Invitation for Expressions of Interest

**(Invitation)**

|  |
| --- |
| [Organisation name] |

[Instructions for use of this document: wherever brackets [ ] appear within this document highlight text and complete instruction or delete if not applicable – including these instructions]

|  |  |
| --- | --- |
| Invitation title: | [Title of procurement] |
| Reference number: | [Reference number] |
| Date of issue: | [Date of issue] |

Table of contents

[Introduction 1](#_Toc405990537)

[Structure of the invitation 1](#_Toc405990538)

[Part A – The invitation 2](#_Toc405990539)

[Part A.1 – About this invitation 2](#_Toc405990540)

[Part A.2 – Overview of requirements 4](#_Toc405990541)

[Part B – Conditions of participation 5](#_Toc405990542)

[Part B.1 – [Organisation name] specific requirements 5](#_Toc405990543)

[Part B.2 – Victorian Government specific requirements 5](#_Toc405990544)

[1. Invitation 5](#_Toc405990545)

[1.1. Invitation 5](#_Toc405990546)

[1.2. Accuracy of invitation 5](#_Toc405990547)

[1.3. Additions and amendments 5](#_Toc405990548)

[1.4. Availability of additional materials 5](#_Toc405990549)

[1.5. Representation 5](#_Toc405990550)

[1.6. Licence to use Intellectual Property Rights 5](#_Toc405990551)

[2. Communication 5](#_Toc405990552)

[2.1. Communication protocol 5](#_Toc405990553)

[2.2. Requests for clarification 6](#_Toc405990554)

[2.3. Briefing session 6](#_Toc405990555)

[2.4. Unauthorised communication 6](#_Toc405990556)

[2.5. Anti‑competitive conduct 6](#_Toc405990557)

[2.6. Consortia and trustees 6](#_Toc405990558)

[2.7. Complaints about this Invitation 6](#_Toc405990559)

[3. Submission of an invitee’s response 7](#_Toc405990560)

[3.1. Lodgement 7](#_Toc405990561)

[3.2. Late invitee’s response 7](#_Toc405990562)

[3.3. Providing an invitee’s response 7](#_Toc405990563)

[3.4. Obligation to notify errors 7](#_Toc405990564)

[3.5. Use of an invitee’s response 8](#_Toc405990565)

[3.6. Withdrawal of an invitee’s response 8](#_Toc405990566)

[3.7. Status of invitee’s response 8](#_Toc405990567)

[3.8. Disclosure of EOI contents and EOI information 8](#_Toc405990568)

[4. Capacity to comply with the overview of requirements 8](#_Toc405990569)

[5. Evaluation 8](#_Toc405990570)

[5.1. Evaluation process 8](#_Toc405990571)

[6. Next stage of the EOI process 9](#_Toc405990572)

[6.1. Options available to the organisation 9](#_Toc405990573)

[7. No legally binding contract 9](#_Toc405990574)

[8. Invitee warranties 9](#_Toc405990575)

[9. Organisation rights 9](#_Toc405990576)

[10. Governing Law 10](#_Toc405990577)

[11. Interpretation 10](#_Toc405990578)

[11.1. Definitions 10](#_Toc405990579)

[11.2. Interpretation 11](#_Toc405990580)

[Part C – Invitee’s response 12](#_Toc405990581)

# Introduction

The [Organisation name] (Organisation) is responsible for [provide details of organisation’s responsibilities].

The organisation is seeking invitee’s response to the invitation for the supply of goods and/or services as outlined in Part A.2.

The organisation seeks to gain a more detailed understanding of the supplier market and range of solutions that may be available. Hence, this EOI process may be the first stage of a multi‑stage procurement process. For further information relating to the next stage (if any) of the EOI process refer to clause 6 of Part B.2.

[Organisations can add as much or as little information to detail the opportunity available, however it should be high level so as to not duplicate the information provided in the Overview of requirements. It needs to be clear and articulate what the organisation is trying to achieve and why an invitee would want to provide an Invitee’s response and compete for government business.]

## Structure of the invitation

This Invitation comprises the following sections:

* Introduction – contains an overview of the structure of the documents.
* Part A – The Invitation
  + Part A.1 – About this Invitation provides establishment details about the procurement opportunity; and
  + Part A.2 – Overview of requirements describes the goods and/or services in respect of which the organisation invites EOIs from interested parties.
* Part B – Conditions of participation sets out the rules applying to the EOI process for the supply of goods and/or services. The rules are separated into organisational and whole of Victorian Government specific rules.
* Part C – Invitee’s response details the information to be provided by invitees. Part C may include templates to be completed.

