification Closing Time and Date** | Means the ‘Clarification Closing Time and Date’ specified in Table 1 set out in Section 1.4 (Tender Process and Project Timeframes) of this Invitation for EOI. |
| **Clause** | Clause means a clause in the Terms and Conditions. |
| **Commercial Acceptance** | Means the stage when the ***[insert Project asset(s)]*** is ready for ***[#service / #operation]***, including the completion of all testing and commissioning works, in accordance with the Project Deed. ***[Guidance note: This definition should be amended to reflect Project-specific requirements.]*** |
| **Competing Respondent** | Means any person responding to this Invitation for EOI, other than the Respondent. |
| **Contract Close** | Means the date of execution of the Project Deed by the State and Project Co. |
| **Data Room** | Means any data room operated by or on behalf of the State containing information relevant to the Project and includes any Electronic Data Room. |
| **D&C Contractor** | Means the Respondent Member that is intended to undertake the design and construction of the ***[insert Project asset(s)]***. |
| **Development Phase** | Means the phase from Contract Close until Final Acceptance. |
| **Disabling Code** | Means any computer software known as a back door, time bomb, logic bomb, trojan horse, worm, drop dead device, virus, or any other computer software or configuration intended or designed to:▪ permit access to or use of the computer systems or associated data of a Respondent Member other than as expressly authorised by the Respondent Member; or;▪ disable, damage, corrupt or erase, or disrupt or impair the normal operation of, computer systems or associated data of a Respondent Member. |
| **Disclosed Information** | Means the following information (of whatever nature, including written, graphical, electronic, oral or in any other form) which is disclosed to, or otherwise obtained by or on behalf of, the Respondent, a Respondent Member or any respective Associate in connection with the Project or the Tender Process:▪ this Invitation for EOI and the RFP;▪ any oral or written advice, representations or information given by or on behalf of the State or any of its Associates during the Tender Process;▪ all material contained in any Data Room; and▪ each EOI and Proposal to the extent that it contains or would reveal any of the information referred to in the dot points above, any other information which the Respondent, Respondent Member or any respective Associate knows or ought reasonably to know is confidential to the State or any of its Associates or should be treated as such. |
| **Electronic Data Room** | Has the meaning given in Clause 5.6(a) (Data Room) of the Terms and Conditions. |
| **EOI Closing Time and Date** | Has the meaning given in Section 11.5 (EOI Closing Time and Date) of the Invitation for EOI. |
| **EOI Evaluation Criteria Returnables** | Means the EOI Returnables set out in Section D.3 (EOI Evaluation Criteria Returnables) of Appendix D (EOI Returnables) to this Invitation for EOI |
| **EOI Form** | Means the form to be submitted by a Respondent as set out in Section D.2 (EOI General Returnables) of Appendix D (EOI Returnables) to this Invitation for EOI. |
| **EOI General Returnables** | Means the EOI Returnables set out in Section D.2 (EOI General Returnables) of Appendix D (EOI Returnables) to this Invitation for EOI. |
| **EOI Industry Briefing** | Means any industry briefing conducted by the State for potential Respondents, as described in Section 1.5 (EOI Industry Briefing). ***[Guidance Note: This term should be deleted if Section 1.5 (EOI Industry Briefing) is not included in the Invitation for EOI.]*** |
| **EOI Phase** | Means the phase of the Tender Process which commences on the release of this Invitation for EOI and ends on the selection of the Shortlisted Respondents invited to proceed to the RFP Phase. |
| **EOI Returnables** | Means the EOI Returnables set out in Appendix D (EOI Returnables) in this Invitation for EOI and comprise:▪ the EOI General Returnables; and▪ the EOI Evaluation Criteria Returnables. |
| **Equity Investor** | Means any entity intending to provide equity funding to the Project.  |
| **Evaluation Criteria** | Means the evaluation criteria set out in Section 10.2 (Evaluation Criteria) of this Invitation for EOI. |
| **Evaluation Sub-Criteria** | Means the evaluation sub-criteria set out in Section 10.2 (Evaluation Criteria) of this Invitation for EOI. |
| **Expression of Interest (EOI)** | Means an Expression of Interest submitted by a Respondent in accordance with the terms of this Invitation for EOI. |
| **Final Acceptance** | Means the stage when the balance of the works not completed as part of Commercial Acceptance have been completed, including the correction of minor defects, in accordance with the Project Deed.***[Guidance note: This definition should be amended to reflect Project-specific requirements.]*** |
| **Financial Close** | Means when the last condition precedent is satisfied or waived in accordance with the Project Deed. |
| **Financier** | Means any entity intending to provide debt finance to the Project. |
| **Glossary** | Means this Appendix A (Glossary) to this Invitation for EOI. |
| **Holding Company** | Means a ‘holding company’ as defined in section 9 of the *Corporations Act 2001* (Cth) of a Related Member. |
| **Independent Reviewer** | Means the independent party experienced in design and construction of works, who will carry out the role of independent reviewer for the purposes of the Project. |
| **Independent Reviewer Deed of Appointment** | Means the agreement Project Co will enter into with the State and the Independent Reviewer which appoints the ‘Independent Reviewer’. |
| **Intellectual Property Rights** | Means all existing and future rights in the nature of intellectual property or industrial property (within the meaning of the term 'industrial property' in Article 1 of the Paris Convention for the Protection of Industrial Property) throughout the world, including:▪ copyright;▪ trade and service marks (whether registered or unregistered);▪ designs (whether registered or unregistered);▪ patents and inventions (whether or not patented or patentable);▪ internet domain names;▪ trade, business or company names; and▪ confidential information and trade secrets,whether tangible or intangible, which incorporates, embodies or is based on any of the things referred to in the dot points above. |
| **Interactive Protocols** | Means the protocols set out in the ITP Plan that will apply to the Interactive Tender Process. |
| **Interactive Tender Process (ITP)** | Means the interactive process during the RFP Phase providing an opportunity for active interface between the State and all Respondents. |
| **Invitation for Expressions of Interest** | Means this invitation for expression of interest (including all of its appendices). |
| **ITP Plan** | Means the plan setting out the process and protocols for the conduct of the Interactive Tender Process. |
| **ITP Workshops** | Means the process of interaction between the Shortlisted Respondents and key Project Stakeholders during the RFP Phase, to be carried out consistently with the ITP Plan and the Terms and Conditions.  |
| **Key Performance Indicator (KPI)** | Means the measures of Project Co’s performance during the Operating Phase to be set out in the Project Deed. |
| **Key Project Issue** | Means an issue set out in Section 5 (Key Project Issues) of this Invitation for EOI. |
| **Law** | Means the principles of common law and equity established by decisions of court, all other statutes, regulations, by-laws, ordinances and subordinate legislation of the Commonwealth, the State or any other government agency and any approvals. |
| **Lead Respondent Member** | Means the Respondent Member nominated by a Respondent in its EOI Form as its lead representative. |
| **Liability** | Means any loss, cost, liability or expense whether:▪ arising from or in connection with any proceeding or claim or not;▪ liquidated or not;▪ legal or equitable;▪ present, prospective or contingent; or▪ owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others. |
| **Local Content** | Under VIPP, the term ‘local content’ covers all suppliers producing Australian or New Zealand (ANZ) goods or services or when they have added value to imported items.The ‘local content’ (ANZ value added activity) of a good or service is determined on a cost basis and is the part of a product or service left once the cost of the international component has been subtracted. It can be expressed by the following equation:Local content = total cost of the good or service less international contentThe content of a good or service may include but not be limited to; fees, tax, margins, profits, tariffs, insurances, freight, transport, engineering, planning, testing and analysis certification, commissioning, manufacturing or provision of service.Australia and New Zealand are treated as a single market for government procurement under the Australia and New Zealand Government Procurement Agreement. All other jurisdictions are considered ‘international’. Items imported into New Zealand as part of New Zealand-sourced goods and services are considered to be international content. |
| **Local Industry Development Plan (LIDP)** | Means a plan to be developed by Shortlisted Respondents during the RFP Phase, as described in Section 8.1 (Local Jobs First – Victorian Industry Participation Policy (VIPP)) of this Invitation for EOI. |
| **Major Projects Skills Guarantee** | Means the policy of the Victorian Government applicable from 1 January 2016 which is located at http://economicdevelopment.vic.gov.au/about-us/strategies-and-initiatives/major-projects-skills-guarantee. |
| **Major Projects Skills Guarantee Compliance Plan** | Means the plan to be provided by Shortlisted Respondents as part of their Proposals at the RFP Phase. |
| **National PPP Policy and Guidelines** | Means the suite of guidance material published by Infrastructure Australia and available at https://infrastructure.gov.au/infrastructure/ngpd. |
| **Negotiation and Completion Phase** | Means the phase of the Tender Process following selection of a Preferred Respondent which involves amongst other things:▪ negotiation with the Preferred Respondent; and▪ achievement of Contract Close and Financial Close. |
| **Notice** | Has the meaning given in Clause 14 (Notices) of the Terms and Conditions. |
| **Operating Phase** | Means the period starting from Commercial Acceptance and ending ***[insert Operating Phase period]*** years later (unless the Project Deed is terminated prior). |
| **Partnerships Victoria Framework** | Means the Victorian Government framework that requires compliance with both:▪ the National PPP Policy and Guidelines; and▪ the Partnerships Victoria Requirements. |
| **Partnerships Victoria Requirements** | Means the State’s Partnership Victoria policy. Further information can be obtained at http://www.dtf.vic.gov.au/Publications/Infrastructure-Delivery-publications/Partnerships-Victoria/Partnerships-Victoria-Requirements. |
| **Permitted Purpose** | Means to:▪ submit an EOI or Proposal (or consider and determine whether or not to submit an EOI or Proposal) in accordance with the Terms and Conditions; or▪ comply with an obligation under the Invitation for EOI or the RFP. |
| **PPP** | private public partnership. |
| **Preferred Respondent** | Means one or more Respondents invited to proceed to the Negotiation and Completion Phase. |
| **Probity Advisor** | Means the probity advisor appointed by ***[insert Procuring Agency]*** in respect of the Project, as identified in Section 11.3 (Probity) of this Invitation for EOI. |
| **Probity Checks** | Has the meaning given in Clause 17.5(a) (Probity Checks) of the Terms and Conditions. |
| **Project** | Has the meaning given in Section 1.1 (The Opportunity) of this Invitation for EOI. |
| **Project Advisors** | Means the advisors listed in Section 11.2 (Project Team and Project Advisors) of this Invitation for EOI and any other advisor engaged by ***[insert Procuring Agency]*** from time to time (whether on an exclusive basis or not). |
| **Project Co** | Means the private party engaged by the State to execute the Project Deed and deliver the Project. |
| **Project Deed** | Means the principal contract between the State and Project Co that establish the rights and obligations of the parties in respect of the Project. |
| **Project Documents** | Means the full suite of documents to be entered into by the State, Project and others for the delivery of the Project. |
| **Project Objectives** | Means the Project Objectives set out in Section 2.4 (Project Objectives) of this Invitation for EOI. |
| **Project Stakeholder Advisor** | Means an advisor engaged by a Project Stakeholder in relation to the Project or a Related State Project. |
| **Project Stakeholders** | Means:▪ the stakeholders listed in Section 7.2 (Project Stakeholders) of this Invitation for EOI;▪ any government or any governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister statutory corporation or instrumentality having jurisdiction over or involvement in any part of the Project; and▪ any person notified by the State to a Respondent to be a Project Stakeholder to the extent they have jurisdiction over or involvement in any part of the Project. |
| **Proposal** | Means a proposal submitted by a Shortlisted Respondent in response to the RFP, including any clarifications or further information submitted or given by a Shortlisted Respondent in respect of the Proposal, under the Terms and Conditions. |
| **Public Disclosure Obligation** | Has the meaning given in Clause 11.2(a) (Public Disclosure and Freedom of Information) of the Terms and Conditions. |
| **Public Sector Comparator (PSC)** | Means the hypothetical, risk-adjusted, whole-of-life cost of a public sector project if delivered by Government. |
| **Related Member** | Means a Respondent Member who is a Related Party of a Respondent Member of any Competing Respondent. |
| **Related Party**  | Has the meaning given to the expression ‘related entity’ by section 9 and 50 of the *Corporations Act 2001* (Cth) and includes any ‘associate’ (as defined by sections 10 to 17 of the *Corporations Act 2001* (Cth)). |
| **Related State Project** | Includes other infrastructure projects funded by the State other than the Project, including:▪ ***[Insert related State Projects]*** |
| **Request for Proposal (RFP)** | Means the documentation issued to a Shortlisted Respondent in relation to which it may submit a Proposal for delivery of the Project. |
| **Respondent** | Means any person (who alone) or persons (who together), comprising any Respondent Members, submit an EOI. |
| **Respondent Member** | Means each of the following entities (forming the Respondent) in their individual capacity:▪ sponsor(s);▪ Equity Investor(s);▪ D&C Contractor; ▪ Services Contractor;▪ any special purpose vehicle that is intended to be the party that enters into the State Project Documents with the State; and▪ any additional entity notified to the State in accordance with the Terms and Conditions. |
| **Response Requirements** | Means the requirements set out in Appendix D (EOI Returnables). |
| **RFP Phase** | Means the phase of the Tender Process described in Section 9.2.2 (Phase 2 (RFP) of this Invitation for EOI. |
| **RFP Primary Contact** | Means the person nominated by each Respondent as the primary contact for the Respondent for the RFP Phase. |
| **Risk Allocation Summary** | Means the State’s proposed risk allocation for the Project set out in the Appendix C (Risk Allocation Summary) to this Invitation for EOI. |
| **Section** | Refers to a section in this Invitation for EOI (excluding the Terms and Conditions). |
| **Service Payment** | Means the service payment to be made by the State to Project Co during the Operating Phase, subject to the requirements of the Project Deed (including the performance regime). |
| **Services Contractor** | The Respondent Member entity that is intended to undertake the ***[insert services to be provided by Project Co]*** of the ***[insert Project asset(s)]***. |
| **Shortlisted Respondent** | Any Respondent who is invited to submit an RFP Proposal. |
| **Site** | Means the [site / sites] on which the ***[insert asset(s) to be delivered by Project Co]*** ***[is / are]*** to be located, as described in Section 4 (The Site***[s]***) of this Invitation for EOI. |
| **Site Inspection** | Means Site inspections made available to Respondents during the RFP Phase as part of the Interactive Tender Process to be carried out consistent with the ITP Plan and the Terms and Conditions.  |
| **Skills Guarantee** | Has the meaning given in Section 8.2 (Major Projects Skills Guarantee) of this Invitation for EOI. |
| **State** | Means the Crown in right of the State of Victoria. |
| **State Advisor** | Means:▪ a Project Advisor;▪ a Project Stakeholder Advisor;▪ an advisor to the State or its Associates in relation to the Project; or▪ an advisor to the State, its Associates, or any other State government agency in respect of a Related State Project. |
| **State Project Documents** | Means the Project Documents to be entered into between the State and Project Co. |
| **State Representative** | The person with overall responsibility for delivery of the Project on behalf of the State, as referred to in Section 11.4.1 (Project Contact and State Representative) of this Invitation for EOI. |
| **State Security** | Means the State security Project Co will enter into with the State, pursuant to which Project Co grants security to the State over the Project assets. |
| **Steering Committee** | The committee established by ***[#Insert Procuring Agency]*** to assist the State Representative to deliver the Project, as referred to in Section 7.1 (Project Delivery Governance) of this Invitation for EOI. |
| **Successful Respondent** | Means the Shortlisted Respondent selected to enter into the State Project Documents with the State to deliver the Project. |
| **Team Member** | Means an individual who is an employee, agent or adviser of a Respondent Member who is directly involved in the Tender Process for that Respondent Member. |
| **Tender Box** | Means the box at the location specified in Section 11.5 (EOI Closing Time and Date) of this Invitation for EOI into which EOIs must be submitted by the EOI Closing Time and Date. |
| **Tender Process** | Means the tender process for the delivery of the Project, including each of the following phases:▪ the EOI Phase;▪ the RFP Phase;▪ the Negotiation and Completion Phase,as described in Section 9.2 (Tender Process) of this Invitation for EOI. |
| **Terms and Conditions** | Means the Terms and Conditions set out in Appendix B (Terms and Conditions) to this Invitation for EOI and further terms and conditions to be set out in the RFP, or otherwise imposed by the State, in respect of the Tender Process. |
| **VIPP** | Means the Victorian Industry Participation Policy made pursuant to section 4 of the *Victorian Industry Participation Policy Act 2003* (Vic). |
| **Validity Period** | Means the period to be identified in the RFP. |

