



Victorian Auditor-General's Office

Request for Application Financial Audit Services Panel

Reference number: FA Panel

Issue Date: 11 May 2016

Place for Lodgement: FA Panel@audit.vic.gov.au

Please note:

The Applications must be completed in the format specified Part D – Applicant's Response and submitted to FA Panel@audit.vic.gov.au.

Table of contents

INTRODUCTION 1

PART A..... 2

CONDITIONS OF APPLICATION..... 2

1. Establishment Details 2

 1.1 *Lead Department Victorian Auditor-General's Office (VAGO)* 2

 1.2 *Reference Number FA Panel*..... 2

 1.3 *Project Manager and Project Sponsor*..... 2

 1.4 *Additional materials*..... 3

 1.5 *Lodgement of Applications*..... 3

 1.5.1 *Internet lodgement*..... 3

2. Rules governing this Application Process 3

 2.1 *Application of these Rules*..... 3

3. Request for Application..... 3

 3.1 *Status of Request for Application* 3

 3.2 *Accuracy of Request for Application*..... 4

 3.3 *Additions and amendments to Request for Application*..... 4

 3.4 *Representations* 4

 3.5 *Confidentiality* 4

 3.6 *Licence to use Intellectual Property Rights*..... 5

 3.7 *Availability of additional materials* 5

4. Communications during the Application Process..... 5

 4.1 *Project manager* 5

 4.2 *Requests for clarification or further information* 5

 4.3 *Unauthorised communications* 5

 4.4 *Improper assistance* 6

 4.5 *Anti-competitive conduct*..... 6

 4.6 *Complaints about Application Process* 6

 4.7 *Conflict of Interest* 7

5. Submission of Applications..... 7

 5.1 *Lodgement* 7

6. Application Documents 7

 6.1 *Applicants' Responsibilities*..... 7

 6.2 *Preparation of Applications* 7

 6.3 *Illegible content, alteration and erasures*..... 8

 6.4 *Obligation to notify errors*..... 8

6.5	<i>Responsibility for Application Costs</i>	8
6.6	<i>Disclosure of Application contents and Application information</i>	8
6.7	<i>Use of Applications</i>	9
6.8	<i>Period of validity</i>	9
6.9	<i>Status of Application</i>	9
7.	Compliance with Specification and Proposed Contract	10
7.1	<i>Compliance with Specification</i>	10
7.2	<i>Compliance with the proposed contract</i>	10
7.3	<i>General</i>	11
7.4	<i>Alternative Application</i>	11
8.	Contract Disclosure Requirements	12
8.1	<i>Freedom of Information</i>	12
8.2	<i>Environmental claims</i>	12
8.3	<i>Trade secrets</i>	12
8.4	<i>Unreasonable disadvantage</i>	13
9.	Evaluation of Applications	13
9.1	<i>Evaluation process</i>	13
9.2	<i>Evaluation criteria format</i>	13
9.3	<i>Clarification of Application</i>	15
9.4	<i>Discussion with Applicants</i>	15
9.5	<i>Best and final offers</i>	15
10.	Successful Applications	16
10.1	<i>No legally binding contract</i>	16
10.2	<i>Pre-contractual negotiations</i>	16
10.3	<i>No Obligation to enter into contract</i>	16
11.	Additional Rules	16
12.	Applicant Warranties	17
13.	Lead Department's Rights	17
14.	Governing Law	17
15.	Interpretation	18
15.1	<i>Definitions</i>	18
15.2	<i>Interpretation</i>	19
15.3	<i>Inconsistency</i>	19

INTRODUCTION

The Opportunity

The Victorian Auditor-General's Office (VAGO) has established a Panel (FA Panel) of pre-qualified financial audit service providers for the provision of **Financial Audit Services** to the **Financial Audit Group**.

The FA panel was established in early January 2015. The initial term of the panel is for **five years** with an **option** to extend the term for an additional **two year** period.

Suppliers of financial audit services are welcome to submit an Application to be part of the panel at any time during the term of the FA Panel. All Applications must address the same evaluation criteria as those completed by respondents to the original Request for Tender.

