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16 January 2002

Mr Tim Grimwade  
A/g General Manager  
Adjudication Branch  
Australian Competition &  
Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

CC: Mr Gavin Jones  
Contact officer  
Adjudication Branch  
Australian Competition &  
Consumer Commission  
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DICKSON ACT 2602

By mail and fax: (02) 6243 1211 By mail and fax: (02) 6243 1211

Dear Mr Grimwade

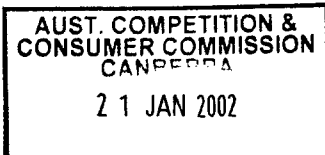
**Applications for Authorisation Nos A90811 & A90812  
lodged by Health Purchasing Victoria**

The purpose of this letter is to:

- provide you with a formal response to the issues raised in your letter of 12 December 2001, which sought clarification of the material provided in the application in order to assist the Commission's assessment of the application for interim authorisation;
- provide you with further information justifying the need for interim authorisation, focusing on the need for interim protection while the Commission considers the merits of the application for authorisation proper, as requested in your meeting of 20 December 2001 with Rachel Olliffe of our office and Steve Sant, Acting Chief Executive Officer for Health Purchasing Victoria ('HPV'), and in your facsimile of 10 January 2002; and
- advise you of changes to the proposed tender by HPV and provide you with a copy of the amended Request for Tender and Services Agreement (together, 'the Tender Documents') with changes to the Tender Documents since their submission to the Commission on 30 November 2001 marked up.

In addition, in your meeting of 20 December 2001 with Rachel Olliffe of our office and Steve Sant, you also requested further information on the public benefits provided by the proposed tender. We are currently in the advanced stages of preparing further information to you on the public benefits of the proposed tender and are currently intending to provide you with this information either late this week or early next week.

We will deal with each of the matters referred to above in turn below.



## Response to issues raised in your letter of 12 December 2001

In your letter of 12 December 2001 you set out a number of issues in relation to which you sought further information from our client. Set out below are our client's responses to each of the questions posed by you in that letter.

**1      *What progress has been made on deciding which option to pursue? What if any decision has been made? If no decision has been made as yet when is one expected?***

The Board of HPV has now agreed to proceed with Option 1, involving the issue of a direction by HPV under the *Health Services Act* 1988 to each of the relevant health services (other than the Sisters of Charity Health Service).

As you will recall, under Option 1 HPV will make a direction under s132 of the *Health Services Act* 1988 requiring each of the relevant health services (other than the Sisters of Charity Health Service) to acquire all their agency nursing staff requirements exclusively from the successful tenderers and providing that HPV is appointed as their agent to contract on their behalf with the successful tenderers. The Sisters of Charity Health Service will enter into an agreement with HPV appointing HPV as its agent to contract on its behalf with the successful tenderers and will agree to exclusively acquire all its agency staff requirements from the successful tenderers.

The precise wording of the direction remains to be determined, however. Therefore, we are not able to advise you of the precise wording to be used in the direction at this stage.

**2      *Under option 1 most health service providers will be directed under the Health Services Act to engage the successful tenderer(s), however, the Sisters of Charity Health Service will enter an agreement with HPV to engage the successful tenderer(s). What is the intended nature of this agreement? Under option 1 other health services would be compelled by written direction under the Health Services Act to enter into such agreements with HPV. Will the Sisters of Charity Health Services have the option of choosing whether to enter into an agreement or not?***

The Sisters of Charity Health Service ("Sisters of Charity") provides public beds but is a private health service. Accordingly, HPV does not have statutory power to make a binding written direction in relation to the activities of that Health Service. The Sisters of Charity has the right to decide whether to appoint HPV as its agents and whether it will engage the successful tenderer(s).

The Sisters of Charity have, however, informed HPV that should ACCC authorisation be granted in relation to their participation in the proposed tender, it will appoint HPV as its agent to conduct the proposed tender process and to enter into service contracts with the successful tenderer(s) on behalf of the Sisters of Charity. The proposed agreement will be a standard form agency contract by which the Sisters of Charity will appoint HPV as its agent for the purposes described here.

