

## Conditions of Participation

These Conditions of Participation (the **Conditions**) apply to any procurement activity that refers to them as being applicable. This may include activities undertaken by entities other than the Department of Education (DE).

The Conditions apply to:

- any information given, received or made available in connection with the procurement activity, including additional materials and addenda;
- the process of the procurement activity itself; and
- any communications (including any briefings, presentations, meetings or negotiations) relating to the procurement activity.

By submitting a response to the procurement activity, a supplier is deemed to have agreed to be bound by the Conditions.

Any queries regarding these Conditions that do not relate to a specific procurement activity can be directed to [procurement@education.vic.gov.au](mailto:procurement@education.vic.gov.au). Queries relating to a specific procurement activity should be raised with the Buyer through the platform upon which the activity is being undertaken.

This version of the Conditions is current from 29 April 2024.

### 1. Request for Quote

#### 1.1. Request for Quote

- (a) This Request for Quote (RFQ) is an invitation to Suppliers to submit a response that sets out a proposal for the provision of goods and/or services as specified in the RFQ.
- (b) Nothing in this RFQ is to be construed, interpreted or relied upon, whether expressly or implied, as an offer capable of acceptance by any person, or as creating any form of contractual, promissory, restitutionary or other rights.
- (c) No binding contract or other understanding (including any form of contractual, promissory, restitutionary or other rights) for the supply of the Goods or Services will exist between the Buyer and any Supplier unless and until the Buyer has signed a formal written contract as contemplated in clause 6.1 below.
- (d) All entities (whether or not they submit a Response), having obtained or received this RFQ, may only use it and the information contained in it, in compliance with these Conditions.

#### 1.2. Accuracy of RFQ

- (a) The Buyer does not warrant the accuracy of the content of this RFQ and will not be liable for any omission from information provided as part of the RFQ.
- (b) If a Supplier finds any discrepancy, ambiguity, error or inconsistency in the RFQ or any other information provided by the Buyer (other than minor clerical matters), the Supplier must immediately notify the Buyer in writing, so that there is fair opportunity to consider what corrective action is necessary (if any).

- (c) If there is any inconsistency between any of the information constituting this RFQ, the Buyer will determine the order of precedence. The Buyer will notify all Suppliers in writing where a determination is made pursuant to this clause 1.2(c).

### **1.3. Additions and amendments**

- (a) The Buyer reserves the right to change any information and/or to issue addenda to the RFQ before the Closing Time. Where the Buyer exercises its right to change information in accordance with this clause 1.3, the Buyer may seek amended Responses from Suppliers and may amend the Closing Time to allow Suppliers sufficient time to amend their Response.

### **1.4. Representation**

- (a) No representation made by or on behalf of the Buyer in relation to this RFQ (or its subject matter) will be binding on the Buyer unless the representation is expressly incorporated into the contract(s) ultimately entered into between the Buyer and a Supplier.

### **1.5. Licence to use Intellectual Property Rights**

- (a) Persons obtaining or receiving this RFQ and any other information released in relation to the RFQ may use the information only for the purpose of preparing a Response.
- (b) Such Intellectual Property Rights as may exist in the RFQ and any other information provided to Suppliers by or on behalf of the Buyer in connection with the RFQ Process are owned by (and will remain the property of) the Buyer except to the extent expressly provided otherwise.

### **1.6. Confidentiality**

- (a) The Buyer may require persons and businesses wishing to access or obtain a copy of the RFQ, or certain parts of it, to execute a deed of confidentiality (in a form required by or satisfactory to the Buyer) before or after access is granted or a copy is provided.
- (b) Regardless of whether a deed of confidentiality is executed in relation to the RFQ, Suppliers obtaining or receiving the RFQ must keep the content of the RFQ and such other information confidential and not disclose or use that information except as required for the purpose of developing a Response to the RFQ.

## **2. Communication**

### **2.1. Communication protocol**

- (a) All communications relating to this RFQ and the RFQ Process must be directed to the Buyer through the platform upon which the RFQ has been issued, unless the RFQ directs otherwise.

### **2.2. Requests for clarification**

- (a) Any questions or requests for clarification or further information regarding this RFQ or the RFQ Process must be submitted to the Buyer in writing at least three days prior to the Closing Time.
- (b) The Buyer is not obliged to respond to any question or request.
- (c) The Buyer may make available to other Suppliers details of such a question or request together with any response, in which event those details shall form part of this RFQ.

### **2.3. Briefing session**

- (a) The Buyer may hold briefing sessions at location(s) and time(s) specified in the RFQ. A Supplier must attend a briefing session if attendance is specified as mandatory in the RFQ. If a Supplier fails to attend a mandatory briefing session, the Buyer may disqualify the Supplier from further participating in the RFQ Process.

**2.4. Unauthorised communication**

- (a) Communications (including promotional or lobbying activities) with staff of the Buyer or consultants assisting the Buyer with the RFQ Process are not permitted during the RFQ Process except as provided in clause 2.1 above, or otherwise with the prior written consent of the Buyer.
- (b) Nothing in this clause 2.4 is intended to prevent communications with staff of, or consultants to, the Buyer to the extent that such communications do not relate to this RFQ or the RFQ Process.
- (c) Suppliers must not engage in any activities or obtain or provide improper assistance that may be perceived as, or that may have the effect of, influencing the outcome of the RFQ Process in any way. Such activities or assistance may, in the absolute discretion of the Buyer, lead to disqualification of a Supplier.