# Part A – The invitation

Part A.1 – About this invitation

1. Establishment details

|  |  |
| --- | --- |
| Organisation name: |  |
| EOI title: |  |
| EOI reference number |  |

1. Registration

[Registering details of invitees will assist with communication throughout the EOI process. If applicable, detail the location for registration of invitees. Otherwise mark as ‘not applicable’.]

|  |  |
| --- | --- |
| Registration location | Optional: Invitees must ensure that they register their details at www.tenders.vic.gov.au to ensure they are kept informed of any changes that may arise in relation to this Invitation to supply |

1. Organisation contact

|  |  |
| --- | --- |
| Project manager | [Generally two contact points should be nominated] |
| Name: |  |
| Position title: |  |
| Business unit |  |
| Contact details: | [Detail how invitees can contact the project manager. Via email, telephone or post.] |

|  |  |
| --- | --- |
| Second contact person | [Generally two contact points should be nominated] |
| Name: |  |
| Position title: |  |
| Business unit |  |
| Contact details: | [Detail how invitees can contact the second contact person. Via email, telephone or post.] |

1. Closing time

|  |  |
| --- | --- |
| Closing time |  |
| [Australian Eastern Standard time or Australian daylight saving time where applicable] | [time] [date ]  [include day and date as dd/mmm/yyyy] |

1. Lodgement details

|  |  |
| --- | --- |
| Hardcopy lodgement | [delete if not applicable] |
| Location of Tender Box |  |
| Hours of access to Tender Box |  |
| Access restrictions (if any) |  |
| Information to be marked on package containing the offer |  |
| Other requirements | [Stipulate the required format (PDF, Word); number of copies; file size limit; do not include graphics or data except at the end of the document, if required] |

|  |  |
| --- | --- |
| Internet lodgement | [delete if not applicable] |
| Website address | www.tenders.vic.gov.au |
| Access restrictions (if any) |  |
| Other requirements | [Provide details of required format (PDF, Word); number of copies; file size limit; documents must be virus checked prior to lodgement] |

1. Briefing session [if applicable]

|  |  |
| --- | --- |
| Briefing session |  |
| Briefing session time and date | Time:  Date: |
| Location of briefing session | [Detail the location] |
| Attendance at the briefing session is | Optional/mandatory |

1. Indicative timetable

Please note: this timetable provides invitees with an indication of the timing of the EOI process. The timetable is indicative only and may be changed by the organisation in accordance with clause 5.1 of Part B.2.

| Activity | Date |
| --- | --- |
| Invitation issued |  |
| Invitation briefing (if applicable) |  |
| End of period for questions or requests for information |  |
| Closing time for invitee’s response | [time] [date]  [must match Item 4 of A.1] |
| Intended completion date of short listing process |  |
| Intended completion date of evaluation of invitee’s responses |  |
| Negotiations with invitee(s) (if applicable) |  |
| Intended date of next stage | [Proposed date and details] |

1. Additional materials

|  |  |  |
| --- | --- | --- |
| Item | Description | Location |
|  |  |  |
|  |  |  |

1. Evaluation criteria

An invitee’s response will be evaluated against:

(a) The evaluation criteria identified in the table below; and

(b) the overall proposition presented in the invitee’s response.

|  |  |
| --- | --- |
| Mandatory requirements | Complies |
|  | Yes/No |
|  | Yes/No |

|  |
| --- |
| Other evaluation criteria |
| (a) |
| (b) |
| (c) |
| (d) |

Part A.2 – Overview of requirements

[Insert the requirements for the procurement, including (if appropriate) the nature and quantity / estimated quantity of the goods or services to be procured.]

# Part B – Conditions of participation

Part B.1 – [Organisation name] specific requirements

[Details relating to the complaints procedure must be stated in this Section B. They relate to mandatory requirements of VGPB Procurement Policies. Also include here details of any other organisation specific conditions of participation in the procurement, such as OH&S requirements.]