Structure of Application

This Application comprises the following sections–

- **Introduction** – contains an overview of the opportunity presented in, and the objectives of, this Application.
- **Part A – Conditions of Application** sets out the rules applying to these Application documents and to the Application Process. These rules are deemed to be accepted by all organisations having received or obtained the Application.
- **Part B – Specification** describes the Services in respect of which VAGO invites Applications from interested organisations.
- **Part C – Proposed Contract** contains the terms and conditions in compliance with which VAGO desires the Services set out in Part B to be provided.
- **Part D – Applicant's Response** specifies the information to be provided in any Application and may also specify any information to be provided by any Applicant by other means. Part D may include templates to be completed and included in an Application.

Application Objectives

These documents request Applicants seeking membership to a panel of pre-qualified financial audit service providers to be established to service VAGO's Financial Audit Group. The objectives of the panel are to:

- gain ready access to a pool of highly skilled contractors with the relevant experience and expertise to support the work of the Financial Audit group
- maximise value for money to VAGO in the engagement of contractors
- streamline and improve the turnaround for the seeking of quotes and selecting suitable contractors
- achieve an overall reduction in administrative costs to VAGO
- give Panel Members the opportunity to submit quotes for specific engagements throughout the panel contract period
- achieve a reduction in the tendering costs of industry in its dealings with VAGO.

VAGO's specific requirements in relation to the Services sought are set out in Part B - (Specification).

Note to Applicants: Only Applicants capable of providing all of the Services and complying in full with the conditions set out in this Application should apply.

PART A

CONDITIONS OF APPLICATION

Reference Schedule

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

Capitalised terms used in this Application have defined meanings which are explained in clause 16.1 (Interpretation) of this Part A. Capitalised terms defined elsewhere in this Application but not referred to in clause 16.1 have the same meaning wherever used throughout this Application.

1. Establishment Details

1.1 Lead Department

Victorian Auditor-General's Office (VAGO)

1.2 Reference Number

FA Panel

1.3 Project Manager and Project Sponsor

Project Manager	
Name and title	Susan Fraser, Director, Standards & Quality
Address for correspondence by post	Level 24, 35 Collins Street, Melbourne, Victoria 3000.
Email Address	tenders@audit.vic.gov.au
Project Sponsor	
Name and title	Andrew Greaves , Auditor-General,
Address for correspondence by post	Level 24, 35 Collins Street, Melbourne, Victoria 3000.

1.4 Additional materials

Additional material is available on the website www.audit.vic.gov.au/

Item	Description	Location
1	VAGO Strategic Plan	http://www.audit.vic.gov.au/reports_and_publications/strategic_plan.aspx
2	Annual Plan	http://www.audit.vic.gov.au/reports_publications/corporate_publications/annual_plan.aspx
3	VAGO's Annual Report	http://www.audit.vic.gov.au/reports_and_publications/annual_reports.aspx
4	<i>The Audit Act 1994</i>	http://www.legislation.vic.gov.au/

1.5 Lodgement of Applications

1.5.1 Internet lodgement

Address FA Panel@audit.vic.gov.au

2. Rules governing this Application Process

2.1 Application of these Rules

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

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

2.1.3 All Applicants are deemed to accept the rules contained in this Part A. The rules contained in this Part A apply to:

- (a) the Application and any other information given, received or made available in connection with the Application, including any additional materials specified in item 1.4(Additional Materials) of Part A and any revisions or addenda;
- (b) the Application Process; and
- (c) any communications (including any Briefings, presentations, meetings or negotiations) relating to the Application or the Application Process.

3. Request for Application

3.1 Status of Request for Application

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

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

3.2 Accuracy of Request for Application

- 3.2.1 While all due care has been taken in connection with the preparation of this Application, VAGO makes no representations or warranties that the content in this Application or any information communicated to or provided during the Process is, or will be, accurate, current or complete. VAGO and its officers, employees and advisors will not be liable with respect to any information communicated or provided which is not accurate, current or complete.
- 3.2.2 If an Applicant finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in this documentation or any other information provided by VAGO (other than minor clerical matters), the Applicant should promptly notify VAGO in writing of such discrepancy, ambiguity, error or inconsistency to give VAGO an opportunity to consider what corrective action is necessary (if any).
- 3.2.3 Any actual discrepancy, ambiguity, error or inconsistency in the Application or any other information provided by VAGO will, if possible, be corrected by VAGO.