- 3 Under option 2 each of the health services will enter into an agreement with the HPV to engage the successful tenderer(s). What is the intended nature of these agreements? Would individual health services have the option of opting out of such agreements? What would be the effect of some health services choosing not to enter into such agreements?**

The Board of HPV has agreed not to proceed with Option 2. Therefore, question 3 is no longer relevant to the assessment of the applications for authorisation. Each of the relevant health services (other than the Sisters of Charity) will be directed by HPV acquire all their agency nursing staff requirements exclusively from the successful tenderers and providing that HPV is appointed as their agent to contract on their behalf with the successful tenderers. The nature of the agency agreement to be executed by the Sisters of Charity is discussed above. Even where the agency contract executed by the Sisters of Charity provided it with the option to terminate the agency contract, following execution of the services contract by HPV on behalf of the Sisters of Charity, the Sisters of Charity will be bound to exclusively acquire its agency nurse requirements from the successful tenderer(s).

- 4 Is it intended that the tender process will commence prior to a decision being made between option1 and options 2? In the event that option 2 is chosen, will the tender process commence prior to finalising agreements with each health service (i.e. before the health services to which agency nurses will be provided by the successful tenderer(s) are known)?**

A decision has been made by the HPV Board to proceed with Option 1. The tender process, meanwhile, will not commence unless and until interim or final authorisation is granted for this purpose or, at a minimum, we receive some degree of comfort from the Commission with respect to engaging in a conditional tender process as requested in our facsimile to you dated 9 January 2001.

Under Option 1, the Sisters of Charity is the only health service which must execute an agency contract appointing HPV as its agent in order to participate in the tender process. It is possible that the tender process will commence prior to finalising the agency contract with the Sisters of Charity (ie, before it is known whether agency nurses will be provided by the successful tenderer(s) to the Sisters of Charity on the basis of the tender submission).

We trust that the information set out above answers the questions raised by you in your letter of 12 December 2001.

#### **Information justifying the need for interim authorisation**

We appreciate that the Commission will only grant interim authorisation where the applicant is able to demonstrate an urgent need for protection from the *Trade Practices Act* 1974 and only where the Commission is satisfied that the market would be able to return to its pre-interim authorisation state if the Commission later denied full authorisation. To better allow you to assess whether the current matter falls within these criteria, your facsimile of 10 January 2001 requests further information justifying the need for interim authorisation.

Accordingly, we provide you with the following information which, we submit, justifies the need for interim authorisation.

- 1 On the terms of our interim request for interim authorisation, of 30 November 2001, the market would be able to return to its pre-interim authorisation state if the Commission later denied full authorisation. You will recall, that we requested interim authorisation to proceed with a conditional tender process including calling for expressions of interest in the tender, publishing the Request for Tender, receiving tenders from nurse agencies and evaluating bids. The proposed Request for Tender is subject to ACCC authorisation and no contracts or binding arrangements will be entered into unless and until the ACCC publishes a Final Determination providing authorisation.
- 2 We submit that there is an urgent need for interim protection to allow the conditional tender process to proceed while the Commission considers the merits of the substantive application for authorisation for the following reasons:

- 2.1 The optimal time for publishing the Request for Tender and receiving tenders from nurse agencies is in March, as the level of supply of nurses in Victoria, for both permanent employment positions with hospitals and nurse agencies, is at its highest level for the year in March as a result of the influx of new graduate nurses at this time in the year. Proceeding with the tender process at or before March offers the following significant advantages:

- Nurse agencies can be expected to tender on the most favourable terms when the level of supply in the market for the supply of nurses is at its highest level for the year. This, in turn, offers increased public benefits of the type discussed in our submission dated 30 November 2001 and in the further information we are yet to provide you with in relation to the public benefits of the tender process; and
- Any instability in the market for the supply of nurses as a result of the tender process can be best addressed when the level of supply in the market for the supply of nurses is at its highest level for the year.

You have advised us, by telephone on 14 January 2002, that we cannot reasonably expect a determination on the substantive application for authorisation before May 2002. In the absence of interim authorisation, the tender process will not proceed until after March with the result that the benefits set out above will be lost.