1. Complaints procedure
2. Location of Tender Box
3. [Insert details here of any additional organisation specific conditions of participation]

Part B.2 – Victorian Government specific requirements

## 1. Invitation

### 1.1. Invitation

This invitation is not an offer. It is a formal request for invitees to submit an invitee’s response for the supply of goods and/or services in response to the organisation’s requirements in Part A.2. Nothing in this Invitation is to be construed as creating any binding contract for the supply of goods and/or services (express or implied) between the organisation and any invitee.

### 1.2. Accuracy of invitation

The organisation does not warrant the accuracy of the content of this invitation and will not be liable for any omission from the Invitation documents.

### 1.3. Additions and amendments

The organisation reserves the right to change any information or to issue an addenda to this Invitation.

### 1.4. Availability of additional materials

Additional materials (if any) may be accessed in the manner set out in Item 8 of Part A.1. Invitees should familiarise themselves with the additional materials.

### 1.5. Representation

No representation made by or on behalf of the organisation in relation to this invitation (or its subject matter) will be binding on the organisation unless the representation is expressly incorporated into any contract(s) ultimately entered into between the organisation and an invitee.

### 1.6. Licence to use Intellectual Property Rights

* 1. Persons obtaining or receiving this Invitation and any other documents issued in relation to this Invitation may use the documents only for the purpose of preparing an invitee’s response. Such Intellectual Property Rights as may exist in this Invitation and any other documents provided to the invitees by or on behalf of the organisation in connection with the EOI process are owned by (and will remain the property of) the organisation except to the extent expressly provided otherwise.

## 2. Communication

### 2.1. Communication protocol

All communications relating to this Invitation and the EOI process must be directed to the project manager.

### 2.2. Requests for clarification

* 1. Any questions or requests for clarification or further information regarding this Invitation or the EOI process must be submitted to the organisation contact in writing at least 5 working days prior to the EOI closing time.
  2. The organisation is not obliged to respond to any question or request for clarification or further information.
  3. The organisation may make available to other prospective invitees details of such a request together with any response, in which event those details shall form Part of this Invitation.

### 2.3. Briefing session

The organisation will hold briefing sessions at the location(s) and time(s) specified in Item 6 of Part A.1. An invitee must attend the briefing session if it is specified as ‘mandatory’. If an invitee fails to attend a mandatory briefing session, the organisation may disqualify the invitee from further participating in the EOI process.

### 2.4. Unauthorised communication

* 1. Communications (including promotional or lobbying activities) with staff of the organisation or consultants assisting the organisation with the EOI process are not permitted during the EOI process except as provided in clause 2.1 above, or otherwise with the prior written consent of the organistation contact.
  2. Nothing in this clause 2.4 is intended to prevent communications with staff of, or consultants to, the organisation to the extent that such communications do not relate to this Invitation or the EOI process.
  3. invitees 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 EOI process in any way. Such activities or assistance may, in the absolute discretion of the organisation, lead to disqualification of an invitee.

### 2.5. Anti‑competitive conduct

Invitees and their representatives must not engage in any collusion, anti‑competitive or similar conduct with any other invitee or person in relation to the preparation, content or lodgement of their invitee’s response. In addition to any other remedies available to it under law, the organisation may, in its absolute discretion, disqualify an invitee that it believes has engaged in such collusive or anti‑competitive conduct.

### 2.6. Consortia and trustees

Where the invitee is a member of a consortium, the invitee’s response must stipulate which parts of the goods and/or services that each entity comprising the consortium would provide and how the parties would relate to each other to ensure full provision of the required goods and/or services. All consortium members are to provide details relating to their legal structure and where applicable provide details of their special purpose vehicle established for the supply of the goods and/or services.

### 2.7. Complaints about this Invitation

An invitee with a complaint about this Invitation or the EOI process which has not been resolved in the first instance with the project manager must follow the complaints process of the organisation as detailed in Item 1 of Part B.1.

## 3. Submission of an invitee’s response

### 3.1. Lodgement

* 1. The invitee’s response must be lodged by the EOI closing time. The closing time may be extended by the organisation in its absolute discretion by providing notice to invitees.
  2. All invitees’ responses lodged after the EOI closing time will be recorded by the organisation. The determination of the organisation as to the actual time that the invitee’s response is lodged is final.
  3. Where this Invitation requires or permits invitee’s responses to be lodged via the internet through the website nominated at Item 5 of Part A.1, invitees are deemed to accept the online user agreement applying to that website and must comply with the requirements set out on that website.
  4. Where this Invitation requires or permits invitee’s responses to be lodged in hard copy, packages containing the invitee’s response must be marked and lodged as set out in Item 5 of Part A.1. Failure to do may result in disqualification from the EOI process.