3.3 Additions and amendments to Request for Application

- 3.3.1 VAGO reserves the right to change any information in, or to issue addenda to, this Application during the period that the Panel is current. VAGO and its officers, employees and advisors will not be liable in connection with either the exercise of, or failure to exercise, this right.
- 3.3.2 If VAGO exercises its right to change information under clause 3.3.1, it may seek amended Applications from all panel members.

3.4 Representations

- 3.4.1 No representation made by or on behalf of VAGO in relation to this Application (or its subject matter) will be binding on VAGO unless that representation is expressly incorporated into the contract(s) ultimately entered into between VAGO and an Applicant.

3.5 Confidentiality

- 3.5.1 VAGO may require persons and organisations wishing to access or obtain a copy of this Application or certain parts of it, or any additional materials (as referred to below in clause 3.7 (Availability of additional materials) of this Part A) to execute a deed of confidentiality (in a form required by, or satisfactory to, VAGO) before or after access is granted.
- 3.5.2 Whether or not execution of a deed of confidentiality under clause 3.5.1 is required by VAGO, all organisations obtaining or receiving this Application and any other information in connection with the Application or the Application Process must:
- (a) keep the contents of the Application and such other information confidential; and
 - (b) not disclose or use that information except as required for the purpose of developing an Application.

3.6 Licence to use Intellectual Property Rights

3.6.1 Organisations obtaining or receiving this Application and any other documents issued in relation to the Application Process may use such documents only for the purpose of preparing an Application.

3.6.2 Such Intellectual Property Rights as may exist in the Application and any other documents provided to Applicants by or on behalf of VAGO in connection with the Application Process are owned by (and will remain the property of) VAGO except to the extent expressly provided otherwise.

3.7 Availability of additional materials

3.7.1 Additional materials (if any) may be accessed in the manner set out in item 1.4 of the Establishment Details. Applicants should familiarise themselves with these additional materials.

4. Communications during the Application Process

4.1 Project manager

4.1.1 All communications relating to the Application Process must be directed to the Project Manager or any delegate as may be identified by the Project Manager.

4.2 Requests for clarification or further information

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

4.2.2 Any communication by an Applicant to VAGO will be effective upon receipt by the Project Manager (provided such communication is in the required format).

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

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

4.2.5 A Applicant may, by notifying the Project Manager in writing, withdraw a question submitted in accordance with this clause 4.2 (Requests for clarification or further information)

4.3 Unauthorised communications

4.3.1 Communications (including promotional or advertising activities) with staff of VAGO or consultants assisting VAGO with the Application Process are not permitted during the Application Process except as provided in clause 4.2 (Requests for clarification or further information) above, or otherwise with the prior written consent of the Project Manager. Nothing in this clause 4.3 (Unauthorised Communications) is intended to prevent communications with staff of, or

consultants to, VAGO to the extent that such communications do not relate to this Application or the Application Process.

- 4.3.2 Applicants must not otherwise engage in any activities that may be perceived as, or that may have the effect of, influencing the outcomes of the Application Process in any way.
- 4.3.3 Unauthorised communications with such persons may, in the absolute discretion of VAGO, lead to disqualification of an Applicant.

4.4 Improper assistance

- 4.4.1 Applicants must not seek or obtain the assistance of employees, agents or contractors of VAGO or the State in the preparation of their Applications. In addition to any other remedies available to it under law or contract, VAGO may, in its absolute discretion, immediately disqualify an Applicant that it believes has sought or obtained such assistance.

4.5 Anti-competitive conduct

- 4.5.1 Applicants and their respective officers, employees, agents and advisers must not engage in any collusion, anti-competitive conduct or any other similar conduct with any other Applicant or any other organisations in relation to:

- (a) the preparation or lodgement of their Application;
- (b) the evaluation and clarification of their Application; and
- (c) the conduct of negotiations with VAGO,

in respect of this Application Process.