- 2.2 The tender must be finalised at least 6 to 8 weeks prior to the onset of winter, allowing for any instability in the market for the supply of nurses that may result from the tender process, to avoid a winter nursing staff crisis. The demand on the relevant health services increases dramatically in the winter months, with the result that the nursing staff requirements of the Health Services also increases dramatically. The health services are

already facing difficulties in filling permanent nursing staff vacancies. In the winter months, these difficulties will be exacerbated with the result that, if the tender process has not been finalised at least 6 to 8 weeks prior to the onset of Winter, the workload of permanent nursing staff and the reliance on agency nurses can be expected to further increase. (The public detriments associated with this will be discussed in greater detail in the further information we are yet to provide you with on the public benefits of the proposed tender.) You have advised us, by telephone on 14 January 2002, that we cannot reasonably expect a determination on the substantive application for authorisation before May 2002. In the absence of interim authorisation, it will be difficult for the tender process to be finalised in sufficient time to avoid a winter nursing staff crisis.

2.3 The ever-increasing reliance on agency nurses by the health services to satisfy their nursing staff requirements has created a funding crisis which is exacerbated by the passage of time. The relevant public health services are reticent to close beds (ie, reduce the quantity of publicly funded health services on offer) during the financial year in response to budgetary strain and / or cut the range of publicly funded health services offered. However, the current budgetary strain on these health services as a result of increasing reliance on agency nurses and escalating nurse agency fees means that, if the outcomes of the tender process are not known, the health services may have to incorporate in their budget planning for the next financial year some restriction in the quantity of health services (ie, bed closures) and the range of health services below what is currently offered. As already noted, you have advised us that we cannot reasonably expect a determination on the substantive application for authorisation before May 2002. In the absence of interim authorisation, the relevant health services can therefore be expected to have completed their budgetary planning for the financial year July 2002 - June 2003 with the consequences this will have for the quantity and range of health services on offer to the public by these health services.

3 HPV, as a recently established statutory authority which acts on behalf of the Crown in relation to matters of public interest, needs to carefully manage risk. Accordingly, from a risk management perspective, HPV would prefer that the ACCC grant interim authorisation for the purpose of proceeding with the tender rather than provide comfort with respect to engaging in a conditional tender process as initially mooted by you in our meeting of 20 December 2001 and discussed in our correspondence of 9 and 10 January 2002.

### **Changes to the proposed HPV tender**

We attach (to the hard copy version of this letter only) revised copies of the Tender Documents with changes to the Tender Documents since their submission to the Commission on 30 November 2001 marked up. Amendments are made to the Tender Documents to:

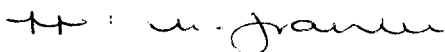
- implement the HPV Board decision to proceed with Option 1; and

- require that tenderers agree to remunerate nurse agency staff at the Award or enterprise bargaining agreement rate and provide that any tender that does not agree to remunerate nurse agency staff on this basis will be a non-conforming tender which HPV, in its discretion, may disregard in evaluating the tenders.

The significance of the latter change for the delivery of public benefits by the proposed tender will be demonstrated in the further information to be provided to you on the public benefits of the proposed tender, as requested on 20 December 2001. We also note that it is our client's current understanding that the Department of Human Services will issue a direction in March under the *Health Services Act* 1988 requiring that public hospitals only engage nurses (including agency nurses) where those nurses are remunerated at the Award or enterprise bargaining agreement rate.

We trust that this letter addresses the issues you have raised in relation to our client's application for interim authorisation. Nonetheless, we are available to discuss any questions you may have about a matter discussed in this letter or to assist you with any further queries you may have in relation to our client's application for interim authorisation or substantive application for authorisation.