### 3.2. Late invitee’s response

If an invitee’s response is lodged after the EOI closing time, it will be disqualified from the EOI process and will be ineligible for consideration unless:

* 1. the invitee can clearly document to the satisfaction of the organisation that an event of exceptional circumstances caused the invitee’s response to be lodged after the EOI closing time; and
  2. the organisation is satisfied that accepting a late submission would not compromise the integrity of the EOI process.

The organisation will inform an invitee whose invitee response was lodged after the EOI closing time as to whether the invitee’s response is ineligible for consideration.

### 3.3. Providing an invitee’s response

It is the invitee’s responsibility to:

* 1. understand the requirements of this Invitation, the EOI process and any reference documentation;
  2. ensure that all the information fields in Part C are completed and contain the information requested;
  3. ensure that their invitee’s response is in the correct format, complies with all requirements of this invitation and is accurate and complete;
  4. make their own enquiries and assess all risks regarding this invitation and the EOI process;
  5. ensure that 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 organisation or its representatives other than any statement, warranty or representation expressly contained in this Invitation;
  6. ensure that they comply with all applicable laws in regard to the EOI process;
  7. be responsible for all costs and expenses related to the preparation and lodgement of its invitee’s response, any subsequent negotiation, and any future process connected with or relating to the EOI process.

### 3.4. Obligation to notify errors

* 1. If an invitee identifies an error in their invitee’s response (excluding clerical errors which would have no bearing on the evaluation), they must promptly notify the organisation.
  2. The organisation may permit an invitee to correct an unintentional error in its invitee’s response where that error becomes known or apparent after the EOI closing time, but in no event will any correction be permitted if the organisation reasonably considers that the correction would materially alter the substance of the response.

### 3.5. Use of an invitee’s response

Upon submission, all invitee’s responses become the property of the organisation. The invitee will retain all ownership rights in any Intellectual Property Rights contained in the invitee’s response. However each invitee, by submission of their invitee’s response, is deemed to have granted a licence to the organisation to reproduce the whole, or any portion of their invitee’s response for the purposes of enabling the organisation to evaluate their invitee’s response.

### 3.6. Withdrawal of an invitee’s response

An invitee who wishes to withdraw a previously submitted response must immediately notify the organisation of the fact. Upon receipt of such notification, the organisation will cease to consider the invitee’s response.

### 3.7. Status of invitee’s response

Each invitee’s response constitutes a non‑binding proposal by the invitee to the organisation to provide the goods and/or services required under and otherwise to satisfy the requirements in accordance with Part B of this Invitation.

### 3.8. Disclosure of EOI contents and EOI information

Invitee’s responses will be treated as confidential by the organisation. The organisation will not disclose the information contained in an invitee’s response, except:

* 1. as required by law (including, for the avoidance of doubt, as required under the *Freedom of Information Act 1982* (Vic))
  2. for the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;
  3. to external consultants and advisers of the organisation engaged to assist with the EOI process;
  4. to other government departments or organisations in connection with the subject matter of the EOI process; or
  5. general information from invitees required to be disclosed by government policy.

## 4. Capacity to comply with the overview of requirements

Part A details the organisation’s requirements for the goods and/or services the subject of this Invitation. The assumption is that each invitee will be capable of providing all of the goods and/or services in full. Where an invitee believes it will not be capable of providing all the goods and/or services in full or will only comply with Part B subject to conditions, it should either not apply or set out potential limitations in their invitee’s response.

Invitees who are invited to participate in subsequent EOI processes (should such eventuate) will be provided with a full specification for the relevant goods and/or services at that time.

## 5. Evaluation

### 5.1. Evaluation process

Invitee’s responses will be evaluated in accordance with the evaluation criteria stipulated in Item 9 of Part A.1.

An invitee’s response will not be deemed to be unsuccessful until such time as the invitee is formally notified of that fact by the organisation.