- 4.5.2 For the purposes of clause 4.5.1, collusion, anti-competitive conduct or any other similar conduct may include disclosure, exchange and clarification of information whether or not such information is confidential to VAGO or any other Applicant or any organisation.
- 4.5.3 In addition to any other remedies available to it under law or contract, VAGO may, in its absolute discretion, immediately disqualify an Applicant that it believes has engaged in any collusive, anti-competitive conduct or any other similar conduct in respect of this Application Process.

4.6 Complaints about Application Process

- 4.6.1 Any complaint about the Application or the Application Process must be submitted to the Project Manager in writing immediately upon the cause of the complaint arising or becoming known to the Applicant. The written complaint must set out:

- (a) the basis for the complaint (specifying the issues involved);
- (b) how the subject of the complaint (and the specific issues) affect the organisation making the complaint;
- (c) any relevant background information; and
- (d) the outcome desired by the organisation making the complaint.

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

4.7 Conflict of Interest

- 4.7.1 An Applicant must not, and must ensure that its officers, employees, agents and advisers do not place themselves in a position that may or does give rise to actual, potential or perceived conflict of interest between the interests of the State and the Applicant's interests during the Application Process.
- 4.7.2 The Applicant's Response Part D requires Applicants to provide details of any interests, relationships or clients which may or do give rise to a conflict of interest in relation to the supply of Services under any contract that may result from this Application.
- 4.7.3 If the Applicant submits its Application and a conflict of interest arises, or is likely to arise, which was not disclosed in the Application, the Applicant must notify VAGO immediately in writing of that conflict.
- 4.7.4 VAGO may disqualify an Applicant from the Application Process if the Applicant fails to notify VAGO of the conflict as required.

5. Submission of Applications

5.1 Lodgement

- 5.1.1 Applications must be lodged only by the means set out in item 1.5 of the Establishment Details of Part A.

6. Application Documents

6.1 Applicants' Responsibilities

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

6.2 Preparation of Applications

- 6.2.1 Applicants must ensure that:
- (a) their Application is presented in the required format as set out in Part D; and
 - (b) all the information fields in Part D are completed and contain the information requested.

Note to Applicants: VAGO may in its absolute discretion reject an Application that does not include the information requested or is not in the format required.

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

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

6.3 Illegible content, alteration and erasures

6.3.1 Incomplete Applications may be disqualified or evaluated solely on the information contained in the Application.

6.3.2 VAGO may disregard any content in an Application that is illegible and will be under no obligation whatsoever to seek clarification from the Applicant.

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

6.4 Obligation to notify errors

6.4.1 If, after an Applicant's response has been submitted, the Applicant becomes aware of an error in the Applicant's response (including an error in pricing, but excluding clerical errors which would have no bearing on the evaluation of the Application), the Applicant must promptly notify VAGO of such error.

6.5 Responsibility for Application Costs

6.5.1 The Applicant's participation or involvement in any stage of the Application Process is at the Applicant's sole risk, cost and expense. VAGO will not be responsible for, nor pay for, any expense or loss that may be incurred by Applicants in relation to the preparation or lodgement of their Applications.

6.5.2 In addition to clauses 3.1.1 and 3.1.2, VAGO is not liable to the Applicant for any costs on the basis of any contractual, promissory or restitutionary grounds whatsoever as a consequence of any matter relating to the Applicant's participation in the Application Process, including without limitation, instances where:

- (a) the Applicant is not engaged to perform under any contract; or
- (b) VAGO exercises any right under this Application or at law.

6.6 Disclosure of Application contents and Application information

6.6.1 Applications will be treated as confidential by VAGO. VAGO will not disclose Application contents and Application information, except:

- (a) as required by law (including, for the avoidance of doubt, as required under the *Freedom of Information Act 1982* (Vic) (FOI Act));
- (b) for the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;
- (c) to external consultants and advisers of VAGO engaged to assist with the Application Process; or

- (d) general information from Applicants required to be disclosed by government policy.