Appendix B – Terms and Conditions

* 1. Application of Terms and Conditions

The Terms and Conditions set out in this Appendix B apply on and from the date of this document for the duration of the Tender Process.

* 1. General
		1. **Definitions**

Unless the context otherwise requires, words and phrases used in the Terms and Conditions have the meaning ascribed to them in the Glossary.

* + 1. **Interpretation**
			- 1. No entity may participate in the Tender Process unless that entity is a Respondent, Respondent Member or a respective Associate.
				2. Where the Respondent comprises more than one entity or is a consortium, the obligations and liabilities of the Respondent under the Terms and Conditions apply to the Respondent and each Respondent Member jointly and severally.
				3. No rule of interpretation applies to the disadvantage of the State on the basis that the State put forward the Terms and Conditions.
				4. Unless the context indicates a contrary intention, in the Terms and Conditions:

‘includes’ in any form is not a word of limitation; and

the meaning of ‘or’ will be that of the inclusive ‘or’, meaning one, some or all of a number of possibilities.

* + - * 1. If any of the Terms and Conditions purport to exclude liability for a particular matter, such exclusion only operates to the extent permitted by Law.
				2. Headings are for convenience only and do not affect interpretation.
				3. The singular includes the plural and the plural includes the singular.
				4. If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
				5. A reference to a person includes an individual, corporation, trust, partnership, unincorporated body or statutory body or other entity or any of them.
				6. A reference to a time is to Australian Eastern Standard (AEST) time.
				7. A reference to a party in the Terms and Conditions or another agreement or document includes that party’s successors, permitted substitutes and permitted assigns (and, where applicable, the party’s legal or personal representatives).
				8. A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and all legislation, regulations or statutory instruments issued under it.
				9. Unless expressly provided to the contrary in the Terms and Conditions, the State may give, modify, withhold, withdraw, make or exercise any action, approval, consent, decision or discretion or other function under the Terms and Conditions at the State’s absolute discretion, whether subject to terms and at any time.
	1. Agreement to Comply with Terms and Conditions
		+ - 1. Subject to Clause 3(b), by submitting a completed EOI Form, the Respondent and each Respondent Member agrees to comply with the Terms and Conditions.
				2. Without limiting Clause 6, in consideration of the potential Respondent and its potential Respondent Members agreeing to be bound by the Terms and Conditions, the State will receive and consider the potential Respondent’s Proposal.
				3. Nothing in the Terms and Conditions limits or otherwise derogates from any additional obligations on any Respondent, Respondent Member or Associate under any deed or other arrangement with the State relating to the management of conflicts, information barriers or confidentiality entered after, the date of the Invitation for EOI.
	2. Liability
		+ - 1. Except as otherwise expressly provided in the Terms and Conditions, the Respondent and Respondent Members are not entitled to make any Claim against the State for any Liability incurred by them arising out of, or in connection with, the Terms and Conditions, the Tender Process, the submission of a Proposal, the Disclosed Information or any inspections of any site related to the Project.
				2. The Respondent and Respondent Members must indemnify, and must keep indemnified on demand, the State and any of its Associates from and against any Claim or Liability suffered or incurred by the State or any of its Associates arising out of, or in connection with:

any breach by the Respondent or a Respondent Member of the Terms and Conditions;

any action or Claim brought by the Respondent, a Respondent Member or any of their respective Associates against the State or any of its Associates with respect to any of the matters or events identified in Clause 4(a);

any failure of an Associate to perform or otherwise comply with the Associate Obligations (as relevant); and

any site inspection to the extent caused by the act or omission, including any negligence of, the Respondent, a Respondent Member or any of their respective Associates.