Yours sincerely



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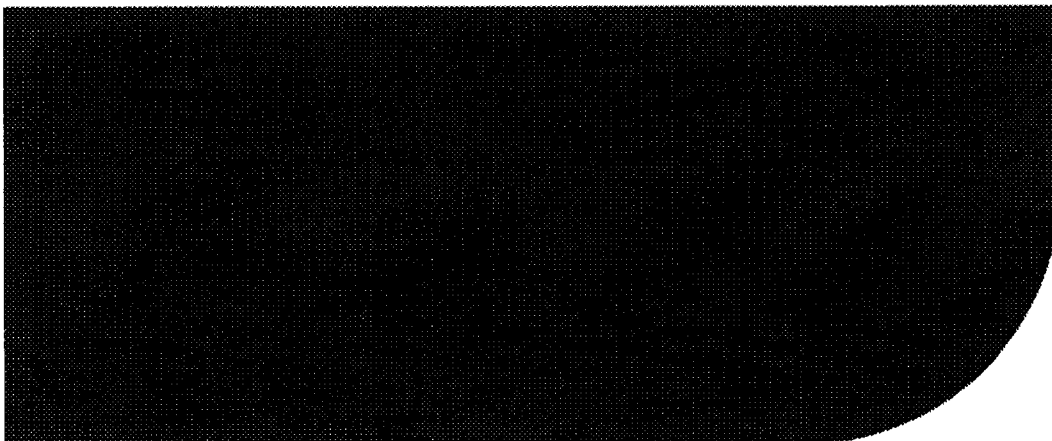
## Health Purchasing Victoria

### Request for Tender

Ref No: HPV 001/2001

### SUPPLY OF TEMPORARY NURSING SERVICES TO MELBOURNE AND GEELONG PUBLIC HEALTH SERVICES AND SISTERS OF CHARITY HEALTH SERVICE

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



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## 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\*~~ and the Sisters of Charity Health Service's agreement referred to in clause 2.42, 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 and Sisters of Charity Health Service 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 [hvp@hvp.org.au](mailto:hvp@hvp.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 Tenderers are required to agree to remunerate nurses providing services on a temporary basis at the Health Services sites at the relevant Industrial Award or Enterprise Bargaining Agreement rate. A tender submission that does not comply with this requirement to pay the relevant Award / EBA rate will be considered to be a non-complying tender in accordance with clause 2.2 of the Tender Conditions. 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 Tender Condition 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 nor 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;
- 3.28.3 telephone number;
- 3.28.4 facsimile number; and
- 3.28.5 e-mail address.

**Declaration by Tenderer**

- 3.29 The tender submission must include a signed declaration in the form contained in Part C of this Request for Tender.

**Execution**

- 3.30 The tender submission must be signed for and on behalf of the tenderer by a director or duly authorised representative of the tenderer having the authority to make the declarations set out in Part C of this Request for Tender and to bind the tenderer. The name, office and authority of the person signing the tender submission on behalf of the tenderer must be clearly stated.

**4 Evaluation of tender****Process of evaluation**

- 4.1 All complying tender submissions will be considered by HPV. The evaluation process is expected to take three weeks from the closing date of the tender.

**Evaluation of tenders**

- 4.2 The criteria that will be used by HPV to evaluate a tender submission will include the following:

- 4.2.1 ability to meet the Health Services operational needs;
- 4.2.2 overall price rates and ultimate cost to the Health Services, including any discounts;
- ~~4.2.3 tenderer's willingness to pay nurses the relevant Industrial Award or Enterprise Bargaining Agreement rate;~~

- 4.2.44.2.3 ability to provide consistent and reliable services;
- 4.2.54.2.4 financial viability;
- 4.2.64.2.5 workforce capabilities and the tenderer's key personnel who will be devoted to providing the services;
- 4.2.74.2.6 past experience and current work;
- 4.2.84.2.7 responsiveness of services;
- 4.2.94.2.8 operational stability;
- 4.2.104.2.9 depth and strength of management;
- 4.2.114.2.10 a commitment to support all reasonable requests made by Health Services personnel;
- 4.2.124.2.11 relevant quality management, risk management, industrial relations and occupational health and safety policies and standards;
- 4.2.134.2.12 references provided by tenderer; and
- 4.2.144.2.13 acceptance of terms and conditions of the Service Agreement.