6.7 Use of Applications

- 6.7.1 Upon submission in accordance with the requirements of clause 5 (Submission of Applications) of Part A all Applications become the property of VAGO. Applicants will retain all ownership rights in any intellectual property contained in the Application. The submission of an Application does not transfer to VAGO any ownership interest in the Applicant's intellectual property rights, or give VAGO any rights in relation to the Application, except as expressly set out below.
- 6.7.2 Each Applicant, by submission of their Application, is deemed to have licensed VAGO to reproduce the whole, or any portion, of their Application for the purposes of enabling VAGO to evaluate the Application.
- 6.7.3 Further, in submitting an Application, the Applicant accepts that VAGO may, in accordance with the requirements of applicable Victorian Government policy, publish (on the internet or otherwise):
- (a) the name of the successful or recommended Applicant(s);
 - (b) the value of the successful Application; and
 - (c) the Applicant's name together with the provisions of the contract generally.

6.8 Period of validity

- 6.8.1 All Applications must remain valid and open for acceptance for a minimum of 120 days from the Closing Time. This period may be extended by mutual agreement between VAGO and the Applicant.

6.9 Status of Application

- 6.9.1 Each Application constitutes an irrevocable offer by the Applicant to VAGO to provide the Services required under, and otherwise to satisfy the requirements of Part B Specification (of this Application) on the terms and conditions of the Proposed Contract (subject to the Statement of Compliance contained in Part D).
- 6.9.2 An Application must not be conditional on:
- (i) board approval of the Applicant or any related body corporate of the Applicant being obtained;
 - (ii) the Applicant conducting due diligence or any other form of enquiry or investigation;
 - (iii) the Applicant (or any other party) obtaining any regulatory approval or consent;
 - (iv) the Applicant obtaining the consent or approval of any third party; or
 - (v) the Applicant stating that it wishes to discuss or negotiate any commercial terms of the contract.
- 6.9.3 VAGO may, in its absolute discretion, disregard any Application that is, or is stated to be, subject to any one or more of the conditions detailed above (or any other conditions).
- 6.9.4 VAGO reserves the right to accept an Application in part or in whole or to negotiate with an Applicant in accordance with clause 8.4 (Unreasonable disadvantage) of Part A.

7. Compliance with Specification and Proposed Contract

7.1 Compliance with Specification

- 7.1.1 Under Part D, an Applicant must submit a tabulated statement showing, in order of the relevant clauses, its level of compliance with the Specification contained in Part B.
- 7.1.2 In particular, Applicants must state if they will not comply with the Specification, or will only comply with the Specification subject to conditions. Full details of the non-compliance (including the nature and extent of the non-compliance and any reasons for such non-compliance) must be stated in the space provided in the tabulated statement contained in section 3 (Compliance with the Specification) of Part D. No response is required in respect of a particular section of the Specification where Applicants will comply with the Specification. Only sections that Applicants will not comply with, or will only comply with subject to conditions, should be noted in the tabulated statement.
- 7.1.3 VAGO is prepared to contemplate minor variations or departures from the Specifications proposed by Applicants. However, Applicants should note that significant or substantive variations or departures from the Specifications will not be viewed favourably unless the Applicant is able to demonstrate to the satisfaction of VAGO the necessity for such variations or departures.

Note to Applicants: VAGO will assume that an Applicant's response complies in all relevant respects with the Specification unless the Applicant states otherwise. Failure to notify VAGO of any non-compliance may result in an Applicant's response being disregarded.

- 7.1.4 For the purposes of this clause 7.1:
- (a) **Complies** means that in all respects the Applicant's response meets or otherwise satisfies all specified outputs, characteristics or standards.
 - (b) **Will comply subject to conditions** means that the specified outputs, characteristic or performance standard can only be met by the Applicant subject to certain conditions.
 - (c) **Will not comply** means that the specified outputs, characteristic or performance standard is not met by the Applicant's response.