**2.5. Anti-competitive conduct**

- (a) Suppliers and their representatives must not engage in any collusive, anti-competitive or similar conduct with any other Supplier or person in relation to:
  - (i) the preparation, content or lodgement of their Response;
  - (ii) the evaluation and clarification of their Response; and
  - (iii) the conduct of negotiations with the Buyer.
- (b) In addition to any other remedies available to it under law or contract, the Buyer may, in its absolute discretion, immediately disqualify a Supplier that it believes has engaged in such collusive or anti-competitive conduct.

**2.6. Complaints about this RFQ**

- (a) Complaints relating to obligations under international agreements will be managed in accordance with clause 10.
- (b) Any other complaint about this RFQ or the RFQ Process should be submitted to the Buyer through the specified preferred communication channel upon the cause of the complaint arising or becoming known to the Supplier. The written complaint must set out:
  - (i) the basis for the complaint (specifying the issues involved);
  - (ii) how the subject of the complaint (and the specific issues) affects the person or organisation making the complaint;
  - (iii) any relevant background information; and
  - (iv) the outcome desired by the person or organisation making the complaint.

- (c) If the Buyer does not resolve the complaint to the Supplier's satisfaction, the Buyer may lodge a complaint with the Chief Procurement Officer of DE in accordance with the DE Procurement Complaints Management Framework as published on its website.

## **2.7. Conflict of interest**

- (a) Suppliers and their Representatives must not place themselves in a position that may give rise to an actual, potential or perceived conflict of interest between the interest of the State and the Supplier's interests during the RFQ Process.
- (b) Suppliers are required to disclose any conflicts of interest in their Response and also notify the Buyer if any conflict of interest arises after lodgement of their Response.
- (c) The Buyer may disqualify a Supplier from the RFQ Process if the Supplier fails to notify the Buyer of any conflict of interest.

## **3. Submission of Responses**

### **3.1. Submission**

- (a) Suppliers must submit Responses through the platform upon which the RFQ documents were issued, unless the RFQ or a related notice from the Buyer specifies otherwise.
- (b) Responses must be submitted by the Closing Time. The Closing Time may be extended by the Buyer in its absolute discretion. Where the Buyer extends the Closing Time, it will provide written notice to Suppliers.
- (c) All platforms used by the Buyer will reject any attempt by a Supplier to submit a Response after the Closing Time. Where a submission method enables Responses after the Closing Time, those Responses will be recorded by the Buyer. The determination of the Buyer as to the actual time that a Supplier's Response was lodged is final.

### **3.2. Late Response**

- (a) If a Response is submitted after the Closing Time, it may be disqualified from the RFQ Process and may be ineligible for consideration unless:
  - (i) the Supplier can demonstrate to the satisfaction of the Buyer that an event of exceptional circumstances caused the Response to be submitted after the Closing Time; or
  - (ii) the Supplier can demonstrate to the satisfaction of the Buyer that mishandling by the Buyer caused the Response to be submitted after the Closing Time; and, in either case
  - (iii) the Buyer is satisfied that accepting a late submission would not compromise the integrity of the RFQ Process.
- (b) The determination of the Buyer as to the actual time that a Supplier's Response is lodged is final.
- (c) The Buyer will inform a Supplier whose Response was lodged after the Closing Time of their ineligibility for consideration.

### **3.3. Providing a Response**

- (a) It is the responsibility of all Suppliers to:
- (i) understand the requirements of the RFQ, the RFQ Process, any reference documentation or other information in relation to the RFQ;
  - (ii) ensure that their Response addresses all the information fields in the RFQ with the information requested, is presented in the required format(s) and is accurate and complete;
  - (iii) make their own enquiries and assess all risks regarding this RFQ and the RFQ Process;
  - (iv) ensure that they comply with all applicable laws with regard to preparing their Response and participating in the RFQ Process (including Chapter 2 of the Australian Consumer Law and *Fair Trading Act 2012 (Vic)*);
  - (v) meet all costs and expenses related to the preparation and lodgement of its Response, any subsequent negotiation, and any future process connected with or relating to the RFQ Process;
  - (vi) ensure that Responses remain valid and open for acceptance for a minimum of 120 days from the Closing Time (this period may be altered by mutual agreement between the Buyer and the Supplier);
  - (vii) ensure that the Response is not conditional on:
    - (I) any type of board, committee, third party or regulatory approval or consent;
    - (II) conducting due diligence or any other form of enquiry or investigation; or
    - (III) the Supplier stating that it wishes to discuss or negotiate any commercial terms of the Proposed Contract;
  - (viii) ensure the Response includes a GST-exclusive price, the GST payable and the total cost for the Goods and/or Services; and
  - (ix) provide additional information in a timely manner as requested by the Buyer.

### **3.4. Errors in a Response**

- (a) If a Supplier identifies an error in their Response (excluding clerical errors which would have no bearing on the evaluation), they must promptly notify the Buyer.
- (b) The Buyer may permit a Supplier to correct an unintentional error in their Response where that error becomes known or apparent after the Closing Time, but in no event will any correction be permitted if the Buyer reasonably considers that the correction would materially alter the Response.