4.3 The criteria in clause 4.2 are not listed in any particular order of importance.

#### **HPV may request additional information**

4.4 HPV may request a tenderer to submit additional information concerning the tender before any tender is accepted.

#### **HPV may require tenderer to demonstrate**

4.5 HPV may require a tenderer to demonstrate to its satisfaction that the tenderer is able to meet the requirements of this Request for Tender.

#### **Presentation**

4.6 A tenderer may be required to present its tender submission to HPV management.

#### **HPV has absolute discretion**

4.7 HPV has absolute discretion in relation to the evaluation of tenders and the selection of a preferred or successful tenderer and in particular, HPV:

- 4.7.1 is not bound to accept the lowest priced tender;
- 4.7.2 may accept one or more tenders;
- 4.7.3 is not bound to accept any tender;

- 4.7.4 is not bound to enter into an agreement relating to the provision of the services;
  - 4.7.5 may accept a tender which has variations requested by HPV only of that tenderer and subsequent to its submission;
  - 4.7.6 may accept a tender either conditionally or unconditionally;
  - 4.7.7 may refuse to consider a non-conforming tender; and
  - 4.7.8 reserves the right to accept non-conforming tenders.
- 4.8 HPV is not under any obligation to:
- 4.8.1 enter into discussions with tenderers in relation to the rejection of any tender submission; or
  - 4.8.2 give reasons for not accepting any of the tenders.
- 4.9 Tenderer's attention is specifically drawn to Part A clause 3 of this Request for Tender, which states that the appointment of successful tenderer(s) will not occur if HPV does not receive authorisation for this tender process and the appointment of successful tenderer(s) from the ACCC.

## **5 Selection and appointment**

### **Appointment of one or more preferred tenderers**

- 5.1 HPV may select one or more preferred tenderers by notice in writing. That does not mean that HPV has accepted any tender. It simply means that the preferred tenderers are entitled to negotiate with HPV and that in the course of such negotiations the terms of the Services Agreement may change. HPV may request further information from each of the preferred tenderers. HPV may subsequently appoint a preferred tenderer as the successful tenderer or as a member of a panel of suppliers, however, it does not have to do so.

### **Appointment of successful tenderer**

- 5.2 When HPV has selected one or more successful tenderers, it will notify the successful tenderer(s) in writing.

### **No right of recourse**

- 5.3 A tenderer is not entitled, in any jurisdiction, to challenge any decision by HPV, including the following decisions:
- 5.3.1 to appoint one or more preferred tenderers or successful tenderers;
  - 5.3.2 to enter into a contract with one or more preferred tenderers or successful tenderers; or
  - 5.3.3 to cancel a tender at any time.

## **6 Services Agreement**

### **Successful tenderer(s) to enter into Services Agreement**

- 6.1 The successful tenderer(s) will be required to enter into a Services Agreement with HPV as agent for each Health Service substantially in the form set out in Part D of this Request for Tender. The Services Agreement sets out the terms and conditions upon which the services will be provided.

### **Amendments proposed by tenderers**

- 6.2 As indicated in clause 3.2.3 of Part B of this Request for Tender, tenderers are to indicate whether they accept the terms and conditions of the Services Agreement. If tenderers do not accept a term or condition of the Services Agreement, they must clearly mark the Services Agreement with the amendments required and provide an explanation as to why that amendment is required.

### **Services Agreement**

- 6.3 HPV and the Health Services reserve the right to include amendments to the Services Agreement in the course of the tender process or in the negotiation of the Services Agreement.

### **Entry into Services Agreement**

- 6.4 When HPV advises a tenderer that it is the successful tenderer pursuant to clause 5.2, HPV will:
- 6.4.1 attach the Services Agreement to the notification in the form agreed to by the parties for execution by the successful tenderer; or
  - 6.4.2 arrange a time with the successful tenderer for the parties to execute the Services Agreement.

### **Services Agreement to be final**

- 6.5 The Services Agreement executed by HPV and the successful tenderer(s) will exclusively govern the relationship between the parties and each Health Service for the term of the agreement.