7.2 Compliance with the proposed contract

- 7.2.1 Under Part D, an Applicant must also submit a tabulated statement, with numbering corresponding to the relevant clauses, detailing its level of compliance with the Proposed Contract contained in Part C.
- 7.2.2 In particular, Applicants must state if they will not comply with the Proposed Contract, or will only comply with the Proposed Contract subject to conditions. Full details of the non-compliance (including the nature and extent of the non-compliance and any reasons for such non-compliance) must be stated in the space provided in the tabulated statement contained in section 10 (Risk and insurance) of Part D, together with any proposed amendments that would render the contractual provision acceptable to the Applicant. No response is required in respect of a particular clause of the Proposed Contract where Applicants will comply with the Proposed Contract. Only clauses that the Applicant will not comply with, or will only comply with subject to conditions should be noted in the tabulated statement.
- 7.2.3 VAGO is prepared to contemplate minor variations or departures from the Proposed Contract proposed by Applicants. However, Applicants should note that significant or substantive

variations or departures will not be viewed favourably unless the Applicant is able to demonstrate the necessity for such variations or departures.

Note to Applicants: VAGO will assume that an Applicant is able to and will in fact comply in all relevant respects with the Proposed Contract unless the Applicant expressly states otherwise. Failure to notify VAGO of any non-compliance may result in an Applicant's response being disregarded.

7.2.4 For the purposes of this clause 7.2:

- (a) **Complies** means that the Applicant accepts the contractual provision in every respect (including the wording of the provision).
- (b) **Will comply subject to conditions** means that the Applicant will comply with the relevant contractual provision subject to certain specified conditions.
- (c) **Will not comply** means that the Applicant does not accept the contractual provision.

7.3 General

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

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

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

7.4 Alternative Application

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

- (a) the Applicant also provides a conforming Applicant's response; and
- (b) the alternative proposal is clearly identified as an "Alternative Application".

7.4.2 An Alternative Application may:

- (a) not comply with the Specifications for the relevant Services due to inherent design or capability in the operation of the Services; or
- (b) provide the Services in a manner different to that specified in Part B.

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

- (a) the outputs, functional, performance and technical aspects of the requirement; or
- (b) minimisation of environmental impact;
- (c) opportunities for more advantageous commercial arrangements.

7.4.4 Any such options or solutions will be considered by VAGO on a "commercial in confidence" basis if so requested by the Applicant.

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

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

8. Contract Disclosure Requirements

8.1 Freedom of Information

8.1.1 The contractor notes the obligation on VAGO to provide information under clause 6.6 in accordance with the *Freedom of Information Act 1982*, subject to the limitation in section 20B of the *Audit Act 1994*...

8.1.2 The Conditions of Application include a provision for the disclosure of contract information (refer clause 6.7 (Use of Application) in Part A dealing with "Use of Applications").

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

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

8.2 Environmental claims

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

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

8.3 Trade secrets

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

- (a) the extent to which it is known outside of the Applicant's business;
- (b) the extent to which it is known by the persons engaged in the Applicant's business;
- (c) any measures taken to guard its secrecy;
- (d) its value to the Applicant's business and to any competitors;
- (e) the amount of money and effort invested in developing the information; and
- (f) the ease or difficulty with which others may acquire or develop this information.

8.4 Unreasonable disadvantage

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

- (a) whether the information is generally available to competitors; and
- (b) whether it could be disclosed without causing substantial harm to the competitive position of the business.

8.4.2 VAGO will consider these Applications in the Application evaluation and negotiations with Applicants.

9. Evaluation of Applications

9.1 Evaluation process

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

9.1.2 Without limiting VAGO's rights in the Application, VAGO may at any time during the Application Process choose to:

- (a) shortlist one or more Applicants;
- (b) commence or continue discussions with all or some Applicants without shortlisting any Applicants; or
- (c) accept one or more of the Applications.

9.1.3 Should VAGO choose to include a shortlisting stage in its evaluation process, VAGO is not, at any time, required to notify Applicants or any other organisation interested in submitting an Application.

9.1.4 An Applicant's response will not be deemed to be unsuccessful until such time as the Applicant is formally notified of that fact by VAGO. The commencement of negotiations by VAGO with one or more other Applicants is not to be taken as an indication that any particular Applicant's response has not been successful.

