

Our ref: 02206594

30 November 2001

Mr Tim Grimwade
General Manager - Adjudication
Australian Competition and
Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2606

120 Collins Street
Melbourne VIC 3000
PO Box 4301PP
Melbourne VIC 3001
Australia
DX 147 Melbourne
Tel +61 3 9274 5000
Fax +61 3 9274 5111
www.phillipsfox.com

Adelaide
Brisbane
Canberra
Melbourne
Perth
Sydney
Auckland
Wellington
Hanoi
Ho Chi Minh City



Dear Mr Grimwade

Authorisation Applications by Health Purchasing Victoria

Please see enclosed two authorisation applications pursuant to section 88(1) of the *Trade Practices Act 1974* in relation to potential exclusionary provisions and agreements affecting competition lodged by Health Purchasing Victoria.

We enclose Authorisation Application Forms A and B together with a cheque totalling \$9,000 in respect of the lodgement fee.

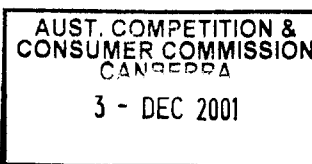
We will be happy to provide any further information requested. Should you have any further enquiries please contact either of us.

Kind regards

Rachel Olliffe
Solicitor
Direct +61 3 9274 5121
Email rachel.olliffe@phillipsfox.com

Simon Uthmeyer
Partner
Direct +61 3 9274 5470
Email simon.uthmeyer@phillipsfox.com

Encl



FORM A

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 88(1)

EXCLUSIONARY PROVISIONS: APPLICATIONS FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* (the 'Act') for an authorisation under that sub-section:

- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of the Act; and
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of the Act.

1 (a)	Name of applicant	Health Purchasing Victoria
(b)	Short description of business carried on by applicant	<p>Health Purchasing Victoria ('HPV') is a statutory authority established under section 129 of the <i>Health Services Act 1988</i> to carry out the functions under section 131 of that Act, including amongst other things, to facilitate access to the supply of goods and services to health services and other health or related services on best value terms.</p> <p>Health Purchasing Victoria has the power under section 132 of the <i>Health Services Act 1988</i> to enter into contracts or arrangements, including joint ventures, on its own behalf or on behalf of one or more health or related services and call and award tenders and advertise as necessary to perform its functions.</p>
(c)	Address in Australia for service of documents on the applicant	<p>C/- Simon Uthmeyer Partner Phillips Fox 120 Collins Street Melbourne Vic 3000</p>

2 (a) Description of contract, arrangement or understanding and, where already made, its date

The arrangements to which this application relates include:

- 1 The proposed calling and awarding of a tender by HPV, on behalf of the health services listed at **Attachment C** (hereafter referred to as 'health services'), for the exclusive acquisition of temporary agency nursing staff from suppliers of agency nursing staff by such health services. A copy of the tender documentation is attached at **Attachment A**;
- 2 Either:
 - 2.1 Option 1 - HPV will make a direction under the *Health Services Act 1988*, requiring each health service (other than the Sisters of Charity Health Service) to acquire all their agency nursing staff requirements exclusively from the successful tenderers and that HPV is appointed as their agent to contract on their behalf with the successful tenderers. Also the Sisters of Charity Health Service will enter into an agreement with HPV appointing the HPV as its agent to contract on its behalf with the successful tenderers and will agree to exclusively acquire all its agency nursing staff requirements from the successful tenderers; or
 - 2.2 Option 2 - All the health services will individually enter into an agreement with the HPV appointing the HPV as their agent to contract on their behalf with the successful tenderers and agreeing to exclusively acquire all their agency nursing staff requirements from the successful tenderers; and
- 3 The HPV, acting on behalf of each health service, will enter into an agreement with each of the successful tenderers for the exclusive provision of agency nursing staff.

Please see **Attachment B** for a further explanation of the proposed arrangements.

(b) Brief description of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions

The proposed arrangements set out at 2(a) above may be considered to amount to exclusionary provisions on the basis that they have the purpose of preventing, restricting or limiting the health services from acquiring agency nursing staff from suppliers other than the successful tenderers. Please see **Attachment B** for more details.

- | | | |
|-----|--|---|
| (c) | Names and addresses of other parties or proposed parties to contract, arrangement or understanding | At this stage, we are unable to provide the names and addresses of the successful tenderers. For the names and addresses of the health services, please see Attachment C . |
| 3 | Names and addresses (where known) of parties and other persons on whose behalf application is made | Please see Attachment C for the names and addresses of the other parties on whose behalf this application is made. |
| 4 | (a) Grounds for grant of authorisation | Please see Attachment B . |
| | (b) Facts and contentions relied upon in support of those grounds | Please see Attachment B . |
| 5 | This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understanding, that are or will be in similar terms to the abovementioned contract, arrangement or understanding. | |
| | (a) Is this application to be so expressed? | No |
| | (b) If so, the following information is to be furnished: | |
| | (i) the names of the parties to each other contract, arrangement or understanding | |

(ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application)

6 (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)? No

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

(c) If so, by whom or on whose behalf are those other application being made?