* 1. Disclosed Information
		1. **Use and Disclosure**
			+ 1. Subject to Clauses 5.1(b), 5.2 and 5.3, the Respondent and each Respondent Member must:

not use the Disclosed Information for any purpose whatsoever except for the Permitted Purpose; and

keep confidential and not copy or duplicate (or allow the copying or duplication of) any Disclosed Information.

* + - * 1. The Respondent and Respondent Members may disclose the Disclosed Information to their respective Associates if the disclosure is required solely for the Permitted Purpose and is made in accordance with the Associate Obligations.
		1. **Approved Disclosure**

The provisions of Clauses 5.1(a)(ii) and 5.3 do not apply to:

* + - * 1. the disclosure of Disclosed Information for which the State has given its prior written consent;
				2. Disclosed Information after (but only to the extent that) it becomes generally available to the public other than because of a breach of any provision of the Terms and Conditions; or
				3. the disclosure of Disclosed Information to the extent necessary to comply with any applicable Law or legally binding order of any governmental agency.
		1. **Unauthorised Disclosure**

The Respondent and each Respondent Member must:

* + - * 1. notify the State immediately if it becomes aware of any unauthorised disclosure, copying or use of Disclosed Information (suspected or actual);
				2. immediately take all reasonable steps to prevent or stop any such suspected or actual unauthorised disclosure, copying or use of Disclosed Information (including complying with directions of the State in this regard); and
				3. take all reasonable steps to recover any Disclosed Information that has been disclosed, used or copied without the State’s consent under the Terms and Conditions.
		1. **No Liability for Disclosed Information**

The Respondent and each Respondent Member acknowledges and agrees that:

* + - * 1. the State and its Associates do not warrant, guarantee or make any representation (express or implied), or assume any duty of care, or accept any liability, with respect to the completeness, accuracy, adequacy or correctness of Disclosed Information;
				2. the Disclosed Information, and all Intellectual Property Rights in the Disclosed Information, will remain the property of the State or any of its Associates (as the case may be);
				3. the Respondent, Respondent Members and their respective Associates will not in any way rely upon:

the Disclosed Information; or

a failure by the State or any of its Associates to provide any information; and

* + - * 1. the Respondent, Respondent Members and their respective Associates must each carry out all relevant investigations, make its own review and evaluation, and examine and acquaint itself in respect of:

all aspects of the Project;

the contents, correctness, sufficiency and suitability of the Disclosed Information; and

all information which is relevant to the risks, contingencies and other circumstances related to the Project which could affect the decision to lodge a Proposal,

without reliance on the State or any of its Associates.

* + 1. **Return of Disclosed Information**

If the State terminates the Tender Process in respect of a Respondent (or the Tender Process as a whole), the Respondent and Respondent Members must, at the State’s election, destroy or return to the State all Disclosed Information other than Disclosed Information which:

* + - * 1. is required to be retained in accordance with Law or a binding requirement of a recognised stock exchange;
				2. forms part of the minutes of, or papers to, a board or investment committee of the Respondent or a Respondent Member; or
				3. is retained as part of automatic information technology archiving or back-up procedures,

provided that, in each case, the Disclosed Information is kept confidential and otherwise in accordance with the Terms and Conditions.

* + 1. **Data Room**

The Respondent and each Respondent Member acknowledges and agrees that:

* + - * 1. any Data Room may (either wholly or in part) take the form of a web-based portal or other online facility for gaining access to information (**Electronic Data Room**);
				2. it is responsible for ensuring that it has all computer hardware and computer software required to gain access to any Electronic Data Room, and that such computer hardware and computer software must comply with any requirements notified by the State in writing from time to time;
				3. it will comply with all directions issued by the State in writing from time to time regarding access to or the use of any Electronic Data Room;
				4. the State and its Associates do not warrant, guarantee or make any representation (express or implied), or assume any duty of care, or accept any Liability, with respect to the functionality, performance or availability of any Electronic Data Room, or whether any Electronic Data Room will be free of Disabling Code or will cause any Disabling Code to be introduced into any computer systems of the Respondent or a Respondent Member, and the Respondent and Respondent Members are not entitled to make any Claim against the State for any Liability incurred by them and indemnify the State or State Associates in respect of any Claim brought by any Respondent Associates for Liability incurred by them arising out of or in connection with the use, functionality, performance or availability of any Electronic Data Room or the introduction of any Disabling Code into any computer systems of the Respondent or a Respondent Member; and
				5. agrees that the information in the Electronic Data Room is Disclosed Information that must be kept confidential in accordance with these Terms and Conditions.
	1. Discretion of the State
		+ - 1. The Respondent and each Respondent Member acknowledges and agrees to the State’s right, at the State’s absolute discretion, to:

reject or refuse to consider, or to accept any EOI or Proposal that does not comply with the requirements of the Invitation for EOI, the RFP or the Terms and Conditions (as the case may be) or which is otherwise incomplete;

suspend or terminate the Tender Process;

require the Respondent and each Respondent Member at any time (including as a condition precedent to being appointed a Preferred Respondent) to provide security for its involvement or continued involvement in the Tender Process;

elect not to further evaluate any EOI or Proposal that fails to satisfy the EOI Evaluation Criteria, the RFP evaluation criteria or other relevant evaluation criteria;

reject or accept any EOI or Proposal notwithstanding whether such EOI or Proposal is the lower priced, higher-ranked, or otherwise;

award the Project to any Respondent, including a Respondent which did not have the highest ranked EOI or Proposal as against the EOI Evaluation Criteria, the RFP evaluation criteria or other relevant evaluation criteria;

accept or reject the whole or part of any EOI or Proposal to the extent, in the case of part-acceptance, that part of the EOI or Proposal is capable of such partial acceptance;

suspend or terminate the Respondent’s participation in the Tender Process if the State forms the view that the Respondent, a Respondent Member or any of their respective Associates has breached the Terms and Conditions;

require, request, receive or accept (whether requested or not) additional information, material, clarification or explanation from any Respondent or any Competing Respondent relating to an EOI or Proposal at any time and the State may, at its sole discretion, take such information, material, clarification or explanation into consideration in its evaluation of an EOI or Proposal;

consider and accept an EOI or Proposal regardless of whether:

any Respondent, Respondent Member or any of their respective Associates has breached the Terms and Conditions; or

any member of a Competing Respondent has breached the Terms and Conditions;

vary or supplement any of the Terms and Conditions or other aspects of the Invitation for EOI or the RFP;

change the timing, order or application of any phase or process in the Tender Process or supplement, remove, add to or vary any part of the Tender Process;

accept or reject an EOI or Proposal at any time after the closing time and date for the EOI or Proposal, as set out in the Invitation for EOI or the RFP or which is lodged otherwise than in accordance with the Invitation for EOI or the RFP;

accept or reject any clarification question or request for a meeting which is lodged by a Respondent after the time and date specified, or otherwise in the manner specified, in the Invitation for EOI or the RFP as the closing time and date for such questions or requests;

extend any time or date specified in the Invitation for EOI or the RFP;

negotiate with any Respondent or Competing Respondent on any matter the State may determine;

enter into the State Project Documents with a Competing Respondent without prior notice to the Respondent;

allow any Respondent to clarify, alter, amend, add to or change its EOI or Proposal, Respondent Members or Associates after the closing time and date for the EOI or Proposal (as applicable), as set out in the Invitation for EOI or the RFP, without notifying or offering the same opportunity to others;

in evaluating any Proposal or selecting a Preferred Respondent, have regard to:

the State’s and its Associates’ knowledge and previous experience and dealings with any Respondent, Respondent Member or any of their respective Associates; or

information concerning a Respondent, Respondent Member or any of their respective Associates which is in the public domain or which is obtained by the State or its Associates through its or their own investigations;

appoint or decline to appoint any number of Preferred Respondents or change Respondents or Preferred Respondents at any time;

require one or more of the Respondents and Competing Respondents to make a ‘best and final offer’;

withdraw, cancel or modify (substantially or otherwise) the Project or any part of the Project;

change the procurement method of the Project (including public sector delivery) or any part of the Project in any way it sees fit;

abort the Tender Process at any time;

without limiting Clause 6(a)(vi), select the highest ranked Respondent who does not have a Related Member ahead of a higher ranked Respondent that does have a Related Member;

not attribute any reasons for any actions or decisions taken, including in respect of the exercise of any or all of the above mentioned rights;

require the Respondent or any Respondent Associate to enter into a probity and process deed with the State; or

otherwise take any such other action as it considers appropriate in relation to the Tender Process.

* + - * 1. The State is not obliged to disclose to any Respondent, Respondent Member or any of their respective Associates, any negotiations the State has had with any Competing Respondent or any amendments, additions or other changes the State has allowed a Competing Respondent to make to its Proposal, and is not obliged to enter into similar negotiations with the Respondent or allow or require amendments, additions or changes to be made to its Proposal.
	1. Conflicts and Competing Respondents
		1. **Conflicts and Competing Respondents**

Subject to Clauses 7.5, 7.6 and 7.7, the Respondent and each Respondent Member:

* + - * 1. acknowledges and agrees that except as consented to by the State in writing (either conditionally or unconditionally, and at the State’s sole and absolute discretion), it is not and will not become:

a member of, or otherwise be involved with, a Competing Respondent in respect of the Project; or

an Associate of the State or involved with the State or any of its Associates in respect of the Project; and

* + - * 1. must immediately notify the State of any involvement with;

a Project Stakeholder;

an Associate of the State (or any of its Associates); or

a former State Advisor,

in respect of the Project; and

* + - * 1. warrants that no actual or perceived conflict of interest has arisen or will arise in respect of the performance by a person within the Respondent or relevant Respondent Member or a Respondent Associate, in respect of the Project.
		1. **Related Members**

The Respondent acknowledges and agrees:

* + - * 1. it must not have a Related Member as a Respondent Member, except as consented to by the State in writing (either conditionally or unconditionally, and at the State’s sole and absolute discretion);
				2. that no confidential information about the Invitation for EOI or the RFP is to be disclosed to any person other than a Team Member, where the State is satisfied such persons have complied with the Terms and Conditions;
				3. to immediately notify the State if it receives confidential information of a Competing Respondent, other than in accordance with the Terms and Conditions; and
				4. that the State has the right to exclude the Respondent from the Tender Process for breach of this Clause 7.2. No compensation will be payable in these circumstances.
		1. **Independent Reviewer**

The Respondent and each Respondent Member acknowledges and agrees that a Respondent Member (and any Associate of a Respondent Member) who is a part of the Successful Respondent is not eligible for the role of the independent reviewer under the State Project Documents.