### **3.5. Use of a Response**

- (a) Upon submission, all Responses become the property of the Buyer. The Supplier will retain all ownership rights in any intellectual property contained in their Response, however each Supplier, by submission of their Response, is deemed to have granted a licence to the Buyer to reproduce the whole, or any portion of their Response for the purposes of enabling the Buyer to evaluate the Response.

### **3.6. Alternative Responses**

- (a) A Supplier may submit an Alternative Response. An Alternative Response will only be accepted if:
  - (i) the Supplier also provides a conforming Response; and
  - (ii) the Alternative Response is clearly identified as such.
- (b) An Alternative Response may:
  - (i) not comply with the Specifications for relevant Goods and/or Services due to the inherent design or capability of those Goods and/or Services; or
  - (ii) contain an offer to provide Goods and/or Services in a manner different to that specified in the Specifications.
- (c) Suppliers are encouraged to offer options or solutions which may, in an innovative way, contribute to the Buyer's ability to carry out its business in a more cost-effective manner. These may be related to:
  - (i) the outputs, functional, performance and technical aspects of the requirement;
  - (ii) minimisation of environmental impact; and/or
  - (iii) opportunities for more advantageous commercial arrangements.
- (d) Any such options or solutions will be considered by the Buyer on a "commercial-in-confidence" basis if so requested by the Supplier.
- (e) Where an Supplier submits an Alternative Response which meets the requirements of this RFQ in an alternative and practical manner, the Alternative Response must also include any supplementary material (including such pricing and costing details as may be necessary to enable the Buyer to fully assess the financial impact of the Alternative Response), which demonstrates in detail that such an alternative will fully achieve all the specified requirements, together with references as to why the additional features may be advantageous.
- (f) The Buyer reserves the right to consider Alternative Responses on their merits or not to consider them at all.

## **4. Compliance with Specifications and Proposed Contract**

### **4.1. Compliance statements**

- (a) Suppliers are required to provide confirmation in their Response of the extent of their compliance with the provided Specifications and with the provided proposed contract (or other form of engagement).

## **5. Evaluation**

### **5.1. Evaluation process**

- (a) The Buyer will evaluate all Responses complying with the conditions of this RFQ, including Late Responses where the Buyer is satisfied of the matters referred to in clause 3.2.

- (b) The Buyer will evaluate Responses in accordance with the evaluation criteria stipulated in the RFQ. In the event that one or more of the evaluation criteria are subjective, then the Buyer reserves the right to exercise discretion.
- (c) A Response from a Supplier will not be deemed to be unsuccessful until such time as the Supplier is formally notified of that fact by the Buyer.
- (d) The Buyer may in its absolute discretion:
  - (i) reject a Response that does not include all the information requested or is not in the format required;
  - (ii) after concluding a preliminary evaluation, reject any Response that in its opinion is unacceptable;
  - (iii) disregard any content in a Response that is illegible without any obligation whatsoever to seek clarification from the Supplier;
  - (iv) disqualify an incomplete Response or evaluate it solely on the information contained within the Response;
  - (v) alter the structure and/or the timing of the RFQ or the RFQ Process;
  - (vi) vary or extend any time or date specified in the RFQ for any or all Suppliers;
  - (vii) elect not to appoint any Supplier or enter into a contract with any Supplier;
  - (viii) cease to proceed with or suspend the RFQ Process prior to the execution of a formal written contract;
  - (ix) consider Alternative Responses; or
  - (x) call for new Responses.

## **5.2. Clarification of a Response**

- (a) If in the opinion of the Buyer, a Response is unclear in any respect, the Buyer may seek clarification from a Supplier. Failure to supply clarification to the satisfaction of the Buyer may render the Response liable to disqualification.
- (b) The Buyer is under no obligation to seek clarification and reserves the right to disregard any clarification that the Buyer considers to be unsolicited or otherwise impermissible in accordance with the RFQ.

## **5.3. Discussion with Suppliers**

- (a) The Buyer may:
  - (i) negotiate with one or more Suppliers and allow any Supplier to vary its response;
  - (ii) interview, negotiate or hold discussions with any Supplier or prospective Supplier on any matter contained (or proposed to be contained) in a Response to the exclusion of others; or
  - (iii) request some or all Suppliers to conduct site visits, provide references and additional information, and/or make themselves available for panel interviews.

## 6. Preferred Supplier

### 6.1. No legally binding contract

- (a) Selection as a preferred Supplier does not give rise to a contract (express or implied) between the preferred Supplier and the Buyer for the supply of Goods and/or Services. No legal relationship will exist between the Buyer and the preferred Supplier until such time as a binding contract is executed by both parties.

### 6.2. Pre-contractual negotiations

- (a) The Buyer may in its absolute discretion decide not to enter into pre-contractual negotiations with a successful Supplier.
- (b) The Supplier is bound by its Response and if selected as the successful Supplier, must enter into a contract on the basis of the Response without negotiation.

## 7. Disclosure requirements

### 7.1. Disclosure of Response contents and Response information

- (a) Responses will be treated as confidential by the Buyer. The State will not disclose Response contents and information except:
- (i) as required by law (including, for the avoidance of doubt, as required under the *Freedom of Information Act 1982 (Vic)* (FOI Act);
  - (ii) for the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;
  - (iii) to external consultants and advisers of the Buyer engaged to assist with the RFQ Process; or
  - (iv) general information from Suppliers required to be disclosed by government policy.