9.2 Evaluation criteria format

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

9.2.2 In evaluating an Applicant's responses, VAGO will have regard to:

- (a) specific evaluation criteria identified in the list below; and
- (b) particular weighting assigned to any or all of the criteria specified in the table below (noting that any criteria for which a weighting has not been assigned should be assumed to have equal weighting).

9.2.3 For the purposes of clause 9.2.2, "value for money" is a measurement of financial and non-financial factors, including:

- (a) quality levels;
- (b) performance standards;
- (c) costings; and
- (d) environmental benefits/impacts.

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

Evaluation criteria:	Weighting
a) Professional competence	
<p>Knowledge and understanding of the public sector, namely:</p> <ul style="list-style-type: none"> • VAGO and the role and responsibilities of the Auditor-General and an Financial Audit Service Provider (ASP) • the Victorian public sector, the reporting framework(s) and timeframes <p>A risk-based audit methodology that complies with all relevant professional, ethical, legislative and regulatory requirements, including Australian Auditing Standards</p> <p>A system of quality control that complies with <i>APES 320 Quality Control for Firms ("APES 320")</i> and <i>ASQC 1 Quality Control for Firms that Perform Audits and Reviews of Financial Reports, Other Financial Information, and Other Assurance Engagements ("ASQC 1")</i></p> <p>Technical support available including any specialist resources to assist audit teams</p>	
<p>Whether there have been any adverse ASIC reports in the past 3 years relating to the Applicant</p> <p>The firm will abide by the conditions of the Application and the Application Process</p>	
b) Commercial	(1) Not met; (2) Partially met; (3) Met
<p>Financial Viability</p> <p>Professional indemnity insurance and agreement to indemnify the Auditor-General and each Authority against any financial loss arising from the firm's work.</p> <p>Compliance with Proposed Contract</p> <p>A robust policy to identify and manage any conflicts of interest.</p>	
c) Ethical Purchasing Policy	(1) Not met; (2) Partially met; (3) Met
Breaches of industrial instruments and industrial relations legislation	

Evaluation criteria:	Weighting
Breaches of occupational health and safety legislation Remedial measures to rectify breaches Number of current proceedings or prosecutions	

9.3 Clarification of Application

- 9.3.1 VAGO may seek clarification from and enter into discussions with any Applicants in relation to their Application. VAGO may use such information in interpreting the Application and evaluating the cost and risk to VAGO's of accepting the Application. Failure to supply clarification to the satisfaction of VAGO may render the Application liable to disqualification.
- 9.3.2 VAGO is under no obligation to seek clarification of anything in an Application and VAGO reserves the right to disregard any clarification that VAGO considers to be unsolicited or otherwise impermissible in accordance with the rules set out in this Part A.

9.4 Discussion with Applicants

- 9.4.1 VAGO may elect to engage in detailed discussions with any one or more Applicants, with a view to maximising the benefits of the Application as measured against the evaluation criteria set out in clause 9.2 and fully understanding an Applicant's offer, including risk allocation.
- 9.4.2 As part of this process, VAGO may request such Applicant(s) to improve one or more aspects of their Application, including any technical, financial, corporate or legal components.
- 9.4.3 In its absolute discretion, VAGO may invite some or all Applicants to give a presentation to VAGO in relation to their submissions.
- 9.4.4 VAGO is under no obligation to undertake discussions with, or to invite any presentations from, Applicants.
- 9.4.5 In addition to presentations and discussions, VAGO may request some or all Applicants to:
- (a) conduct a site visit;
 - (b) provide references or additional information; and/or
 - (c) make themselves available for panel interviews.

9.5 Best and final offers

- 9.5.1 Applicants or, where the Application Process involves a shortlisting process, shortlisted Applicants, may be invited by VAGO to submit a best and final offer in relation to all or certain aspects of their respective Applications.
- 9.5.2 VAGO is under no obligation to give Applicants the opportunity to submit a best and final offer. If VAGO chooses to give an Applicant the opportunity to submit a best and final offer, it is under no obligation to give notification before the Closing Time that such opportunity will be given.
- 9.5.3 Notwithstanding the possibility that VAGO may give an Applicant the opportunity to submit a best and final offer, Applicants should be aware that VAGO will, in conducting its evaluation of Applications, rely on all information (including all representations) contained in such Applications. Applicants are therefore encouraged to submit their best and final offers in the first instance.