7 Name and address of person authorised by the applicant to provide additional information in relation to this application. Simon Uthmeyer
Partner
Phillips Fox
120 Collins Street
Melbourne Vic 3000

Date: November 2001

Signed on behalf of Health Purchasing Victoria



Simon Uthmeyer:
Partner
Phillips Fox

* **Note:** References in this application to the Act are references to the *Trade Practices Act 1974* and also include the Competition Codes of New South Wales, Victoria and the Australian Capital Territory as defined in the Competition Reform legislation in force in each jurisdiction.

DIRECTIONS

- 1 Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
- 2 Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
- 3 In item 1(b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
- 4 Furnish with the application particulars of the contract, arrangement or understanding in respect of which the authorisation is sought. Those particulars shall be furnished:
 - (a) in so far as the particulars or any of them have been reduced to writing - by lodging a true copy of the writing; and
 - (b) in so far as the particulars or any of them have not be reduced to writing - by lodging a memorandum containing a full and correct statement of the particulars that have not been reduced to writing.
- 5 Where the application is made also in respect of other contracts, arrangements or understanding which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangement or understanding referred to in item 2.

NOTICES

- 1 In relation to item 4, your attention is drawn to sub-section 90(8) of the *Trade Practices Act 1974* which provides as follows:

“(8) The Commission shall not:

(a) made a determination granting:

- (i) an authorisation under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding, that is or may be an exclusionary provision; or
- (ii) an authorisation under subsection 88(7) in respect of proposed conduct; or
- (iii) an authorisation under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
- (iv) an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

(b) made a determination granting an authorisation under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.”

- 2 If an authorisation is granted in respect of a proposed contract, arrangement or understanding, the names of the parties to which are not known at the date of application, the authorisation shall, by sub-section 88(14) of the *Trade Practices Act 1974*, be deemed to be expressed to be subject to a condition that any party to the contract, arrangement or understanding will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract, arrangement or understanding.

FORM B

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 88(1)

AGREEMENTS AFFECTING COMPETITION: APPLICATIONS FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* (the "Act") for an authorisation under that sub-section:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act; and
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of the Act.

-
- | | | |
|-------|---|--|
| 1 (a) | Name of applicant | Health Purchasing Victoria |
| (b) | Short description of business carried on by applicant | <p>Health Purchasing Victoria ('HPV') is a statutory authority established under section 129 of the <i>Health Services Act 1988</i> to carry out the functions under section 131 of that Act, including amongst other things, to facilitate access to the supply of goods and services to health services and other health or related services on best value terms.</p> <p>Health Purchasing Victoria has the power under section 132 of the <i>Health Services Act 1988</i> to enter into contracts or arrangements, including joint ventures, on its own behalf or on behalf of one or more health or related services and call and award tenders and advertise as necessary to perform its functions.</p> |
| (c) | Address in Australia for service of documents on the applicant | <p>C/- Simon Uthmeyer
 Partner
 Phillips Fox
 120 Collins Street
 Melbourne Vic 3000</p> |
| 2 (a) | Description of contract, arrangement or understanding and, where | <p>The arrangements to which this application relates include:</p> <p>1 The proposed calling and awarding of a tender by HPV,</p> |

already made, its date

on behalf of the health services listed at **Attachment C** (hereafter referred to as 'health services'), for the exclusive acquisition of temporary agency nursing staff from suppliers of agency nursing staff by such health services. A copy of the tender documentation is attached at **Attachment A**;

2 Either:

2.1 Option 1 - HPV will make a direction under the *Health Services Act 1988*, requiring each health service (other than the Sisters of Charity Health Service) to acquire all their agency nursing staff requirements exclusively from the successful tenderers and that HPV is appointed as their agent to contract on their behalf with the successful tenderers. Also the Sisters of Charity Health Service will enter into an agreement with HPV appointing the HPV as its agent to contract on its behalf with the successful tenderers and will agree to exclusively acquire all its agency nursing staff requirements from the successful tenderers; or

2.2 Option 2 - All the health services will individually enter into an agreement with the HPV appointing the HPV as their agent to contract on their behalf with the successful tenderers and agreeing to exclusively acquire all their agency nursing staff requirements from the successful tenderers; and

3 The HPV, acting on behalf of each health service, will enter into an agreement with each of the successful tenderers for the exclusive provision of agency nursing staff.

Please see **Attachment B** for a further explanation of the proposed arrangements.

(b) **Names and addresses of other parties or proposed parties to contract, arrangement or understanding**

At this stage, we are unable to provide the names and addresses of the successful tenderers. For the names and addresses of the health services, please see **Attachment C**.

3 **Names and addresses (where known) of parties and other persons on whose behalf application is made**

Please see **Attachment C** for the names and addresses of the other parties on whose behalf this application is made.