* + 1. **Notification of grant and funding applications**

The Respondent and each Respondent Member must ensure that the Respondent notifies the State immediately if the Respondent or a Respondent Member intends to apply, or has applied, for a grant or funding assistance program administered by the Victorian Government. A notice under this Clause 7.4 must include, without limitation:

* + - * 1. the name of the grant program;
				2. who the grant program is administered by; and
				3. the purpose for seeking the grant.
		1. **Competing Respondent Conflicts**

The Respondent and each Respondent Member must:

* + - * 1. ensure that no Respondent Associate is an advisor to, or involved in, a Competing Respondent in relation to the Project;
				2. immediately notify the State of any Respondent Associate who is (or subsequently becomes) involved with, a Competing Respondent in relation to the Project; and
				3. unless otherwise agreed to by the State:

ensure that any Respondent Associate the subject of Clause 7.5(a) or a notification under Clause 7.5(b), immediately ceases its involvement with the Competing Respondent; or

otherwise take such action as is necessary to ensure that any Respondent Associate the subject of Clause 7.5(a) or a notification under Clause 7.5(b) is no longer an Associate of more than one Respondent or relevant Respondent Member.

* + 1. **State Advisor Conflicts**
			- 1. The Respondent and each Respondent Member must:

ensure that no Respondent Associate is a State Advisor, except as consented to by the State in writing (either conditionally or unconditionally, and at the State’s sole and absolute discretion);

provide details in its Proposal of any Respondent Member that has an existing relationship with a State Advisor;

immediately notify the State of any Respondent Associate who subsequently becomes involved with the State in respect of the Project; and

where a Respondent identifies an existing relationship with a State Advisor comply with such probity arrangements as directed by the State and to the satisfaction of the Probity Advisor.

* + - * 1. Without limiting Clause 6, the State may terminate a Respondent from the Tender Process if satisfactory probity arrangements cannot be agreed with the Probity Advisor or maintained by the Respondent.
		1. **Release of Financiers and Equity Investors**
			- 1. If the State has selected a Competing Respondent as the Preferred Respondent, has terminated or suspended the participation of the Respondent in the Tender Process or the Respondent has otherwise withdrawn from the Tender Process, the Respondent and each Respondent Member agrees, if requested in writing by the State, to release:

its Financiers and Equity Investors (as the case may be) from their respective commitments to the Respondent and Respondent Members to permit them, subject to written approval of the State, to participate in providing funding or other financial accommodation for a Competing Respondent; and

any of its advisors to permit them, subject to the written approval of the State, to be involved in the Project with a Competing Respondent, the State or any of its Associates.

* + - * 1. The release of a Financier, Equity Investor or advisor under Clause 7.7(a), will not limit or affect any confidentiality obligations that the Respondent or the State has in place or reasonably puts in place with the relevant Financiers or Equity Investors in order to protect the confidential information of the Respondent, Respondent Member or the State or its Associates.
		1. **State Right to Impose Additional Requirements**
			- 1. Without limiting Clause 6, the Respondent and each Respondent Member acknowledges and agrees that the State may impose additional obligations, including by issuing addenda to these Terms and Conditions or requiring the execution of confidentiality and process agreements:

on the Respondent and Respondent Member if they identify an existing relationship with the State or a State Advisor in accordance with Clause 7.6 or the State reasonably determines that:

the relationship of the Respondent or a Respondent Member to any person involved in a Competing Respondent; or

the relationship of the Respondent or a Respondent Member to an Associate of the State, or their involvement with the State or any of its Associates in relation to the Project,

renders such additional obligations necessary or desirable to ensure confidentiality, competitiveness or probity with respect to the Tender Process;

on any Respondent Member to implement arrangements and enter into agreements with the State as a condition to the Respondent and relevant Respondent Members continuing in the Tender Process; or

on the Respondent or any Respondent Member in order to facilitate interactions between Respondents and other government agencies or relevant entities, for purposes of the Project,

or if the State reasonably considers that a conflict of interest or a probity concern has arisen or is likely to arise in relation to a Respondent or Respondent Member.

* + - * 1. Upon receipt of any additional obligations or arrangements under Clause 7.8(a), the Respondent and each Respondent Member must promptly comply with the additional obligations or implement arrangements to the satisfaction of the State.
				2. Without limiting Clause 6, the State may terminate or suspend the participation of a Respondent or any Respondent Member from the Tender Process if the Respondent or any Respondent Member fails to comply with the additional obligations or arrangements proposed under Clause 7.8(a).
		1. **Respondent Members and Associates**

The Respondent:

* + - * 1. warrants that its Proposal accurately identifies the Respondent, Respondent Members, Team Members and applicable Associates; and
				2. to the extent that its Proposal identifies changes to:

the identity of any Respondent Members, Team Members and applicable Associates; or

the structure of a Respondent Member or otherwise a change in control (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) of a Respondent Member,

from that identified in its EOI, confirms that it has received the applicable State approval in accordance with Clause 10.3(b).

* + 1. **Associates**

The Respondent and each Respondent Member must ensure that each of their respective Associates complies with the requirements of Clauses 4, 5, 7.1, 7.3, 7.5, 7.6, 7.8, 10.1, 10.6, 10.7, 10.10, 11, 13, 14, 15, 16 and 17 (as though it was a Respondent Member) (**Associate Obligations**).

* 1. Proposal Binding

The Respondent agrees that the Proposal:

* + - * 1. will constitute an offer for the duration of the Validity Period or as otherwise agreed with the State; and
				2. shall remain open for the Validity Period notwithstanding that a Respondent is not appointed as the Preferred Respondent.
	1. Preferred Respondent

The selection of a Preferred Respondent does not constitute an acceptance of the Proposal submitted by the Preferred Respondent and is without prejudice to the State’s right to decline to enter into the Project Agreement or State Project Documents, or to enter into the State Project Documents with a Competing Respondent.

* 1. Process Matters
		1. **Contact with the State, Project Stakeholders and Probity Advisor**
			+ 1. The Respondent and each Respondent Member acknowledges and agrees that it will not, and it will ensure that its respective Associates do not, make contact with:

any governmental agency or officer;

the State or any of its Associates;

members of Parliament or their staff; or

any Project Stakeholders,

to discuss any aspect of the Project, the Invitation for EOI, the RFP or any Proposal except as provided for in the Terms and Conditions.

* + - * 1. The Respondent and each Respondent Member acknowledges and agrees that it will not offer any inducement, fee or reward to the State or any of its Associates.
				2. Any notification to be provided by the State under the Terms and Conditions will not have been given or deemed to have been given unless such notice has been given by the State Representative in writing.
				3. Unless otherwise directed or agreed by the State, all communications by, or on behalf of, the Respondent or any Respondent Member with the State, including any notices required to be provided by the Respondent under the Terms and Conditions, must be provided by the nominated Respondent Member to the State Representative.
				4. The Probity Advisor has been appointed by the State to advise on and monitor the procedural integrity of the Tender Process. The Respondent and each Respondent Member must immediately advise the Probity Advisor of any issues or concerns it has with the probity or integrity of the Tender Process, so that the matter may be considered and remedied where appropriate. When raising an issue or concern, the Respondent or relevant Respondent Member must provide any such information required by the Probity Advisor so that the Probity Advisor can appropriately address the issue or concern raised. Any contact or communication with the Probity Advisor must be disclosed to the State.
				5. The Respondent and each Respondent Member acknowledges and agrees that it will notify the State immediately if:

it becomes aware of any non-compliance with this Clause 10.1; or

it has any contact with:

any governmental agency or officer;

the State or any of its Associates;

members of Parliament or their staff; or

any Project Stakeholders,

outside of the formal Tender Process in relation to any aspect of the Project, the Invitation for EOI, the RFP, or any Proposal.

* + 1. **Material Changes**
			- 1. The Respondent must notify the State promptly in writing of any:

material change to any:

information contained in its EOI or Proposal;

additional information submitted to the State pursuant to this Invitation for EOI or the RFP; or

information submitted to the State in any interview, meeting or workshop conducted pursuant to the RFP;

event which may affect or have an impact on the financial position or capacity of the Respondent or any Respondent Member or the ability of the Respondent or Respondent Member to continue to participate in the Tender Process or comply with the Terms and Conditions; or

circumstances which may affect the truth, completeness or accuracy of any of the information provided in, or in connection with, the Proposal.

* + - * 1. Upon receipt of any written notification pursuant to Clause 10.2(a), the State reserves the right to:

assess the change and terminate the Respondent’s or any Respondent Member’s further participation in the Tender Process; or

invite the Respondent to amend its Proposal accordingly.

* + 1. **Changes to Respondent Members**
			- 1. If, after lodgement of its Proposal:

there is a change in the structure of a Respondent Member or there is otherwise a change in control (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) of a Respondent Member; or

the Respondent replaces, adds or removes a Respondent Member, from those entities identified as Respondent Members in the Respondent’s Proposal,

the Respondent must:

promptly notify the State;

provide the State with sufficient details of the change; and

provide evidence to the State that the new Respondent Member has agreed to be bound by the Terms and Conditions.