### 7.2. Contract disclosure

- (a) The Victorian Government Purchasing Board's 'Contract management and contract disclosure policy' requires the Buyer to disclose key details of contracts it enters into, including head agreements and variations to contracts, with a total estimated value exceeding \$100,000 (including GST). Where the value of the contract is estimated to exceed \$10 million (including GST) full contract details are to be provided on the Contracts Publishing System.
- (b) In submitting a Response, the Supplier accepts that the Buyer may, in accordance with the requirements of applicable Victorian Government policy, publish (on the internet or otherwise):
- (i) the name of the Contractor;
  - (ii) the estimated value of the Response of the Contractor; and
  - (iii) the Contractor's name together with the provisions of the contract generally.

### 7.3. Exemptions from disclosure

- (a) The Buyer will consider requests for exemption from disclosure in the evaluation of Suppliers' submissions and negotiations with Suppliers.



- (b) In determining whether any contractual clauses should be kept confidential, the Buyer will apply the exemptions from disclosure under the FOI Act. These exemptions include a public interest test under s36 of the FOI Act.
- (c) Any request by the successful Supplier for non-disclosure of contract provisions must be justified by the successful Supplier in accordance with s34(1) of the FOI Act. Under s34(1), information acquired by a Buyer or a Minister from a business, commercial or financial undertaking is exempt from disclosure if the information relates to:
  - (i) trade secrets; or
  - (ii) other matters of a business, commercial or financial nature and the disclosure would be likely to expose the undertaking unreasonably to disadvantage.
- (d) Even if certain contractual clauses are redacted by agreement between the Buyer and the successful Supplier, this will not:
  - (i) exempt the redacted clauses from the further operation of the FOI Act; or
  - (ii) constrain the Auditor General's power to secure and publish documents in accordance with the *Audit Act 1994*.

#### **7.4. Unreasonable disadvantage**

- (a) In determining whether disclosure of specific information will expose a Supplier's business unreasonably to disadvantage, the Supplier should consider s34(2) of the FOI Act. Broadly, the Supplier should consider:
  - (i) whether the information is generally available to competitors; and
  - (ii) whether the information could be disclosed without causing substantial harm to the competitive position of the business.

### **8. Local Jobs First Policy**

#### **8.1. Application**

- (a) This clause 8 applies only if the Local Jobs First Policy is applicable to this RFQ.

#### **8.2. Overview**

- (a) The Local Jobs First Policy (LJF Policy) issued under the *Local Jobs First Act 2003* supports businesses and workers by ensuring that small and medium size enterprises are given a full and fair opportunity to compete for both large and small government contracts, helping to create job opportunities, including for apprentices, trainees and cadets. The LJF Policy is implemented by Victorian Government departments and agencies to help drive local industry development.
- (b) The LJF Policy comprises the Victorian Industry Participation Policy (VIPPP) and the Major Projects Skills Guarantee (MPSG).
- (c) For further information, Suppliers should refer to the LJF Policy and Guidelines which can be found at <https://www.localjobsfirst.vic.gov.au/>.

#### **8.3. Definitions**

- (a) For the purposes of this clause 8:
- (i) **Agency** means the Buyer.
  - (ii) **Apprentice** means a person whom an employer has undertaken to train under a Training Contract.
  - (iii) **Cadets** means those persons enrolled in a recognised tertiary level organisation and who receive structured learning opportunities as part of their engagement to a Local Jobs First project (e.g. cadets in architecture, quantity surveying, or engineering) but which is not under a Training Contract.
  - (iv) **Contestable Items** means goods or services in a procurement process where there are competitive international and local suppliers. 'Competitive' means the suppliers are able to offer comparable goods or services that meet the Specifications provided in this RFQ. Contestable items can be goods or services at any stage of a project, including maintenance.
  - (v) **Department** has the meaning given in s3(1) the *Local Jobs First Act 2003*.
  - (vi) **Guidelines** means the Local Jobs First Supplier Guidelines, available at <https://www.localjobsfirst.vic.gov.au/>.
  - (vii) **ICN (Victoria)** means Industry Capability Network (Victoria) Limited ACN 007 058 120 of Level 11, 10 Queens Road, Melbourne VIC 3004.
  - (viii) **Local Content** has the meaning given in s3(1) of the *Local Jobs First Act 2003*.
  - (ix) **LJF Policy** means the policy made under s4 of the *Local Jobs First Act 2003*.
  - (x) **Project** means the work as described in this RFQ.
  - (xi) **Trainee** means a person (other than an Apprentice) employed under a Training Contract.
  - (xii) **Training Contract** has the meaning given in the *Education and Training Reform Act 2006*.

#### 8.4. Contestable Items

- (a) The LJF Policy requires that government agencies consider Local Content and job commitments, particularly in respect of Contestable Items, as a key criterion in Response evaluation and other relevant procurement processes.
- (b) Consideration should be given to contestable and non-contestable items in establishing local content commitments.
- (c) The Contestable Items within the scope of this RFQ are specified in the online LIDP form that Suppliers must complete.

#### 8.5. Local Industry Development Plan

- (a) All Suppliers must prepare a Local Industry Development Plan (LIDP) in accordance with the LJF Policy and Guidelines.