- 4 (a) Grounds for grant of authorisation Please see **Attachment B.**
- (b) Facts and contentions relied upon in support of those grounds Please see **Attachment B.**
- 5 (a) This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understanding, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.
- Is this application to be so expressed? No
- (b) If so, the following information is to be furnished:
- (i) the names of the parties to each other contract, arrangement or understanding
- (ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application
- 6 (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)? No
- (b) If so, are any other applications being made simultaneously with this application in relation to

that joint venture?

- (c) If so, by whom or on whose behalf are those other application being made?

7	Name and address of person authorised by the applicant to provide additional information in relation to this application.	Simon Uthmeyer Partner Phillips Fox 120 Collins Street Melbourne Vic 3000
---	---	---

Date: November 2001

Signed on behalf of Health Purchasing Victoria



Simon Uthmeyer:
Partner
Phillips Fox

* **Note:** References in this application to the Act are references to the *Trade Practices Act 1974* and also include the Competition Codes of New South Wales, Victoria and the Australian Capital Territory as defined in the Competition Reform legislation in force in each jurisdiction.

DIRECTIONS

- 4 Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
- 5 Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
- 6 In item 1(b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
- 7 Furnish with the application particulars of the contract, arrangement or understanding in respect of which the authorisation is sought. Those particulars shall be furnished:
 - (a) in so far as the particulars or any of them have been reduced to writing - by lodging a true copy of the writing; and
 - (b) in so far as the particulars or any of them have not be reduced to writing - by lodging a memorandum containing a full and correct statement of the particulars that have not been reduced to writing.
- 8 Where the application is made also in respect of other contracts, arrangements or understanding which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangement or understanding referred to in item 2.

NOTICES

1 In relation to item 4, your attention is drawn to sub-section 90(8) of the *Trade Practices Act 1974* which provides as follows:

- “(8) The Commission shall not:
- (a) made a determination granting:
 - (i) an authorisation under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding, that is or may be an exclusionary provision; or
 - (ii) an authorisation under subsection 88(7) in respect of proposed conduct; or
 - (iii) an authorisation under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
 - (iv) an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or
 - (b) made a determination granting an authorisation under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.”

2 If an authorisation is granted in respect of a proposed contract, arrangement or understanding, the names of the parties to which are not known at the date of application, the authorisation shall, by sub-section 88(14) of the *Trade Practices Act 1974*, be deemed to be expressed to be subject to a condition that any party to the contract, arrangement or understanding will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract, arrangement or understanding.

Attachment A

Tender documentation

Draft 1.0
30 November 2001



120 Collins Street
Melbourne VIC 3000
PO Box 4301PP
Melbourne VIC 3001
Australia
DX 147 Melbourne
Tel +61 3 9274 5000
Fax +61 3 9274 5111
www.phillipsfox.com

Adelaide
Brisbane
Canberra
Melbourne
Perth
Sydney
Auckland
Wellington
Hanoi
Ho Chi Minh City