* + - * 1. Upon receipt of a notification under Clause 10.3(a) and without limiting Clause 7.8, the State will assess any change and reserves the right to accept the change or terminate the Respondent’s further participation in the Tender Process.
				2. If the change the subject of the notification under Clause 10.3(a) involves a change to the parties which constitute the Respondent Member and that change is approved by the State, the Respondent must submit to the State an updated completed Proposal Form which reflects such change.
		1. **Execution of Proposal by Special Purpose Vehicle**

If the proposed counterparty to the State Project Documents is a special purpose vehicle and that special purpose vehicle is not incorporated as at the date of the completion of the Proposal Form, the Respondent must submit to the State an updated completed Proposal Form which is executed by the special purpose vehicle within 5 Business Days after incorporation of the special purpose vehicle.

* + 1. **Addenda**

The Respondent and each Respondent Member agrees that:

* + - * 1. at any time during the Tender Process the State may, at its discretion, amend the Invitation for EOI (including the Terms and Conditions) or the RFP, by issuing an Addendum;
				2. none of the State or any of its Associates will have any liability to the Respondent or any Respondent Member as a consequence of any such Addendum; and
				3. the Respondent must prepare its Proposal to take into account and reflect the content of any such Addendum.
		1. **Site Inspections**
			- 1. The State may grant the Respondent or any Respondent Member permission to undertake inspections of any site related to the Project.
				2. The Respondent and each Respondent Member must comply with any protocols, procedures or requirements notified by the State prior to any such inspection referred to in Clause 10.6(a).
		2. **Interactive Tender Process**

The Respondent and each Respondent Member:

* + - * 1. acknowledges that:

it is intended that ITP Workshops and Site Inspections will be conducted during the Tender Process; and

the State may hold other meetings and briefings,

with the Respondent, Respondent Members, Competing Respondents and their respective Associates during the Tender Process;

* + - * 1. agrees to participate in any ITP Workshops, Site Inspections and attend any meeting and briefing held during the Tender Process advised by the State on the basis of the Interactive Protocols and any protocols specified by the State in the Invitation to EOI and the RFP;
				2. acknowledges that the ITP Plan, including the Interactive Protocols, apply to the Interactive Tender Process; and
				3. agrees to comply with the terms of the ITP Plan, including the Interactive Protocols during the Tender Process.
		1. **No Amendment**

The Respondent may not amend its Proposal (unless invited or requested to do so by the State or as otherwise required by the Terms and Conditions) after it has been submitted.

* + 1. **No Requirements to Return**

The Respondent agrees that the State will not be required to return the Proposal or any documents, materials, articles and information lodged by the Respondent as part of, or in support of, its Proposal.

* + 1. **State Approval**

To the extent that the State may provide any approval or direction in accordance with the Terms and Conditions, the Respondent must, and must ensure that each Respondent Member and their respective Associates, comply with the terms of such approval or direction and any such conditions attaching to that approval or direction.

* 1. Disclosure by the State
		1. **Disclosure by the State**

The Respondent and each Respondent Member acknowledges and agrees that the State or any of its Associates may publish or disclose (on the internet or otherwise), and consents to such publication or disclosure, details of:

* + - * 1. the Respondent(s) (including Respondent Members and any of their Associates);
				2. the identity of the Preferred Respondent(s) (including Respondent Members and any of their Associates); and
				3. the status of the Tender Process at any time.
		1. **Public Disclosure and Freedom of Information**
			- 1. The Respondent and each Respondent Member acknowledges and agrees that disclosure by either of the State or any of its Associates of any information provided by the Respondent, a Respondent Member or any of their respective Associates may be required and consents to such disclosure:

under any current legislation including;

the *Freedom of Information Act 1982* (Vic);

the *Ombudsman Act 1973* (Vic); and

the *Audit Act 1994* (Vic);

under any future legislation;

in the course of the official duties of a relevant Minister or Department or the State;

to satisfy requirements of parliamentary accountability;

in annual reports of the State;

pursuant to policies of the Victorian government; or

to satisfy any other recognised public requirement,

(each a **Public Disclosure Obligation**).

* + - * 1. The Respondent and each Respondent Member must use all reasonable endeavours to assist the State and its Associates in meeting their Public Disclosure Obligations.
		1. **Proprietary Information**
			- 1. The Respondent and each Respondent Member warrants that between them they have the authority to grant the rights granted to the State under Clause 11.3(c) and that exercise of those rights by the State or any person authorised by the State in accordance with, or as contemplated by, the Terms and Conditions will not infringe the Intellectual Property Rights or other rights of any person.
				2. The Respondent and each Respondent Member must indemnify the State against any Liability or Claim arising from any breach of the warranties set out in Clause 11.3(a).
				3. The Respondent and each Respondent Member grants, and will procure that each of its respective Associates with a relevant interest grants, to the State and its Associates an irrevocable, perpetual, non-exclusive, transferable, free of charge licence to use, reproduce, develop, communicate or modify or sub-licence the whole or any part of any Proposal for the purposes of the Tender Process provided that, subject to the Terms and Conditions and the State Project Documents, the State may not (other than pursuant to Clause 11.2(a)) provide the whole or any part of any Proposal to a Competing Respondent.
				4. Without limiting the application of Clause 11.3(c), if the Respondent has been nominated as the Preferred Respondent, the Respondent and each Respondent Member also licenses the State and its Associates to make publicly available:

the broad concept plan, design documents and any other fly through sketches or drawings of any element of the Project;

the key functional and operational characteristics;

the aggregate capital and / or operating cost;

the proposed risk allocation; and

other high level commercial or technical information,

in relation to the Respondent’s Proposal.

* 1. No Legal Relationship in Respect of Delivery of the Project

The Respondent and each Respondent Member acknowledges and agrees that:

* + - * 1. the Invitation for EOI and the RFP do not constitute an offer to enter into State Project Documents;
				2. other than the process contract that is formed between the State and the Respondent by the operation of Clause 3:

no contract exists or will arise between the State, the Respondent and the Respondent Members in respect of the Project unless and until Contract Close is achieved; and

none of the State, the Respondent or the Respondent Members intends to create a legal relationship; and

* + - * 1. the Terms and Conditions set out the entire agreement between the State, the Respondent and the Respondent Members in respect of the Tender Process.
	1. Publicity

Except to the extent it is not possible to comply with this Clause 13 while complying with the Law or the binding requirement of a recognised stock exchange, the Respondent and each Respondent Member must not make, and must procure that none of its respective Associates make, a media release or other public announcement or statement in relation to the Project without the prior written consent of the State.

* 1. Notices
		1. **General**

Subject to Clauses 10.1(e) and 15, all communications (including notices, demands, consents, approvals or requests) under or in connection with the Terms and Conditions (**Notice**):

* + - * 1. must be, if in writing, signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, and on behalf of, that party; and
				2. must be:

delivered or posted by prepaid post to the address, of the addressee, specified in the Invitation for EOI or the RFP (in the case of the State), and the Proposal (in the case of the RFP Primary Contact); or

sent by email to the email address specified in the Invitation for EOI or the RFP (in the case of the State), and the Proposal (in the case of the RFP Primary Contact),

or to the address, or email address (as the case may be) last notified by the intended recipient to the sender.

* 1. Time of Receipt

A Notice given to a person in accordance with Clause 14.1 is treated as having been given and received by the addressee:

* + - * 1. in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
				2. in the case of delivery by hand, on delivery at the address of the addressee as provided in the Invitation for EOI or the RFP (in the case of the State), and the Proposal (in the case of the RFP Primary Contact), or to such other address last notified by the intended recipient to the sender, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day; and
				3. in the case of delivery by email, the first to occur of:

receipt by the sender of any email acknowledgement from the intended recipient’s information system showing that the Notice has been delivered to the email address of that recipient;

the time that the Notice enters an information system which is under the control of the intended recipient; and

the time that the Notice is first opened or read by an employee or officer of the intended recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or after Business Hours, the Notice will be taken to have been duly given or made at the start of business on the next Business Day.

* 1. Survival of Obligations

The Respondent’s and each Respondent Member’s obligations pursuant to the Terms and Conditions shall exist prior to, and shall survive the termination or completion of, the Tender Process and the Project.

* 1. General Terms and Conditions
		1. **Requirements of Fairness**

The Respondent and each Respondent Member acknowledges and agrees that:

* + - * 1. it must not attempt to obtain any advantage for itself by seeking information other than through the means set out in the Invitation for EOI or the RFP or by attempting to influence the State or any of its Associates in relation to the Project through any means apart from communications and the presentation of information in accordance with the Terms and Conditions or the Invitation for EOI or the RFP; and
				2. it will not, and will procure that its respective Associates do not, engage in collusive tendering, anti-competitive conduct or any similar conduct with a Competing Respondent or any other person in relation to the Project.
		1. **Waiver**
			- 1. Subject to the express provisions of the Terms and Conditions, if the State or any of its Associates fails or delays in exercising or enforcing any right or remedy under the Terms and Conditions, the Invitation for EOI or the RFP, it will not preclude or amount to a waiver of any further exercise or enforcement of that right or remedy or of any other right or remedy under the Terms and Conditions or provided by Law.
				2. If the State or any of its Associates fails or delays in exercising or enforcing any right or remedy under a similar deed to the Terms and Conditions, the Invitation for EOI or the RFP against any Competing Respondent, none of the Respondent, Respondent Members or of their respective Associates will have or make any Claim against the State in respect of such failure or delay.
		2. **No Merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by the Terms and Conditions. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

* + 1. **Entire Agreement and Inconsistency**
			- 1. The terms and conditions for the Tender Process are contained entirely in the Invitation for EOI and the RFP. There are no undertakings, agreements, warranties or representations (express or implied), with respect to the matters contemplated by the terms and conditions except for those referred to in them.
				2. The Respondent must notify the State in writing if the Respondent or a Respondent Member is of the opinion that there is any error or discrepancy in the Invitation for EOI or the RFP, as soon as reasonably practicable after discovering it.
				3. Following receipt of a written notice pursuant to Clause 17.4(b), or if the State otherwise discovers an ambiguity, discrepancy or inconsistency, the State in its sole and absolute discretion, will direct the Respondent in writing as to how to resolve the ambiguity, discrepancy or inconsistency.
		2. **Probity Checks**
			- 1. The State may conduct checks in relation to the Respondent, each Respondent Member and any of their respective Associates during the Tender Process in relation to probity matters (**Probity Checks**).
				2. The Respondent and each Respondent Member consents to such Probity Checks, agrees to procure the consents of its directors and to procure the consents of such employees respective Associates as are requested by the State, and as are required by Law to be obtained in connection with such Probity Checks.
				3. The Respondent and each Respondent Member acknowledges and agrees that the State:

is not under any obligation to provide to the Respondent or any Respondent Member the results of any Probity Checks;

may take into account any matters revealed by any Probity Checks in evaluating any Proposal; and

may reject any Proposal, suspend or terminate the Respondent’s or a Respondent Member’s participation in the Tender Process or take such other action as it considers appropriate, in its absolute discretion, in light of matters revealed by any Probity Checks.