- (b) The assessment of a Response will consider whether and how Suppliers comply with the LJF Policy. This is done through assessment of Suppliers' LIDPs.
- (c) An LIDP must be submitted to ICN (Victoria) and will be made available to the Agency and the Department. The LIDP is an online form and must be completed and submitted using the ICN (Victoria) Victorian Local Jobs First Management Centre at <https://icnvic.force.com/>.
- (d) An LIDP must:
  - (i) specify how the requirements of the LJF Policy will be met;
  - (ii) identify total content and Local Content for the Project; identify total and local jobs for the Project; and
  - (iii) include any other matter required to be included in the Plan by the LJF Policy.
- (e) In developing the LIDP, Suppliers must consult in good faith with ICN (Victoria).
- (f) To demonstrate that the LIDP submitted is completed correctly and includes all required information, Suppliers must obtain an acknowledgement letter of their LIDP from ICN (Victoria). Contact details for ICN are provided below. A Response cannot be evaluated if an acknowledgement is not supplied. The Agency cannot accept a Response that does not include a compliant LIDP.

#### **8.6. Use of the Local Industry Development Plan**

- (a) Any post-bid changes in a Supplier's LIDP commitments will require further ICN (Victoria) assessment and an acknowledgement letter. Suppliers should refer to the Guidelines for further details.
- (b) The contents of a successful Supplier's final LIDP will be included in the agreement to be entered into between that Supplier and the Agency. Further, the bidder's LIDP information will be recorded centrally for ICN (Victoria) certification of the LIDP outcomes reported.

#### **8.7. Further information and assistance**

- (a) The Department has prepared the Guidelines for Suppliers on the application of the LJF Policy to projects.
- (b) ICN (Victoria) provides free services to assist Suppliers in identifying and developing the above information. Suppliers are advised that ICN (Victoria) will be available to assist them in implementing the LJF Policy. For further information or assistance, Suppliers can contact ICN (Victoria):

(03) 9864 6700

[https://icn.org.au/vic\\_home](https://icn.org.au/vic_home)

### **9. Social procurement**

#### **9.1. Overview**

- (a) Victoria's Social Procurement Framework applies to the procurement of all goods, services and construction undertaken by entities that are subject to the Standing Directions of the Minister for Finance 2016.

- (b) The Social Procurement Framework, further definitions and guidance materials for Suppliers regarding the application of the Social Procurement Framework are available online at <https://buyingfor.vic.gov.au/social-procurement-framework>.
- (c) Clauses 9.2 to 9.5 only apply where Social Procurement Commitments are being sought by the Buyer as part of this RFQ.

## 9.2. Definitions

- (a) For the purposes of this clause 9:
  - (i) **Social or Sustainable Outcome** means an outcome listed in Tables 1 and 2 of the Social Procurement Framework.
  - (ii) **Social Procurement Commitment** means a commitment to deliver a Social or Sustainable Outcome through an individual procurement activity.
  - (iii) **Social Procurement Commitment Proposal** means a proposal provided by a Supplier as part of a Response which provides as much detail as practicable as to how the Supplier will deliver their Social Procurement Commitments.
  - (iv) **Social Procurement Commitment Schedule** means the accepted Social Procurement Commitment Proposal of a successful Supplier that has been embodied in a Schedule to an executed Contract.
  - (v) **Social Procurement Performance Report** means a report submitted by a successful Supplier to the Buyer, which details their performance against the Social Procurement Commitments made in their Social Procurement Commitment Proposal.

## 9.3. Social Procurement Commitment Proposal

- (a) As part of all Responses (including Alternative Responses) submitted in response to this RFQ, Suppliers must agree to and demonstrate how they will deliver any Social Procurement Commitments sought by the Buyer.
- (b) These Commitments must be made in the form of a Social Procurement Commitment Proposal which forms part of their Response.

## 9.4. Use of the Social Procurement Commitment Proposal

- (a) The qualitative merit of a Social Procurement Commitment Proposal, relative to the Social Procurement Commitments sought by the Buyer, is an evaluation criteria for this RFQ Process.
- (b) In addition to the Social Procurement Commitments sought by the Buyer, consideration may also be given to any other Social or Sustainable Outcome that the Supplier is willing to deliver as a Social Procurement Commitment within their Social Procurement Commitment Proposal.
- (c) The Social Procurement Commitment Proposal of a successful Supplier will be included as a Schedule (the Social Procurement Commitment Schedule) to any Contract to be entered into between the successful Supplier and the Buyer.

## 9.5. Reporting

- (a) The successful Supplier will be required to submit written Social Procurement Performance Reports to the Buyer consistent with and outlining its performance against the Social Procurement Commitment Schedule.
- (b) Each Social Procurement Performance Report submitted in accordance with clause 9.5(a) must:
  - (i) be in a form satisfactory to the Buyer (acting reasonably); and
  - (ii) include all supporting information reasonably required by the Buyer to verify the contents of the Social Procurement Performance Report.
- (c) In addition to these Social Procurement Performance Reports, the successful Supplier will also be required to submit:
  - (i) a final Social Procurement Performance Report within a specified time from the date of practical completion or the date the Contract is completed, whichever is earlier; and
  - (ii) a statutory declaration made by the Supplier declaring that the contents of the final Social Procurement Performance Report are true and correct, which must be submitted together with the final Social Procurement Performance Report.