Health Purchasing Victoria

Request for Tender

Ref No: HPV 001/2001

SUPPLY OF TEMPORARY NURSING SERVICES TO MELBOURNE AND GEELONG PUBLIC HEALTH SERVICES

Closing time and date: *[insert time and date]*

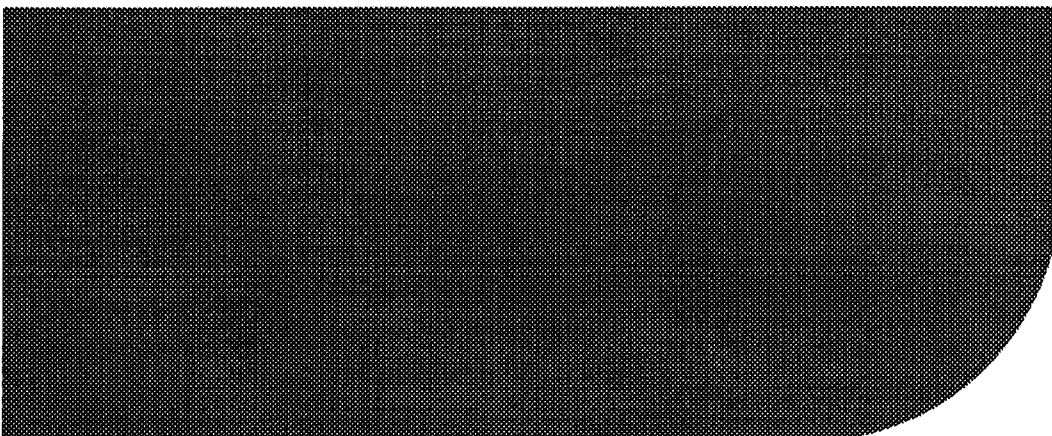


Table of contents

Part A: Briefing Document	1
1 General scope and purpose of tender	1
2 HPV - an overview	1
3 ACCC authorisation	1
4 Detailed description of the services being tendered	2
General	2
Objectives	2
Clinical areas	2
Clinical Specialities	3
Staff Categories Required	3
Anticipated Volumes	3
Shift Lengths	3
Staff Administration	4
Working Attire	4
Use of Health Services Staff	5
Use of nurse banks	5
5 Closing date	5
Part B Tender Conditions	6
1 General conditions of tender	6
Tender conditions	6
Tenderer must inform itself	6
Tenderer may request clarification or elaboration	6
HPV not responsible for inaccurate or inadequate information	6
HPV may vary scope of work	7
HPV property	7
<i>Freedom of Information Act</i>	7
Disclosure of information	7
Duty to preserve confidentiality	7
Publicity	8
Governing law	8
2 Submission of tender and tender requirements	8
Binding and irrevocable offer	8
Non-complying tender	8
No contractual relationship established	8
No change of tender after closing date	9
Undertaking by tenderer	9
Requirements for tender submission	9
Late tenders	10
Legibility	10
3 Information to be included in the tender submission	10
Format of tender submission	10
Acceptance of Tender Conditions and Services Agreement	10
Pricing Structure	10

Sites.....	11
Manner in which services are to be provided	11
Additional services (optional)	12
Experience.....	12
Continuous improvement, cost reduction initiatives and quality management	12
Corporate information	12
Financial Information.....	13
Industrial Relations	13
Engagement/Employment of agency staff.....	14
Superannuation	14
Insurance.....	14
WorkCover.....	14
Industry memberships.....	14
Legal proceedings.....	15
References	15
Joint tenders	15
Status of tenderer	15
Contact details	15
Declaration by Tenderer.....	16
Execution.....	16
4 Evaluation of tender.....	16
Process of evaluation.....	16
Evaluation of tenders	16
HPV may request additional information	17
HPV may require tenderer to demonstrate	17
Presentation.....	17
HPV has absolute discretion	17
5 Selection and appointment	18
Appointment of one or more preferred tenderers.....	18
Appointment of successful tenderer	18
No right of recourse	18
6 Services Agreement	18
Successful tenderer(s) to enter into Services Agreement.....	18
Amendments proposed by tenderers	18
Services Agreement.....	19
Entry into Services Agreement.....	19
Services Agreement to be final	19
Failure to execute Services Agreement.....	19
Part C: Tender Submission.....	20
Declaration.....	20
Part D: Services Agreement.....	21
Attachment A1	22
Attachment A2	26
Attachment A3	27
Attachment A4	29

Part A: Briefing Document

1 General scope and purpose of tender

Health Purchasing Victoria ("HPV") as agent for each Melbourne metropolitan public health service, Barwon Health and the Sisters of Charity Health Service ("Health Services") invites tenders for the exclusive provision of temporary nursing services to those health services.

The services are to be provided for three years, with the Health Service each having an option to renew the service contract for up to another 2 years.

Unsuccessful tenderers will not be able to provide temporary nursing services to any of the Health Services during the contract period.

It is anticipated that the successful tenderer(s) will commence the provision of the services by no later than 1st April 2002.

2 HPV - an overview

- 2.1 HPV is an independent statutory authority established to implement centralised procurement arrangements for goods and services to Victorian public hospitals. It is established under the *Health Services Act* 1988 and is administered by its own Board of Management. It has the power to direct public hospitals as to the suppliers, prices and terms of trade that they will use to obtain their required goods and services. Public hospitals are legally required to abide by this direction unless they are party to a pre-existing contract which already governs the subject of the HPV direction.
- 2.2 In this case, each Melbourne metropolitan public health service and Barwon Health has agreed*/been directed by HPV* to appoint HPV to carry out the tender process and abide by the outcome of the tender process. The Sisters of Charity Health Service have also agreed to this course of action.

3 ACCC authorisation

Tenderers should note that HPV and the Health Services have sought authorisation for this tender and the appointment of successful tenderer(s) to take place from the Australian Competition & Consumer Commission ('ACCC'). Whilst the ACCC has granted interim authorisation, a final authorisation decision is not expected to be received before [insert date]. Completion of the tender process and the appointment of successful tenderer(s) will not occur if ACCC authorisation is not received.

4 Detailed description of the services being tendered

General

- 4.1 HPV, on behalf of each of the Health Service, invites tenders for the exclusive provision of the services of experienced and registered (where necessary) nurses to work on a temporary basis at the sites of the Health Services shown at Attachment A1.
- 4.2 The successful tenderer(s) will be appointed to an exclusive panel of suppliers, from whom each Health Service will select their preferred supplier(s). By virtue of the direction*/agreement* referred to in clause 2.1, the Health Services will not be legally able to engage suppliers who are not appointed to the panel.

Objectives

- 4.3 The objectives of contracting for the supply of temporary nursing services are:
- 4.3.1 To ensure timely and efficient supply of temporary nursing services to meet operational, business and management needs of the Health Services listed in Attachment A1.
 - 4.3.2 To ensure the Health Services are paying reasonable and competitive rates for the services provided.
 - 4.3.3 To ensure availability of a flexible component of the Health Services labour force that meets the regulatory and policy requirements of each Health Service.
 - 4.3.4 To ensure that the quality of the temporary staff services provided to the Health Services is in accordance with the Health Services' standards.