The organisation may in its absolute discretion:

* 1. reject any invitee’s response that does not include all the information requested or is not in the format specified in Item 5 of Part A.1;
  2. after concluding a preliminary evaluation, reject any invitee’s response that in its opinion is unacceptable;
  3. disregard any content in an invitee’s response that is illegible and will be under no obligation whatsoever to seek clarification from the invitee;
  4. disqualify an incomplete invitee’s response or evaluate it solely on the information contained within it;
  5. alter the structure and/or the timing of the EOI process; and
  6. vary or extend any time or date specified in this Invitation for all invitees.

## 6. Next stage of the EOI process

### 6.1. Options available to the organisation

After evaluating all invitee’s responses, the organisation may without limiting other options available to it, do any of the following:

* 1. prepare a short list of invitees and invite further offers from those invitees;
  2. conduct a subsequent procurement process calling for the goods and/or services or any similar related goods and/or services;
  3. enter into pre contractual negotiations with one or more invitees;
  4. decide not to proceed further with the EOI process or any other procurement process for the goods and/or services; or
  5. commence a new process for calling for invitee’s responses on a similar or different basis to that outlined in the original invitation.

## 7. No legally binding contract

Being short listed does not give rise to a contract (express or implied) between the preferred invitee and the organisation. No legal relationship will exist between the organisation and a preferred invitee relating to the supply of goods and/or services unless and until such time as a binding contract is executed by both parties.

## 8. Invitee warranties

By submitting an invitee’s response, an invitee warrants that:

* 1. in lodging its invitee’s 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 organisation or its representatives other than any statement, warranty or representation expressly contained in the invitation documents;
  2. it has examined this Invitation, and any other documents referenced or referred to herein, and any other information made available in writing by the organisation to invitees for the purposes of submitting an invitee’s response;
  3. it has sought and examined all necessary information which is obtainable by making reasonable enquiries relevant to the risks and other circumstances affecting its invitee’s response;
  4. it otherwise accepts and will comply with the rules set out in this Invitation; and
  5. it will provide additional information in a timely manner as requested by the organisation to clarify any matters contained in the invitee’s response.

## 9. Organisation rights

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

* 1. vary or extend any time or date specified in this Invitation for all or any invitees; or
  2. terminate the participation of any invitee or any other person in the EOI process.

## 10. Governing Law

This Invitation and EOI process is governed by the laws applying in the State of Victoria. Each invitee must comply with all relevant laws in preparing and lodging its invitee’s response and in taking Part in the EOI process.

## 11. Interpretation

### 11.1. Definitions

|  |  |
| --- | --- |
| EOI closing time | means the time specified at Item 4 of *Part A.1* by which invitee’s responses must be received by the organisation. |
| EOI process | means the process commenced by issuing an Invitation for invitee’s responses and concluding upon either early termination of the process or a subsequent procurement process. |
| Goods | means the products required by the organisation as set out in *Part A.2.* |
| 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. |
| Invitation | means the opportunity set out in each of the documents identified in the Introduction to this Invitation including this Part B.2, the EOI process and any other documents so designated by the organisation. |
| Invitee | means a person who submits an invitee’s response. |
| Invitee’s response | means a document lodged by an invitee in response to this Invitation containing a proposal to provide goods and/or services. |
| Item | means an item of this Invitation. |
| Organisation | means the government department or agency issuing this Invitation. In the case of an aggregated demand, the organisation is the lead agency issuing this invitation |
| Overview of requirements | means the overview of requirements set out at *Part A.2*. |
| Part | means a Part of this Invitation. |
| Project manager | means the person so designated at Item 3 of *Part A.1*. |
| Representative | means a party and its agents, servants, employees, contractors, associates, invitees and anyone else for whom that party is responsible. |
| Services | means the services required by the organisation as stipulated in *Part A.2*. |
| State | means the Crown in right of the State of Victoria. |
| Tender Box | a secure location within which invitee’s responses are placed. |

### 11.2. Interpretation

In this Invitation, unless expressly provided otherwise:

* 1. the singular includes the plural and vice versa;
  2. a reference to:
     1. ‘includes’ or ‘including’ means includes or including without limitation; and
     2. ‘$’ or dollars is a reference to the lawful currency of the Commonwealth of Australia; and
  3. if a word or phrase is defined, its other grammatical forms have corresponding meanings.

# Part C – Invitee’s response

[The invitee’s response should include a set of questions for invitees to respond to – preferably in a template format. The questions should be established to seek information to address the evaluation criteria and engage with the invitee to promote competition and provision of information to facilitate comparative analysis. The invitee’s response will be the basis for evaluation.]

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