* + 1. **Entitlement to Adopt a Proposed or Draft Document**

If the State has exercised its right to terminate the Tender Process with respect to the Respondent and all Competing Respondents, without the award of the Project to any of them, then the Respondent and each Respondent Member acknowledges that the State is at liberty to negotiate with any party to a proposed or draft document submitted as part of a Proposal, with a view to entering into a contract with that party on substantially the same terms as the proposed or draft document.

* + 1. **Severability of Provisions**

If any provision of the Terms and Conditions is held to be invalid, unenforceable or illegal for any reason, the Terms and Conditions shall remain otherwise in full force and effect apart from such provision which shall be deemed deleted.

* + 1. **Indemnity, Rights Held on Trust and No Fettering**

The Respondent and each Respondent Member declares and acknowledges that:

* + - * 1. each indemnity and right referred to in the Terms and Conditions in favour of any of the State’s Associates is held on trust by the State for the benefit of any of its Associates from the date of the EOI Form;
				2. the consent of the Associates of the State will not be required for any amendment to, or waiver of rights under, the Terms and Conditions by the State; and
				3. nothing contained or implied in the Terms and Conditions or any State Project Documents will be construed or interpreted as unlawfully restricting or otherwise unlawfully affecting the unfettered discretion of the State to exercise any of its executive or statutory powers or functions under any Law.
		1. **Governing Law and Jurisdiction**

The Terms and Conditions are governed by, and are to be construed in accordance with, the Laws applicable in Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

* + 1. **Process Agents**

Each Respondent Member that does not have its registered office in Australia irrevocably:

* + - * 1. nominates the Respondent as its agent to receive service of process or other documents in any action in connection with the Project; and
				2. agrees that service on that agent will be sufficient service on it.
		1. **Additional Obligations Unaffected**

The obligations set out in the Terms and Conditions are in addition (and without prejudice) to any other obligations of confidence or with respect to probity which the Respondent or Respondent Members may have, whether at Law, in equity, by statute or otherwise.

Appendix C – Risk Allocation Summary

Guidance note: The risk allocation summary set out in this Appendix C (Risk Allocation Summary) should be reviewed for each project to ensure consistency with the risk allocation that is proposed for a project.

The Risk Allocation Summary Table below summarises the risk allocation that the State is proposing for this Project.

This risk allocation summary is subject to change and a draft Project Deed will be provided to Shortlisted Respondents in the RFP.

**Risk Allocation Summary Table**

| No. | Type of Risk | Description | Allocation |
| --- | --- | --- | --- |
| State | Shared | Project Co |
| **Land Acquisition and Planning Risk** |
| 1 | Land acquisition | Risk associated with acquiring land identified at Contract Close as required for Project Co’s design accepted by the State. | ✔ |  |  |
|  |  | Risk associated with acquiring land as a result of design changes requested by the State after Contract Close. | ✔ |  |  |
| 2 | Additional land | Any additional land required by Project Co above the land made available by the State. |  |  | ✔ |
| 3 | Planning Approvals | Obtaining planning approvals for the Project in relation to land made available by the State. | ✔ |  |  |
|  |  | Obtaining planning approvals for the Project in relation to any additional land required by Project Co. |  |  | ✔ |
|  |  | Changes to planning approvals proposed by Project Co after Contract Close.  |  |  | ✔ |
| 4 | Compliance with Planning Approvals | Obligation to comply with relevant planning approval conditions. |  |  | ✔ |
| **Site Risks** |
| 5 | Contamination Project Co encounters, disturbs or interferes with on the ***[#Site/#Sites/#Project Area]*** to the extent:▪ of such encountering disturbance or interference; and▪ required in accordance with Best Industry Practice. | Cost relating to the management and removal of such contamination on the ***[#Site/#Sites/#Project Area]***. | ✔(only where caused by the State) |  | ✔(other than where caused by the State) |
| 6 | Contamination required to be remediated as a consequence of any Approval | Cost relating to the management and removal of such contamination on the ***[#Site/#Sites/#Project Area]***. |  |  | ✔ |
| 7 | Contamination which the State directs Project Co to remediate or which is the subject of a Contamination Notice | Cost relating to the management and removal of such contamination on the ***[#Site/#Sites/#Project Area]***. | ✔(other than where Project Co is required to remediate that Contamination as set out in item 5 or 6 above) |  | ✔(only where Project Co is required to remediate that Contamination as set out in item 5 or 6 above) |
| 8 | Native Title Claims | Risk of cost and delay if native title claims are made in respect of the land made available by the State. | ✔ |  |  |
|  |  | Risk of cost and delay if native title claims are made in respect of any additional land required by Project Co. |  |  | ✔ |
| 9 | Aboriginal heritage and artefacts | Risk of cost and delay resulting from discovery of items and aboriginal heritage and artefacts at the ***[#Site/#Sites/#Project Area]***. | ✔ |  |  |
| 10 | Environmental Risk | Risk of general site and environmental conditions (excluding those specifically identified). |  |  | ✔ |
| **Design, Construction and Commissioning Risks** |
| 11 | Force majeure | Risk of delay caused by force majeure events which prevent construction milestones being met. |  | ✔ |  |
| 12 | Design risk | Risk that the design development process cannot be completed on time or to budget or that the design does not meet the Project Scope and Delivery Requirements. |  |  | ✔ |
| 13 | Construction risk | Risk that construction cannot be completed on time or to budget. | ✔(only where caused by a State breach and specified relief events) |  | ✔ |
| 14 | Equipment***[Risk allocation to be determined on a project-by-project basis]***  | Responsibility for the selection, procurement and maintenance of equipment. |  |  |  |
| 15 | Defects risk | Risk that defects are identified following completion of construction. |  |  | ✔ |
| 16 | Fitness for purpose (commissioning) | Risk that the ***[insert Project asset]*** is not fit for purpose or does not comply with contractual obligations. |  |  | ✔ |
| 17 | Commissioning | Risk that the ***[insert Project asset]*** cannot be commissioned in accordance with the agreed commissioning criteria. |  |  | ✔ |
| 18 | State-initiated modifications | If the State elects to make a significant variation to the ***[insert Project asset]*** or the services to be provided by Project Co. | ✔ |  |  |
| 19 | ***[Insert additional Project-specific risks. Examples from other Partnerships Victoria availability PPP projects have included:******▪ the impact of other State projects resulting in modification or delay; and******▪ risk of managing key interfaces.]*** |  |  |  |  |
| **Operating Risks** |
| 20 | Force majeure | Risk that force majeure events affect the operation or availability of the ***[insert Project asset]****.* |  | ✔ |  |
| 21 | Asset management KPIs | Meeting required standards with respect to asset management Key Performance Indicators. |  |  | ✔ |
| 22 | Asset availability and maintenance | Making the ***[insert Project asset]*** available in accordance with availability requirements and levels. |  |  | ✔ |
| 23 | Meeting performance requirements | ***[Insert Project asset]*** performance does not meet the performance requirements. |  |  | ✔ |
| 24 | Maintenance costs | Risk that maintenance costs exceed budgeted costs over the Operating Phase. |  |  | ✔ |
| 25 | Operations costs (non-reviewable services) | Risk that operations costs exceed budgeted costs over the Operating Phase. |  |  | ✔ |
| 26 | Operations costs (reviewable services) | Risk that operations costs exceed budgeted cost over the Operating Phase. | ✔ |  | ✔ |
| 27 | Lifecycle costs | Risks associated with the replacement and refurbishment of the ***[insert Project asset]*** (including plant and finishes) over the Operating Phase. |  |  | ✔ |
| 28 | Changes in service levels | Changes in service levels impacting the maintenance and lifecycle of the ***[insert Project asset]***: |  |  |  |
|  |  | ▪ within parameters specified in the Project Deed; and |  |  | ✔ |
|  |  | ▪ modification to service levels and service plan outside the agreed parameters. | ✔ |  |  |
| 29 | Utility price risk***[Guidance note: The risk allocation is to be determined on a project-specific basis. For a fully outsourced project, volume risk is to be transferred to Project Co.]*** | Risk of change in the price of the utility inputs required by the ***[insert Project asset]***. | ✔ |  |  |
| 30 | Utility volume risk | Risk of change in the cost of utilities as a result of energy demand. | ✔ |  |  |
| 31 | Residual life and end of term handover | Satisfying the residual design life requirements for the ***[insert Project asset]*** at the end of the Operating Phase. |  |  | ✔ |
| 32 | ***[Insert additional Project-specific risks. Examples from other Partnerships Victoria availability PPP projects have included:******▪ franchisee interface risk during the Operating Phase; and******▪ risk that actual revenues generated by commercial opportunities differ from the Base Case Financial Model.*** |  |  |  |  |
| **Accreditation** |
| 33 | ***[Insert Project-specific risk allocation for obtaining and maintaining accreditations for construction and operation of the Project asset. Delete if not applicable for Project.]*** |  |  |  |  |
| **Industrial Relations** |
| 34 | Industrial relations risk | Risks of industrial action in respect of the Project (excluding those actions which directly affect Project Co and which directly results from an act or omission of the State). |  |  | ✔ |
| **Change in Law or Policy Risks** |
| 35 | General change in law | Risk of a general change in law during the Development Phase. |  |  | ✔ |
|  |  | Risk of a general change in law during the Operating Phase. | ✔ |  |  |
| 36 | Project specific change in law | Risk of additional cost or delay resulting from changes in State policy or law which directly affect the ***[insert Project asset]***. | ✔ |  |  |
| **Financing** |
| 37 | Financing | Obtaining and maintaining private sector financing for the Project. |  |  | ✔ |
| 38 | Base interest rate risk | Base interest rate risk prior to Financial Close. | ✔ |  |  |
|  |  | Base interest rate risk from Financial Close to first re-finance date. |  |  | ✔ |
|  |  | Base interest rate risk from the first re-finance date. | ✔ |  |  |
| 39 | Refinancing | Risk of refinancing losses. |  |  | ✔ |
|  |  | Risk of refinancing gains. |  | ✔ |  |
| 40 | Tax | Actual tax payable by Project Co differs from the base case financial model. |  |  | ✔ |
| 41 | Forex risk | Risk of forex movements (excluding agreed overseas sourced spare parts). |  |  | ✔ |