Clinical areas

- 4.4 The Health Services require suitably qualified and experienced staff in the following areas:

Aged Care	Neonatal Intensive Care
Ambulatory services	Nephrology
Cardio-thoracics	Neurology/Neurosurgical
Chemotherapy	Oncology
Coronary Care	Oncology wards surgical and medical
Day Surgery	Operating Theatres

Diagnostic Imaging	Operating Theatres
Emergency	Orthopaedics
Endoscopy	Outpatients
General Medical Units	Paediatrics
General Surgical Units	Palliative Care
Gynaecology	Psychiatry
Hospital in the Home	Radiotherapy
Infectious Diseases	Rehabilitation
Intensive Care	Residential Care
Midwifery	

Clinical Specialities

- 4.5 The Health Services may require temporary staff skilled in the clinical specialities listed at Attachment A2.

Staff Categories Required

- 4.6 The Health Services may require temporary nursing services to be provided by staff in any of the categories shown at Attachment A3.

Anticipated Volumes

- 4.7 Neither HPV nor the Health Services warrant any minimum requirement of temporary nursing staff services. The requirement may vary in the future, depending on factors such as patient load, available funding, industrial agreements or government directions. Attachment A4 shows the actual number of shifts worked by temporary staff, by Health Service and site, for the month of [insert month - latest information available at the time RFT is released].

Shift Lengths

- 4.8 The Health Services require temporary nursing staff services to be provided for a variety of shift lengths ranging between four and twelve hours duration. The shift length required at any particular time will depend on the clinical situation, and will be negotiated at the time of booking. No shift will be less than 4 hours, and the duration of all shifts will be in multiples of 15 minutes.

Staff Administration

- 4.9 The Contractor(s) shall ensure that each of the following requirements are satisfied with respect to each staff member provided to perform services under the terms of the contract entered into with HPV:
- 4.9.1 Registration on the Roll held by The Nurses Board of Victoria in Division 1, 2 or 3. Current registration certificates must be available for inspection at the request of the manager of the area in which the nurse is deployed.
 - 4.9.2 An appropriate representative of the Contractor shall have interviewed the staff member and found him/her suitable, appropriately qualified and experienced for the task for which he/she is being provided.
 - 4.9.3 An appropriate representative of the Contractor shall have checked the employment references of the staff member being provided and deemed them to be suitable to perform the services which are to be supplied.
 - 4.9.4 An appropriate representative of the Contractor has been satisfied that the staff member being provided has demonstrated basic competency in the clinical area and speciality for which they are being provided.
- 4.10 The Contractor(s) shall undertake annual performance reviews in relation to its staff to ensure that the staff remain suitable for the services for which they are engaged. The Contractor(s) shall make such reviews available to the Health Services on request. There must be a mechanism in place to allow managers of Health Service's units where Contractor's staff are deployed to provide feedback on performance issues.
- 4.11 The Contractor(s) shall ensure that all staff it employs or engages to provide Nursing Services are medically fit to provide those services.

Working Attire

- 4.12 The staff supplied by the Contractor shall provide their own working uniforms. The garments should be consistent with the standards applying to the site where they are deployed, and shall be not less than:
- 4.12.1 A photographic identification badge supplied by the Contractor;
 - 4.12.2 Trousers or skirts (no shorts);
 - 4.12.3 White shirt or blouse;
 - 4.12.4 Clean and tidy appearance; and
 - 4.12.5 Footwear appropriate to the tasks carried out by the staff.

Use of Health Services Staff

- 4.13 From the commencement of the contract period, the Health Services will not accept a temporary nursing service provided by a person who is a current member of that Health Service's permanent staff.

Use of nurse banks

- 4.14 Nothing in this Request for Tender prevents the Health Services from having, promoting or utilising their own nurse banks.

5 Closing date

Tenders will be received up to *[insert deadline details]*

Part B Tender Conditions

1 General conditions of tender

Tender conditions

- 1.1 The tender conditions set out in this Part B ("Tender Conditions") govern the tender process in relation to the request for tender for the supply of temporary nursing services to Melbourne and Geelong public Health Services Ref No: HPV 001/2001 ("Request for Tender").

Tenderer must inform itself

- 1.2 It is the tenderer's responsibility to make all necessary investigations for it to become thoroughly informed about the subject matter of the Request for Tender, the nature and location of the services to be provided and to have examined all information which is relevant to the risks, contingencies and other circumstances which could affect its tender and which is obtainable by the making of reasonable enquiries.

Tenderer may request clarification or elaboration

- 1.3 The tenderer may request clarification or elaboration from HPV of any of the tender documents. All requests must be in writing. HPV is not bound to provide the information requested. Any response or information will also be given to other tenderers. Tenderers shall not rely on any information which is not provided in writing. Tenderers shall not contact the Health Services or individual sites for information.
- 1.4 All requests for clarification or elaboration must be addressed to:

Mr Steve Sant
Acting Chief Executive Officer
Health Purchasing Victoria
260 Kooyong Rd
Caulfield, Vic 3162
Facsimile number: 03 9276 6781
Email [hmv@hmv.org.au](mailto:hpv@hmv.org.au)

HPV not responsible for inaccurate or inadequate information

- 1.5 All tender information that HPV provides to a tenderer, whether in the tender documents or not, is provided in good faith to assist tenderers to assess the tender. None of the information is guaranteed. HPV makes no representations or warranties regarding the accuracy or completeness of the information contained in the tender documents. It is the tenderer's responsibility to interpret and assess the relevance of the information provided to tenderers. HPV is not liable for any loss, damage or expense suffered by a tenderer as a result of any inaccuracy or inadequacy in the information it provides.