## 10. Fair Jobs Code

### 10.1. Application

- (a) This clause 10 applies only if the Fair Jobs Code is applicable to this RFQ.

### 10.2. Overview

- (a) The Fair Jobs Code (**FJC**) aims to improve employment outcomes for persons employed by suppliers and service providers to the Victorian Government. The FJC is implemented by Victorian Government departments, agencies and public bodies to help promote fair labour standards and to ensure compliance with employment law.
- (b) For further information, Suppliers should refer to the FJC and FJC Guidelines which can be found at [www.buyingfor.vic.gov.au/fair-jobs-code-guidelines-suppliers-and-businesses](http://www.buyingfor.vic.gov.au/fair-jobs-code-guidelines-suppliers-and-businesses).

### 10.3. Definitions

- (a) For the purposes of this clause 10:
  - (i) **Agency** means the Buyer;
  - (ii) **DJPR** means the Department of Jobs, Precincts and Regions (and its successor Government department) as the Department responsible for the FJC.
  - (iii) **FJC Guidelines** means the Fair Jobs Code Guidelines, available at [www.buyingfor.vic.gov.au/fair-jobs-code-and-guides](http://www.buyingfor.vic.gov.au/fair-jobs-code-and-guides).
  - (iv) **FJC Model Clauses** means the model clauses issued by DJPR as part of the FJC which must be included in the agreements for all threshold procurement contracts.

- (v) **FJC Plan** means each Supplier's Fair Jobs Code Industrial Relations and Occupational Health and Safety Plan, addressing industrial relations, occupational health and safety requirements and commitments and standards as required by the Code.
- (vi) **FJC Plan Template** means the template Suppliers must follow when submitting a FJC Plan as part of a Response. The FJC Template is available at [www.buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies](http://www.buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies).
- (vii) **FJC** means the Fair Jobs Code, available at [www.buyingfor.vic.gov.au/fair-jobs-code](http://www.buyingfor.vic.gov.au/fair-jobs-code).
- (viii) **FJC Unit** means the Fair Jobs Code Unit, an administrative group within DJPR with responsibilities in relation to the FJC.
- (ix) **high value procurement contract** means a contract between a Supplier and a Victorian Government agency with a value of \$20 million or more (exclusive of GST).
- (x) **Significant Subcontractor** means an entity engaged, or to be engaged, under a subcontract directly with a successful Supplier for a high value procurement contract, where the value of that subcontract is \$10 million or more (exclusive of GST)
- (xi) **threshold procurement contract** means a contract between a Supplier and a Victorian Government agency with a value of \$3 million or more (exclusive of GST)

#### 10.4. FJC Pre-Assessment Certification

- (a) All Suppliers submitting Responses for threshold procurement contracts or high value procurement contracts must hold a valid Pre-Assessment Certificate issued by the FJC Unit in accordance with the FJC and the FJC Guidelines.
- (b) A copy of the Supplier's Pre-Assessment Certificate Number must be included in that Supplier's Response.
- (c) Suppliers that do not hold a valid Pre-Assessment Certificate may not be considered for this procurement.
- (d) If a Supplier is unable to secure a valid Pre-Assessment Certificate, it must notify the Agency as soon as possible and prior to submitting its Response.
- (e) An Agency may use its discretion to enter into a contract with a Supplier that does not have a valid Pre-Assessment Certificate subject to sections 4.3 or 4.4 of the FJC.

#### 10.5. Fair Jobs Code Plan

- (a) In addition to the Pre-Assessment Certificate, all Suppliers submitting Responses for high value procurement contracts must submit an FJC Plan using the FJC Plan Template at the time of submitting its Response.
- (b) Suppliers that do not submit a FJC Plan will not be considered for this procurement.
- (c) Commitments made under an FJC Plan are binding and will form part of the agreement entered into between a successful Supplier and the Agency. The Agency will monitor the delivery of the FJC Plan to ensure that the commitments are fulfilled.

#### 10.6. Agreement and continuing FJC obligations

- (a) Successful Suppliers will be required to maintain a valid Pre-Assessment Certificate throughout the contract entered into between that Supplier and the Agency.
- (b) Any agreement between a successful Supplier and the Agency will include the FJC Model Clauses.

#### **10.7. Changes to Pre-Assessment Certificate Status**

- (a) If a Supplier's Pre-Assessment Certificate is revoked or lapses after the Response is submitted, but before contracts are awarded, that Supplier must notify the Agency as soon as practicable but not later than ten (10) days after the revocation or expiry date.
- (b) A Supplier will not be awarded a contract if they do not have a valid Pre-Assessment Certificate unless an exception applies.

#### **10.8. Significant Subcontractors**

- (a) If a Supplier intends to engage Significant Subcontractor/s to perform any part of any agreement entered into with the Agency for this RFQ, then that Supplier must provide in its Response:
  - (i) details of each proposed Significant Subcontractor/s and what roles/responsibilities they will have under the agreement; and
  - (ii) Pre-Assessment Certificate numbers for each proposed Significant Subcontractor.