Appendix D – EOI Returnables

Guidance note: The EOI Returnables set out in this Appendix D (EOI Returnables) are linked to the Evaluation Criteria.

There is flexibility for Procuring Agencies to add detail to the high level information requested in the EOI Returnables.

D.1 EOI Returnables Overview

Overview of EOI Returnables

The EOI Returnables consist of the following:

* EOI General Returnables
* EOI Evaluation Criteria Returnables

Instructions for the completion of EOI Returnable

Respondents are requested to provide concise EOIs that clearly address the information requested.

A Respondent’s EOI must be:

* clearly titled as per the heading and numbering provided in this Appendix D (EOI Returnables);
* completed in accordance with the instructions set out within this Appendix D (EOI Returnables);
* where applicable, set out in the format set out in this Appendix D (EOI Returnables); and
* where applicable, within the prescribed page limits.

Page limits identified in this Appendix D (EOI Returnables) relate to single-sided A4 pages, size 11 font with 1.15 line spacing. Responses should be clear, legible and concise. The page limits include all diagrams, charts, pictures, and the like.

Material in excess of the page limits identified may not, in ***[insert Procuring Agency]***’s discretion, be read or taken into account in the evaluation.

Appendices that are included in excess of the page limits, unless as otherwise specified in this Appendix D (EOI Returnables) if appropriate, may not be considered in the evaluation of EOIs. Respondents are requested not to include generic advertising or marketing material.

The information requested is to be provided under the relevant Evaluation Criterion heading, and not relied upon by being placed elsewhere in the EOI.

Defined terms have the meaning given to them in the Glossary.

D.2 EOI General Returnables

General Returnable: Executive Summary

Respondents are required to provide a summary of the key elements of their EOI.

Page Limits: A maximum of ***[insert page limit]*** A4 pages may be used for the Executive Summary.

General Returnable: EOI Form

**Response Instruction:** The Respondent is to complete this form in this format and submit as part of the EOI. This EOI Form is to be signed by the Respondent and each Respondent Member.

Respondent Information

**Response Instruction:** Provide the following details in relation to the Respondent and each Respondent Member. Respondent Members will be dependent on the proposed contractual structure, but must include ***[insert relevant Respondent Member roles]*** and Project Co, including any special purpose vehicle that is incorporated for the purposes of carrying out the Project (if applicable) and the key Equity Investors and cornerstone Financier. A Lead Respondent Member must also be identified.

Please duplicate the table below for each Respondent Member

The Respondent and Respondent Members are as follows:

| Respondent Information | Response |
| --- | --- |
| **Full Name** | ***[Insert]*** |
| **Role on Project** | ***[Insert]*** |
| **Place and date of incorporation** | ***[Insert]*** |
| **ABN** | ***[Insert]*** |
| **Address of registered office** | ***[Insert]*** |
| **Address for notices** | ***[Insert]*** |
| **Email address for notices** | ***[Insert]*** |
| **Telephone number** | ***[Insert]*** |
| **Name and position of the individual nominated as Respondent’s contact** | ***[Insert]*** |
| **Lead Respondent Member** | ***[Y/N]*** |

Respondent Associates

**Response Instruction:** Provide a list of the Respondent’s Associates, including consultants, advisors, contractors and subcontractors that have been engaged by the Respondent or Respondent Members to assist in the preparation of this EOI and/or the Tender Process if shortlisted.

The Respondent Associates are as follows:

|  |  |
| --- | --- |
| Respondent Associate | Role |
| ***[Name and ABN]*** | ***[Insert]*** |
| ***[Name and ABN]*** | ***[Insert]*** |
| ***[Name and ABN]*** | ***[Insert]*** |
| ***[Name and ABN]*** | ***[Insert]*** |

Related Party Participants

**Response Instruction:** Disclose all Related Party participants of the Respondent and each Respondent Member that may also be a member of a Competing Respondent.

The Related Party participants of the Respondent or Respondent Members that may be a member of a Competing Respondent are as follows:

|  |  |
| --- | --- |
| Respondent Associate | Role |
| ***[Name and ABN]*** | ***[Insert]*** |
| ***[Name and ABN]*** | ***[Insert]*** |
| ***[Name and ABN]*** | ***[Insert]*** |
| ***[Name and ABN]*** | ***[Insert]*** |

EOI Addenda

**Response Instruction:** The Respondent is required to list the Addenda that it has received from *[insert Procuring Agency]* prior to the EOI Closing Time and Date. In completing this EOI Form, the Respondent acknowledges that its EOI has been prepared having regard to these Addenda. Information should be provided in the format set out below.

The Addenda received before the EOI Closing Time and Date are as follows:

|  |  |  |
| --- | --- | --- |
| Addenda No. | Brief description (with heading | Date issued |
| ***[Insert]*** | ***[Insert]*** | ***[Insert]*** |
| ***[Insert]*** | ***[Insert]*** | ***[Insert]*** |
| ***[Insert]*** | ***[Insert]*** | ***[Insert]*** |
| ***[Insert]*** | ***[Insert]*** | ***[Insert]*** |

Respondent confirmation

By submitting its EOI, the Respondent and each Respondent Member confirms that:

* the information set out in the EOI is accurate, true and correct;
* the EOI consists of:
	+ this completed and signed EOI Form;
	+ the other information requested in Appendix D (EOI Returnables); and
	+ the following documents:
		- ***[Respondent to insert if required]***; and
* in order to continue to participate in the Tender Process, the Respondent may need to provide to the State security in accordance with ***[insert Procuring Agency]*** requirements as to the amount and the terms.

Terms and Conditions

By submitting its EOI, the Respondent and each Respondent Member confirms and agrees that it and its Associates are bound by the Terms and Conditions set out in Appendix B of the Invitation for EOI.

Execution

**Response Instruction:** To be signed by duly authorised officers for the Respondent and each Respondent Member using one of the execution blocks below. Where signing under power of attorney, please provide a certified copy of the relevant power(s) of attorney and evidence of the attorney’s authority. The State reserves the right to ensure the Respondent and each Respondent Member has duly executed the EOI Form before further considering the EOI.

This EOI is executed as a deed and is dated the ***[insert day]*** day of ***[insert month]*** ***[insert year]***.

|  |  |  |
| --- | --- | --- |
| Signed for and on behalf of  |  | (ABN) |
| by its attorney under power of attorney dated  |  | in the presence of: |
| Signature of witness  |  | Signature of attorney |
| Full name of witness  |  | Full name of attorney |

or: Executed by ***[#Company name]*** in accordance with section 127 of the Corporations Act 2001 (Cth):

|  |  |  |
| --- | --- | --- |
| Signature of director  |  | Signature of company secretary/director |
| Full name of director  |  | Full name of company secretary/director |

D.3 EOI Evaluation Criteria Returnables

Criterion 1: Demonstrated Experience and Capability to Deliver the Project

|  |  |
| --- | --- |
| Criterion | Sub-Criterion |
| **Criterion 1:** Demonstrated experience and capability to deliver the Project  | **Sub-Criterion 1A: Joint Capability and Experience**Experience and demonstrated ability of Respondent Members to develop a suitable organisational and management structure and demonstrated capability to successfully perform and support all aspects of the Project, across the Tender, Development and Operating Phases. |
| **Sub-Criterion 1B: Project Delivery Capability and Experience**Experience and demonstrated ability of Respondent Members to ***[insert description of project delivery activities, including design and construction activities, and a description of asset(s)]*** |
| **Sub-Criterion 1C: Project Services Capability and Experience**Experience and demonstrated ability of Respondent Members to ***[insert description of Project Services to be delivered by Project Co]*** |
| **Sub-Criterion 1D: Project Financing Capability and Experience**Experience and demonstrated ability of Respondent Members to effectively raise finance for projects of a similar risk profile. |

Criterion 1: Response Requirements

Sub-Criterion 1A: Joint Capability and Experience

Respondents are required to demonstrate the experience of its Respondent Members by providing a list of relevant projects completed individually and jointly in the last 10 years (or ongoing):

* as narrative in a preamble; and
* using the format set-out in the Summary of Experience Table below.

Criterion 1: Summary of Experience

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Project name | Description | Respondent Member(s) and role | Description of organisational structure and contractual arrangements | Start and Finish Date | Project Value |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

Page Limits: A maximum of ***[insert number]*** pages may be used to address Sub-Criterion 1A.

Sub-Criterion 1B to 1D: Case Studies

Guidance note: A maximum of three case studies should be allowed per Sub-Criterion.