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

10. Successful Applications

10.1 No legally binding contract

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

10.2 Pre-contractual negotiations

- 10.2.1 VAGO may, in its absolute discretion, decide not to enter into pre-contractual negotiations with a successful Applicant.
- 10.2.2 A successful Applicant is bound by its Application (including the Statement of Compliance to the Proposed Contract forming part of the Applicant's response) and, if selected as a successful Applicant, must enter into a contract on the basis of the Application without negotiation.

10.3 No Obligation to enter into contract

- 10.3.1 VAGO is under no obligation to appoint a successful Applicant or Applicants (as the case may be), or to enter into a contract with a successful Applicant or any other organisation, if it is unable to identify an Application that complies in all relevant respects with the requirements of VAGO, or if to do so would otherwise not be in the public interest. For the avoidance of any doubt, in these circumstances VAGO will be free to proceed via any alternative process.
- 10.3.2 VAGO may conduct a debriefing session for all Applicants (successful and unsuccessful). Attendance at such debriefing session is optional.

11. Additional Rules

- 11.1.1 Any rules governing the Application or the Application Process in addition to those set out in this Part A.

12. Applicant Warranties

12.1.1 By submitting an Application, an Applicant warrants that:

- (a) in lodging its Application it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of VAGO, its officers, employees, agents or advisers other than any statement, warranty or representation expressly contained in the Application;
- (b) it did not use the improper assistance of VAGO employees or information unlawfully obtained from VAGO in compiling its Application;
- (c) it is responsible for all costs and expenses related to the preparation and lodgement of its Application, any subsequent negotiation, and any future process connected with or relating to the Application Process;
- (d) it otherwise accepts and will comply with the rules set out in Part A; and
- (e) it will provide additional information in a timely manner as requested by VAGO to clarify any matters contained in the Application.

13. Lead Department's Rights

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

- (a) cease to proceed with, or suspend the Application Process prior to the execution of a formal written contract;
- (b) alter the structure and/or the timing of the Application or the Application Process;
- (c) vary or extend any time or date specified in this Application for all or any Applicants or other organisations;
- (d) terminate the participation of any Applicant or any other organisation in the Application Process;
- (e) require additional information or clarification from any Applicant or any other organisation or provide additional information or clarification;
- (f) negotiate with any one or more Applicants and allow any Applicant to alter its Application;
- (g) call for new Applications;
- (h) reject any Application that does not comply with the requirements of this Application; or
- (i) consider and accept or reject any alternative tender.

14. Governing Law

14.1.1 This Application and the Application Process is governed by the laws applying in the State of Victoria.

14.1.2 Each Applicant must comply with all relevant laws in preparing and lodging its Application and in taking part in the Application Process.

15. Interpretation

15.1 Definitions

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

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

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

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

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

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

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

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

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

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

Specification means any specification or description of VAGO's requirements contained in RFT - Part B of this RFT.

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

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

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

Tenderer means an organisation that submits a Tender.

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

Tenders Website means the website administered by the Victorian Department of Treasury and Finance located at universal resource locator www.tenders.vic.gov.au.

VAGO means the Victorian Auditor-General's Office, the agency responsible for the Tendering Process.

15.2 Interpretation

15.2.1 In this RFT, unless expressly provided otherwise:

- (j) a reference to:
 - i) "includes" or "including" means includes or including without limitation; and
 - ii) "\$" or "dollars" is a reference to the lawful currency of the Commonwealth of Australia; and
- (k) if a word or phrase is defined its other grammatical forms have corresponding meanings.

15.3 Inconsistency

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

- (a) the conditions of tendering in Part A of this RFT and any annexes or attachments;
- (b) the Tenderer's response in Part D of this RFT;
- (c) the Proposed Contract in Part C of this RFT;
- (d) any other part of this RFT.

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