HPV may vary scope of work

- 1.6 HPV may vary the scope of the services being tendered for, or the Tender Conditions, by giving written notice of the variation to all tenderers at any time before the closing date for submission of tenders. The variations will apply from the date that they are notified to the tenderer.

HPV property

- 1.7 All tender documents and copyright in all tender documents belong to and remain the property of HPV at all times. All tender documents must be returned to HPV on request, whether a tender is submitted or not. A tenderer must not use or disclose the tender documents in any way or for any purpose not connected with the preparation and submission of a tender.

Freedom of Information Act

- 1.8 Prospective tenderers should note the effects of the *Freedom of Information Act 1982* (Vic) which gives members of the public a right of access to a range of documents in the possession of the Victorian government and its agencies, which includes HPV.
- 1.9 Access to information in the possession of HPV is limited by statutory exemptions which protect the public interest and the private and business affairs of persons about whom information is collected.

Disclosure of information

- 1.10 Prospective tenderers should also note that HPV may be required, as a matter of Government policy, to publish the name(s) of the successful tenderer(s) and the likely contract value together with the conditions of the contract entered into with HPV.

Duty to preserve confidentiality

- 1.11 The tenderer must not disclose any of HPV's or the Health Services' Confidential Information or any information contained in the tender documents, unless any of the following apply:
- 1.11.1 the disclosure is necessary to comply with the tenderer's obligations under the Request for Tender;
 - 1.11.2 the disclosure is to an officer, employee, agent or consultant of the tenderer, to the extent that he or she needs to know the Confidential Information in order to perform a function in connection with this tender process. The tenderer must ensure that its officer, agent, employee or consultant does not make a disclosure which, if the tenderer disclosed it, would be a breach of this clause;
 - 1.11.3 the disclosure is required by law;
 - 1.11.4 the disclosure is reasonably made to a professional legal adviser or professional auditor; or

1.11.5 HPV consents in writing to the disclosure.

1.12 For the purposes of clause 1.11, "Confidential Information" means information in any form that is disclosed to a party by the other party for the purpose of this Request for Tender or which the party otherwise becomes aware of in the course of tendering for the services, but does not include information which:

1.12.1 is public knowledge, except where that information came into the public domain as a result of an unauthorised disclosure; or

1.12.2 the recipient can prove was already known or become known by it, on a non-confidential basis, before the information was disclosed to it.

Publicity

1.13 The tenderer must not make any public announcement in relation to this tender unless it first obtains HPV's written consent. This applies even if the tenderer is advised that it is the successful tenderer.

Governing law

1.14 The tender documents and the tender process are governed by the laws of Victoria.

2 Submission of tender and tender requirements

Binding and irrevocable offer

2.1 By submitting a tender, the tenderer becomes bound by these Tender Conditions. The tender submission constitutes a binding and irrevocable offer by the tenderer. The tender submission must remain fixed and open for acceptance by HPV for ninety days from 4.00pm on the closing date, [insert date]. A tender cannot be withdrawn after it has been submitted to HPV except with the written consent of HPV.

Non-complying tender

2.2 Any tender submission that does not comply with all of the Tender Conditions may be considered to be a non-complying tender and may be rejected at HPV's discretion.

No contractual relationship established

2.3 The tender process is an invitation to treat and not an offer. Submission of a tender does not create a contract for the provision of the services in any way **unless and until** the tender is accepted by HPV **and** the parties execute a services agreement substantially in the form of the services agreement set out in Part D of this Request for Tender ("Services Agreement"). The issue of this Request for Tender and the submission by the tenderer do not create any obligation upon HPV or the Health Services to buy services from the tenderer or to enter into any binding legal relationship with any one or more tenderers.

No change of tender after closing date

- 2.4 A tenderer may not change its tender after the closing date, unless HPV invites it in writing to do so.

Undertaking by tenderer

- 2.5 By submitting a tender, the tenderer undertakes that it has observed all relevant statutory and other regulatory authority requirements in the formulation of its tender submission and has not:

- 2.5.1 accepted or provided secret commissions;
- 2.5.2 colluded with other tenderers;
- 2.5.3 entered into any improper commercial arrangements with any other tenderer; or
- 2.5.4 sought to influence decisions by improper means.