Respondents are required to provide case studies relating to recent and relevant projects completed within the last 10 years (or ongoing) that demonstrate the experience of the Respondents, Respondent Member(s), and/or Respondent Associates as applicable across all sub-criteria. The case studies must be referenced in the list of projects provided in the Summary of Experience Table.

Criterion 1: Case Studies Response

|  |  |
| --- | --- |
| Sub-criteria | Maximum Number of Case Studies |
| **Sub-Criterion 1B: Project Delivery Capability and Experience**Experience and demonstrated ability of Respondent Members to ***[insert description of project delivery activities, including design and construction activities, and a description of the Project asset(s)]*** |  |
| **Sub-Criterion 1C: Project Services Capability and Experience**Experience and demonstrated ability of Respondent Members to ***[insert description of Project Services to be delivered by Project Co]*** |  |
| **Sub-Criterion 1D: Project Financing Capability and Experience**Experience and demonstrated ability of Respondent Members to effectively raise finance for projects of a similar risk profile. |  |

The following information should be provided as a minimum for each case study provided:

* key project information (name, value, procurement model, Respondent Members, contractual arrangements, client, start and finish dates);
* project description highlighting similarities to the Project;
* the name, roles and value of responsibility for each Respondent Member participating on the project;
* key personnel involved (include name and role and duration of engagement);
* key project risks and critical success factors;
* key project outcomes (i.e. delivery against program and budget);
* key lessons learned that could be applied to the Project; and
* client referee (name, role, phone number, email address).

Respondents should note that the case studies may cover more than one of the sub-criteria and may include more than one Respondent Member and/or Respondent Associate.

Page Limits: A maximum of ***[insert number]*** A4 pages may be used for each case study.

Criterion 2: Proposed Approach

Guidance note: Where a project involves additional elements such as operations in a full service PPP, this Criterion 2 should be updated to reflect any additional requirements.

|  |  |
| --- | --- |
| Criterion | Sub-Criterion |
| **Criterion 2:** Proposed approach | **Sub-Criterion 2A: Project Co. Equity and Governance Strategy**The proposed organisational and management structure and capability to successfully perform and support all aspects of the Project across the Tender, the Development and Operating Phases. |
| **Sub-Criterion 2B: Project Delivery Strategy**The proposed approach to ***[insert description of project delivery activities, including design and construction activities, and a description of the Project asset(s)]*** |
| **Sub-Criterion 2C: Project Services Strategy**The proposed approach to ***[insert description of Project Services to be delivered by Project Co]*** |
| **Sub-Criterion 2D: Project Financing Strategy**The proposed approach to securing debt and equity, including driving cost efficiencies through innovative financing solutions. |

Criterion 2: Response Requirements

Sub-Criterion 2A: Project Co Equity and Governance Strategy

Respondents should provide an Organisational and Management Strategy that explains the management approach that will be adopted for the delivery of the Project and the organisational structures (during the Tender Process, the Development Phase and the Operating Phase) that will be put in place to support this strategy. This should include:

* a description of the management approach that will adopted to interact with the State;
* a description of how Project Co will be managed and how it will manage its Respondent Members;
* proposed contractual arrangements between Project Co and its Respondent Members;
* proposed organisational structure for each phase of the Project; and
* the nature and allocation of key management and contracting responsibilities.
* Respondents should also include curriculum vitae for the following key personnel:
* Bid Director/Project Director;
* Commercial Lead;
* Technical Design Lead;
* Technical Delivery Lead;
* Maintenance Lead; and
* Operator Lead. ***[Delete, if not applicable for the Project]***

Page Limits: A maximum of ***[insert number]*** pages may be used for the response to Sub-Criterion 2A, plus 2 A4 pages may be used for each Curriculum Vitae.

Sub-Criterion 2B: Project Delivery Strategy

Guidance note: Include additional project activities as required by the Project.

Respondents should provide details of their proposed Project Delivery Strategy, including an overview of its proposed approach to:

* Design of ***[insert key scope elements]*** including how the design principles detailed in Section 3.2.2 (Design Principles) will be met;
* Construction of ***[insert key scope elements]***, including a description of construction staging and supporting processes; and
* Commissioning and testing.

Page Limits: A maximum of ***[insert number]*** pages may be used for the response to Sub-Criterion 2B.

Sub-Criterion 2C: Project Services Strategy

Respondents should set out a Project Services Strategy for meeting the requirements of this Project, including an overview of its proposed approach to:

* asset management and maintenance for the ***[insert asset description]***;
* optimising whole of life outcomes for ***[insert asset description]***, including a description of how Respondents will leverage the latest innovations; and
* managing key operational and maintenance interfaces, including management of key risks.

Page Limits: A maximum of ***[insert number]*** pages may be used for the response to Sub-Criterion 2C.

Sub-Criterion 2D: Project Financing Strategy

Respondents should provide an outline of their proposed strategy for raising private finance, including expected financing sources and how that strategy has been developed to optimise the amount and cost of private finance available.

Page Limits: A maximum of ***[insert number]*** pages may be used for the response to Sub-Criterion 2D.

Criterion 3: Understanding of Key Project Issues and Proposed Approach

|  |  |
| --- | --- |
| Criterion | Sub-Criterion |
| **Criterion 3:** Understanding of Key Project Issues and Proposed Approach | **Sub-Criterion 3A: *[name of Key Project Issue]***Understanding of and approach to addressing Key Project Issue Number 1 ***[insert name of Key Project Issue]*** |
| **Sub-Criterion 3B: *[name of Key Project Issue]***Understanding of and approach to addressing Key Project Issue Number 2 ***[insert name of Key Project Issue]*** |
| **Sub-Criterion 3C: *[name of Key Project Issue]***Understanding of and approach to addressing Key Project Issue Number 3 ***[insert name of Key Project Issue]*** |
| ***[Insert additional Sub-Criteria if required]*** |

Criterion 3: Response Requirements

Sub-Criterion 3A to [insert]: Understanding of Key Project Issues and Proposed Approach

Guidance note: Recommended page limit of 5 pages per Sub-Criterion.

In response to Sub-Criteria 3A to ***[insert number]***, Respondent are required to provide:

* a commentary demonstrating its understanding of each Key Project Issue; and
* details of how relevant elements of its proposed approach will address each Key Project Issue.

Page Limits: A maximum of***[insert page limit]*** A4 pages may be used for the response to Criterion 3.

Criterion 4: Financing and Commercial Structure

|  |  |
| --- | --- |
| Criterion | Sub-Criterion |
| **Criterion 4:** Financing and Commercial Structure | **Sub-Criterion 4A: Commitment** The level of commitment of all Respondent Members to the Project. |
| **Sub-Criterion 4B: Financial Capacity and Commercial Arrangements**The financial capacity of Respondent Members to sustain their proposed obligations (including the effectiveness of the proposed security arrangements). |
| **Sub-Criterion 4C: Risk Allocation**Understanding and acceptance of the State’s Risk Allocation Summary. |

Criterion 4: Response Requirements

Sub-Criterion 4A: Commitment

Respondents are to provide a letter of support setting out the level of commitment of each Respondent Member to the Project.

In relation to the proposed equity ownership of the Project, Respondents are to:

* ensure that the letter of support from each proposed Equity Investor outlines the degree of commitment to the Project;
* explain the principles on which the equity is to be invested; and
* provide a description of the approach to managing equity ownership over its term.

Sub-Criterion 4B: Financial Capacity and Commercial Arrangements

Respondents are to describe their Financial Capacity and Commercial Arrangements to deliver a robust and sustainable consortium structure that provides certainty that Project Co can deliver the Project in full and otherwise meet all of its contractual obligations to the State. As part of this strategy, Respondents are required to provide commentary on the methodology that Project Co has used to select its Respondent Members and an overview of the security and monitoring arrangements it plans to implement to support the performance of their obligations.

Respondents are to demonstrate that Respondent Members have the financial strength, capacity and track record to successfully deliver their aspect of the Project and can contribute to the overall ability of Respondents to deliver all aspects of the Project. Detailed commentary should be provided in relation to the following Respondent Members:

* ***[list all relevant Respondent Members]***

Respondents are to describe the proposed security and credit support arrangements (including parent company support) that will support the successful delivery of the Project.

***Additional information***

As an attachment to the EOI, Respondents must provide the following for each Respondent Member:

* audited financial accounts for the last 3 years;
* a statement detailing any significant events, matters or post balance date adjustments that have occurred, or are known or pending, since the most recent published balance date of the Respondent Member;
* where a Respondent Member is rated, details of the current credit rating including 3 year rating history; and
* confirmation that there are no circumstances or matters pending that may affect the capacity of the Respondent Member to meet its obligations with respect to the Project.

***Additional information to be provided if requested***

If requested by the State, Respondents must provide the following for each Respondent Member:

* details of any material refinancing required in the next 3 years;
* details of any current or planned financial commitments that may affect the capacity of the Respondent Member to meet its obligations with respect to the Project;
* details of any material contingent liabilities of a Respondent Member;
* copies of any announcements made to authorities of any Stock Exchange, market or boards on which the stocks or shares of the Respondent Member are publicly traded, since the date of the latest published accounts;
* details regarding any regulatory or law enforcement agency investigations with respect to a Respondent Member, related organisations of principals; and
* details of any material contracts that have terminated as a result of default by a Respondent Member over the past 24 months.

Sub-Criterion 4C: Risk Allocation

Respondents should provide:

* their proposed position in relation to the Risk Allocation Summary set out in Appendix C (Risk Allocation Summary); and
* an outline of the proposed commercial structure between the Respondent and Respondent Members and an overview of the proposed intra-consortium allocation of risk between Respondent Members.

Additional Information

Respondents are encouraged to provide feedback or comment on any part of the Tender Process or the Project, including:

* ***[insert]***

The Additional Information responses provided by Respondents will not be considered in the evaluation of EOIs. However, they may be taken into account by the State for the purpose of developing the scope of the Project and other elements of, or requirements for, the Project to be set out in the RFP.