#### **10.9. Further information and assistance**

- (a) The FJC Guidelines provide guidance on the application of the FJC and are available at [www.buyingfor.vic.gov.au/fair-jobs-code-and-guides](http://www.buyingfor.vic.gov.au/fair-jobs-code-and-guides). The FJC Unit provides information to assist Suppliers with Pre-Assessment Certificates. For further information or assistance, Suppliers can contact the FJC Unit:

13 22 15

<https://www.vic.gov.au/fairjobscode>

[fairjobscode@ecodev.vic.gov.au](mailto:fairjobscode@ecodev.vic.gov.au)

### **11. International Agreements – Complaints or Challenges**

#### **11.1. Definitions**

- (a) For the purposes of this clause 11:
  - (i) **Covered procurement** means a procurement to which the requirements of international agreements apply, as set out in:
    - (I) The Instructions for Public Construction Procurement in Victoria, published by the Department of Treasury and Finance; and
    - (II) The Government procurement under International Agreements – procurement guide, published by the Victorian Government Purchasing Board
  - (ii) **Measures** means the Victorian Government's measures to implement the procurement requirements of international agreements;

- (iii) **Public interest certificate** means a certificate issued on behalf of the Buyer stating that it is not in the public interest for this ITS to be suspended while a complaint by a supplier is being managed in accordance with this clause;
- (iv) **Relevant jurisdictions** means those jurisdictions to which the measures apply; and
- (v) **Supplier** means a person or group of persons that provides or could provide goods or services.

### 11.2. Application

- (a) This clause 11 only applies:
  - (i) if this RFQ is a covered procurement; and
  - (ii) to suppliers with their principal place of business in relevant jurisdictions.

### 11.3. Resolution procedure

- (a) Any complaint or challenge by a supplier that there has been a failure of the procuring entity to comply with one or more measures (complaint) shall be resolved in accordance with this clause.

### 11.4. Notice of complaint

- (a) A supplier who has a complaint:
  - (i) may deliver to the Buyer a notice of complaint which must include:
    - (I) a demand that the complaint be reviewed and resolved in accordance with this clause; and
    - (II) a description of the nature and circumstances of the complaint and a statement of the relief sought and, if compensation is claimed, the amount claimed from the Buyer.
  - (ii) must deliver any notice of complaint within 21 days of the date on which the basis for the complaint became known or reasonably should have become known for the supplier.

### 11.5. Negotiation

- (a) A representative of each of the supplier and the Buyer, each having authority to resolve the complaint, must, within 21 days of delivery of the notice of complaint, meet and negotiate in good faith to resolve the complaint.

### 11.6. Mediation

- (a) If the complaint is not resolved within 21 days of delivery of the complaint, either the supplier or the Buyer may by written notice to the other party refer the complaint for mediation under the Australian Centre for International Commercial Arbitration (ACICA) Mediation Rules (mediation notice).
- (b) The mediation will take place in Melbourne, Australia.
- (c) The mediator will be selected from the list of mediators established by the Victorian Government for the purposes of this clause 11 and published on



<https://www.buyingfor.vic.gov.au/> (if such list is established) and otherwise in accordance with the ACICA Mediation Rules.

### 11.7. Arbitration

- (a) If the complaint is not finally resolved by mediation in accordance with clause 11.6 within 28 days of delivery of the mediation notice, the complaint shall be resolved by arbitration in accordance with the ACICA Arbitration Rules in force at the time subject to the provisions of this clause.
- (b) The tribunal shall comprise one arbitrator.
- (c) The arbitrator must be selected from the list of arbitrators established by the Victorian Government to determine complaints under this clause and published at <https://www.buyingfor.vic.gov.au/> (if such a list is established) and otherwise in accordance with the ACICA Arbitration Rules.
- (d) The language of the arbitration shall be English.
- (e) The place of arbitration shall be Melbourne, Australia.
- (f) In making procedural orders, the tribunal must:
  - (i) order the delivery by the Buyer to the tribunal of a written response to the complaint;
  - (ii) order the disclosure to the tribunal of all relevant documents;
  - (iii) convene a hearing at which all participants shall have the right to be heard and the right to be represented;
  - (iv) if requested by a participant, order that any hearing take place in public; and
  - (v) if requested by a participant, order that witnesses may be presented at any hearing.
- (g) The tribunal must deliver its award in a timely fashion, in writing and setting out an explanation of the basis for each decision or recommendation contained in the award.
- (h) The powers of the tribunal constituted in accordance with this clause include the power:
  - (i) to make orders for the rapid interim measures to preserve the supplier's opportunity to participate in the procurement;
  - (ii) to take into account, when making orders or the interim measures, any overriding adverse consequences for the interests concerned, including the public interest; and
  - (iii) where the tribunal determines that there has been a failure of the procuring entity to comply with one or more measures, to award compensation or corrective action, however any compensation awarded to the supplier must not exceed the costs reasonably incurred by the supplier in the preparation of the tender giving rise to the complaint.
- (i) If:
  - (i) a public interest certificate has been issued in respect of this RFQ; and

- (ii) this RFQ has not reached the stage where a contract has been entered into with a supplier, then:
  - (iii) the tribunal must consider whether the award of corrective action would result in significant delay to this ITS, and if so, whether awarding compensation would be a more appropriate remedy than an award of corrective action; and
  - (iv) if the tribunal is satisfied that an award of corrective action would result in a significant delay to this ITS and that awarding compensation is a more appropriate remedy, then the tribunal may refuse to award corrective action.
- (j) Any award rendered in arbitration proceedings conducted in accordance with this clause may, no earlier than 90 days after the date of the award, be provided by the Buyer to a supplier (other than the supplier to whom the award relates) in a sanitised form if requested in writing by the supplier.
- (k) The Buyer is not obliged to disclose the award under paragraph (i) if the award is subject to judicial challenge or otherwise the subject of court proceedings.
- (l) Where an arbitration conducted pursuant to this clause is subject to the *Commercial Arbitration Act 2011* (Vic), the parties agree that an appeal may be made under section 34A of that Act.