Requirements for tender submission

- 2.6 A tender submission must comply with the following requirements:

- 2.6.1 it must be in the format required by these Tender Conditions;
- 2.6.2 it must be signed by the tenderer or by an authorised representative of the tenderer. The tenderer must provide evidence of any authorisation on request by HPV;
- 2.6.3 it must be lodged in a sealed envelope containing:
 - (a) an original and three copies of the tender submission; and
 - (b) one diskette or CD copy of the tender submission in Microsoft Word.
- 2.6.4 the sealed envelope must be clearly marked "Request for Tender - Temporary Nursing Services Ref No: HPV001/2001"
- 2.6.5 it must be submitted in writing by hand or post to:

if by post to:

Health Purchasing Victoria
260 Kooyong Road
Caulfield Vic 3162

if by hand to:

HPV Office
Old Ward 14
Caulfield General Medical Centre

260 Kooyong Road
Caulfield
(enter site via Newstead St, off Hawthorn Road)

- 2.6.6 Hand delivered tenders will **only** be accepted between 10.00am and 4.00pm on the closing date.
- 2.6.7 it must be submitted before 4.00pm on the closing date [insert closing date].

Late tenders

- 2.7 HPV may not consider any tender received later than the deadline.

Legibility

- 2.8 Tenders containing alterations or erasures and tenders in which prices are not clear or legible may be excluded from consideration.

3 Information to be included in the tender submission

Format of tender submission

- 3.1 The tender submission must be in the format set out in Part C and must contain all of the information requested in the Request for Tender.

Acceptance of Tender Conditions and Services Agreement

- 3.2 The tender submission must set out:
- 3.2.1 the extent to which the tender submission does not meet any of the requirements of the tender documents;
 - 3.2.2 the tenderer's acceptance of these Tender Conditions. If the tenderer does not accept each and every Tender Condition, it must specify which Tender Conditions it does not accept and why; and
 - 3.2.3 the tenderer's acceptance of the terms and conditions of the Services Agreement. If the tenderer does not accept each and every term and condition of the Services Agreement it must clearly mark the Services Agreement with the amendments required and provide an explanation as to why that amendment is required.

Pricing Structure

- 3.3 HPV and the Health Services expect that nurses providing services on a temporary basis at the Health Services sites will be remunerated on the basis of the relevant Industrial Award or Enterprise Bargaining Agreement. HPV will give tenderers preference if they agree to pay the relevant Award/EBA rate.
- 3.4 Tenderers are required to provide the following information in relation the prices which they are offering:

3.4.1 Payments to Contractor's staff providing Services to the Health Services - details of any "over award payments" that will be made to staff, including whether the payments will apply to:

- (a) all staff; or
- (b) specific:
 - Days and Times worked;
 - Classifications or grades;
 - Clinical specialities;
 - Clinical areas.

It is not necessary to state the details of any pay rate, allowance or other payment or rate prescribed in the relevant Awards. (Note the preference stated in clause 3.3)

3.4.2 Service Fee, which will include all other elements of the costs of the service provided, including administrative costs, overheads, payments for statutory requirements such as workcover, superannuation, etc, and profit. The Service Fee should be stated as a single consolidated amount. Preference will be given to tenderers who state this fee as a flat charge per shift worked. However, tenders stating fees as a percentage of the total or some defined part of the payment made to staff may be considered. Fees in the format of a flat fee for some stated components plus a percentage charge for other components will also be considered.

3.4.3 Any discount for volume or early payment, which is offered.

3.5 All prices quoted by tenderers must include GST and any other taxes.

Sites

3.6 All tenders must state whether the offer applies to:

- 3.6.1 all Health Services and sites listed in Attachment A1, or
- 3.6.2 limited Health Services and sites only, in which case the applicable Health Services and sites must be listed in the tender submission.

Manner in which services are to be provided

3.7 The tender submission must specify how the tenderer intends to provide the services to the Health Services (for example, resources that will be utilised, number of managerial, administrative and training staff (exclusive of nursing staff actually providing the nursing services) that will be engaged in the provision of the services etc). Tender submissions should also include a description of how the overall account will be managed.

Additional services (optional)

- 3.8 Tenderers may, at their option, provide details of any other services not included in the scope of the Request for Tender, which could be made available to the Health Services that are cost competitive or offer substantial customer benefits.

Experience

- 3.9 The tender submission must specify the current work load of the tenderer in terms of EFT provided and the number of shifts worked and their previous experience in the provision of services similar or relevant to the services set out in Part A of this document. A tender submission must also list the key staff that will be assigned to the Services Agreement and contain a brief description of their relevant experience.

Continuous improvement, cost reduction initiatives and quality management

- 3.10 The tender submission must describe the types of projects the tenderer has undertaken with existing customers that illustrate its capability in implementing, measuring and reporting cost reduction initiatives and efficiency improvements.
- 3.11 The tender submission must set out how the tenderer will apply their past experience to continually improve:
- 3.11.1 service quality;
 - 3.11.2 meeting deadlines;
 - 3.11.3 communications and customer service;
 - 3.11.4 information reporting;
 - 3.11.5 documentation, including invoicing;
 - 3.11.6 price, particularly cost reduction; and
 - 3.11.7 management support.
- 3.12 The tender submission must set out details of the policies and procedures that the tenderer has in place that will be used to monitor and maintain the continuing achievement of the performance standards, including:
- 3.12.1 an outline of the quality system(s) that will be utilised; and
 - 3.12.2 specific details of how the performance standards for the services will be maintained and monitored.
- 3.13 The tender submission must also include any documentation evidencing that the tenderer has quality accreditation.