## **12. Supplier warranties**

### **12.1. Supplier warranties**

- (a) By submitting a Response, a Supplier warrants that:
- (i) in lodging its Response it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the Buyer or its Representatives other than any statement, warranty or representation expressly contained in the RFQ;
  - (ii) it has examined this RFQ, and any other information referenced or referred to herein, and any other information made available in writing by the Buyer to Suppliers for the purposes of submitting a Response;
  - (iii) it has sought and examined all necessary information which is obtainable by making reasonable enquiries relevant to the risks and other circumstances affecting its Response;
  - (iv) it otherwise accepts and will comply with the rules set out in these Conditions of Participation; and
  - (v) it will provide additional information in a timely manner as requested by the Buyer to clarify any matters contained in the Response; and
  - (vi) its Response has been prepared in accordance with all relevant Laws and mandatory codes of conduct.

## **13. Buyer rights**

### **13.1. Buyer rights**

- (a) Notwithstanding anything else in this RFQ, and without limiting its rights at law or otherwise, the Buyer reserves the right, in its absolute discretion at any time, to:
  - (i) vary or extend any time or date specified in this RFQ for all or any Suppliers; or
  - (ii) terminate the participation of any Supplier or any other person in the RFQ Process.

## 14. Law

### 14.1. Governing Law

- (a) This RFQ Process is governed by the Laws

### 14.2. Compliance with Law

- (a) Suppliers must comply with all applicable Laws in preparing and lodging its Response and in taking part in the RFQ Process.
- (b) Any Supplier, if requested by the Buyer, must submit evidence of its compliance with any relevant Laws.

## 15. Interpretation

### 15.1. Definitions

- (a) **Additional Materials** means any of the materials attached to the RFQ.
- (b) **Alternative Response** means a Response made by a Supplier as an alternative to their primary Response. An Alternative Response may be made by a Supplier as part of their Response or may be sought by the Buyer following the Closing Time.
- (c) **Buyer** means the entity undertaking the procurement activity to which these conditions are being applied, as identified in the RFQ.
- (d) **Closing Time** means the time specified in the RFQ by which Responses must be received by the Buyer.
- (e) **Contracts Publishing System** means the Contracts Publishing System of the Victorian Government for the publication of information about contracts entered into by the Victorian Government and some agencies.
- (f) **DE** means the Victorian Department of Education.
- (g) **Evaluation criteria** means the criteria set out in the RFQ.
- (h) **Goods** means the goods or other products required by the Buyer as set out in the RFQ.
- (i) **Intellectual Property Rights** includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- (j) **Late Response** means a Response deemed to be a late Response under clause 3.2(a).
- (k) **Laws** means:

- (i) the law in force in Victoria, including common law, legislation and subordinate legislation; and
  - (ii) ordinances, regulations and by-laws of relevant government, semi-government or local authorities.
- (l) **Proposed Contract** means the agreement and any other terms and conditions contained in or referred to in the RFQ that the Buyer seeks to execute with the preferred Supplier(s).
  - (m) **Representative** means a party's agents, servants, employees, contractors, associates, invitees and anyone else for whom that party is responsible.
  - (n) **Request for Quote (RFQ)** means the Request for Quote (or other similar request) issued by the Buyer to which these Conditions have been specified as being applicable, as well as the RFQ Process and any other information so designated by the Buyer.
  - (o) **Response** means information, lodged by a Supplier in response to an RFQ, containing a proposal to provide goods and/or services in accordance with the RFQ. This may also be referred to as an offer, quote, tender, submission or bid.
  - (p) **RFQ Process** means the process commenced by the issuing of the RFQ and concluded upon formal announcement by the Buyer of the selection of a preferred Supplier(s) or upon the termination of the process.
  - (q) **Services** means the services required by the Buyer as stipulated in the RFQ.
  - (r) **Specifications** means any specifications or description of the Buyer's requirements contained in the RFQ, including those defined as a Statement of Requirements.
  - (s) **State** means the Crown in right of the State of Victoria.
  - (t) **Supplier** means any entity that is eligible to submit a Response to the RFQ. A Supplier may also be known as a tenderer, provider, registrant, bidder or invitee.
  - (u) **Supplier Code of Conduct** means the Supplier Code of Conduct issued by the Victorian Government for suppliers providing goods or services to the Victorian Government (as amended from time to time).

## 15.2. Interpretation

- (a) In the RFQ, unless expressly provided otherwise:
  - (i) the singular includes the plural and vice versa;
  - (ii) a reference to:
    - (I) 'includes' or 'including' means includes or including without limitation;
    - (II) '\$' or dollars is a reference to the lawful currency of the Commonwealth of Australia; and
  - (iii) if a word or phrase is defined, its other grammatical forms have corresponding meanings.

### ***Version history***

29 April 2024: Department name revised to DE; expanded application to any relevant DE platform

1 December 2022: introduced terms regarding the Fair Jobs Code.

23 May 2022: first online publication.

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