Corporate information

- 3.14 The tender submission must set out in writing the following information in relation to the tenderer:

- 3.14.1 full legal entity/company name;
- 3.14.2 registered address, postal address, telephone number and facsimile number;
- 3.14.3 details of company directors (if applicable);
- 3.14.4 the date and place of incorporation and the Australian Companies Number (if applicable);
- 3.14.5 Australian Business Number and confirmation that the tenderer is registered for GST;
- 3.14.6 individual, personal or corporate shareholders holding 20% or more of any issued share capital;
- 3.14.7 related bodies corporate within the meaning of section 9 of the *Corporations Act*; and
- 3.14.8 corporate profile including the size, the location of company sites, number of staff and areas of expertise.

Financial Information

- 3.15 The tender submission must set out the following financial information in relation to the tenderer and may contain any other information which will allow HPV to assess the stability and commercial viability of the tenderer:
 - 3.15.1 last 2 annual reports (audited where available);
 - 3.15.2 annual turnover;
 - 3.15.3 profitability record (over the past 3 years); and
 - 3.15.4 budgeted financial information.

Industrial Relations

- 3.16 The tender submission must provide details of the tenderer's industrial relations strategy, including (where applicable):
 - 3.16.1 enterprise agreements;
 - 3.16.2 industrial relations dispute resolution procedures;
 - 3.16.3 employee consultative arrangements;
 - 3.16.4 applicable awards;
 - 3.16.5 workcover experience; and
 - 3.16.6 any previous notices or prosecutions under Occupational Health & Safety Acts.

Engagement/Employment of agency staff

- 3.17 It is intent of this tender and any resultant contract(s) that HPV will contract on behalf of each Health Service with one or more nursing agencies to provide a complete nursing agency service, including all matters related to the engagement/employment and administration of the nurses who provide services. Neither HPV or the Health Services regard itself in any way as the employer/principal contractor of the staff provided by the Contractor(s). The Contractor(s) shall engage/employ all staff involved in delivering the services contracted for by the Health Services, and will be responsible, at its/their expense for satisfying all statutes, laws, regulations, awards, and industrial agreements that apply to the staff. The Contractor(s) shall be responsible for the payment of all taxes, benefits, superannuation, WorkCover costs and any other expenses payable in respect of the staff they engage/employ. The Contractor(s) shall provide, on request of a Health Service, copies of standard form contracts between the Contractor and its staff in relation to their employment/engagement with the Contractor.
- 3.18 The tender submission must include an acknowledgement by the tenderer that it accepts the provisions of clause 3.17.

Superannuation

- 3.19 Every quarter throughout the term of the Service Agreement, the successful tenderer(s) shall provide to each Health Service to whom they provide services, evidence that they have met their legal superannuation obligations to their staff who provide nursing services.

Insurance

- 3.20 The successful tenderer(s) will be expected to have in place insurance arrangements appropriate to the services being provided and in the terms specified by HPV, with respect to workers compensation, public liability and, where relevant, professional indemnity insurance.
- 3.21 The tender submission must provide details of the insurances currently held by the tenderer.

WorkCover

- 3.22 At the beginning of each financial year throughout for the term of the Service Agreement and as requested, the successful tenderer(s) shall provide to each Health Service to whom they provide services a Certificate of Currency for WorkCover in respect to all temporary staff provided to the Health Services under the terms of the Service Agreement entered into with HPV. Tenderers must confirm in their tender submission whether they are willing to comply with this requirement.

Industry memberships

- 3.23 The tender submission must include details of any industry/professional association memberships.

Legal proceedings

- 3.24 The tender submission must provide details of any current legal proceedings or any legal judgments entered against the tenderer during the past 3 years. If there are no current legal proceedings and no legal judgments have been entered against the tenderer during the past 3 years, the tender submission must contain confirmation to that effect.

References

- 3.25 The tender submission must contain three recent and relevant references. HPV will not contact the referees until tenderers have been shortlisted and notified. References should contain the following information:

- 3.25.1 name of organisation;
- 3.25.2 address;
- 3.25.3 name of contact;
- 3.25.4 contact number;
- 3.25.5 organisation's industry;
- 3.25.6 organisation's size (number of employees); and
- 3.25.7 description of services provided.

Joint tenders

- 3.26 If a tender is to be submitted by two or more entities, the tender submission must specify:
- 3.26.1 the relationship between the entities, including details of any agreements evidencing the relationship; and
 - 3.26.2 details as to who will be responsible for each component of the services.

Status of tenderer

- 3.27 A tenderer must advise HPV whether it is tendering as principal or as an agent. If the tenderer is tendering as an agent, it must specify the name of the principal in its tender submission.

Contact details

- 3.28 The tender submission must specify the following details in relation to the tenderer's point of contact:
- 3.28.1 name;
 - 3.28.2 position;