### **Failure to execute Services Agreement**

- 6.6 Without prejudice to any of its other rights, if the tenderer fails to execute the Services Agreement within 2 weeks of the date the tenderer receives notification that it was the successful tenderer, HPV may, at its sole discretion, cancel its award of the tender to the tenderer and recover from the tenderer any losses HPV and the Health Services have sustained as a consequence of the tenderer's failure to fulfil its obligations.

## Part C: Tender Submission

### Tender Submission in response to the Request for Tender for Temporary Nursing Services Ref No: HPV 001/2001

To: Health Purchasing Victoria

#### Declaration

Having examined the Request for Tender and being fully satisfied as to the tenderer's abilities and experience in all aspects to satisfy the requirements of the Request for Tender, the tenderer hereby submits this tender to HPV as a binding and irrevocable offer to provide the services being tendered for:

- on the terms and conditions set out in the Tender Conditions; and
- on the basis of the prices quoted and information provided in the tenderer's submission in accordance with the Tender Conditions.

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

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

Signed for and on behalf of the tenderer by a director or duly authorised representative of the tenderer having the authority to make the declarations set out above and to bind the tenderer.

---

Signature

---

Name (please print)

---

Position (please print)

## **Part D: Services Agreement**

**Attachment A1****List of Health Services and their Sites involved in this Tender**

Each Melbourne metropolitan public health service and Barwon Health has agreed\*/been directed by HPV\* to abide by the outcome of this tender process. The Sisters of Charity Health Service has agreed to abide by the outcomes of the process. Those health services and their campuses are:

| <b>Metropolitan Health Service</b> | <b>Sites</b>                         |
|------------------------------------|--------------------------------------|
| Southern Health                    | Monash Medical Centre – Clayton      |
|                                    | Monash Medical Centre – Moorabbin    |
|                                    | Dandenong Hospital                   |
|                                    | Kingston Centre                      |
|                                    | Hampton Hospital                     |
|                                    | Berwick Hospital (from 2004)         |
| Bayside Health                     | The Alfred Hospital                  |
|                                    | Caulfield General Medical Centre     |
|                                    | Sandringham Hospital                 |
| Royal Vic Eye & Ear Hospital       | East Melbourne                       |
|                                    | RVEEH at Broadmeadows Health Service |
|                                    | RVEEH at Maroondah Hospital          |
| Peter MacCallum Cancer Institute   | East Melbourne campus                |
|                                    | Box Hill campus                      |
|                                    | Moorabbin campus                     |

|                                      |   |
|--------------------------------------|---|
| Western Health                       | Western Hospital  |
|                                      | Sunshine Hospital   |
|                                      | Williamstown Hospital   |
|                                      | Reg Geary Nursing Home  |
|                                      | Hazeldean Nursing Home  |
|                                      | Drug & Alcohol Services   |
| Dental Health Services<br>Victoria   | Royal Dental Hospital of Melbourne  |
| Sisters of Charity Health<br>Service | St. Vincent's Hospital Melbourne  |
|                                      | St Georges Health Service   |
|                                      | Caritas Christi Hospice<br><br>Fitzroy<br><br>Kew   |
|                                      | Prague House  |
| Northern Health                      | The Northern Hospital   |
|                                      | Broadmeadows Health Service   |
|                                      | Bundoora Extended Care Centre   |
| Melbourne Health                     | The Royal Melbourne Hospital  |
|                                      | Melbourne Extended Care and Rehabilitation<br>Services at<br><br>Cyril Jewel House (East Keilor),<br><br>Boyne Russell House (Brunswick)<br><br>Parkville Hostel on MECCRS site |



|   |   |
|---|---|
|   | Melbourne Mental Health   |
|   | Melbourne Health Dialysis Centers at<br><br>RMH<br><br>Sunshine<br><br>Broadmeadows |
| Austin & Repatriation<br>Medical Centre | Austin Campus   |
|   | Repatriation Campus   |
|   | Royal Talbot Campus   |
|   | Satellite Dialysis Services   |
|   | Community Psychiatry Centres  |
| Women's and Children's<br>Health        | Royal Women's Hospital  |
|   | Royal Children's Hospital   |
|   | Adolescent Forensic Health Service  |
|   | Travancore Mental Health Service  |
|   | Young Peoples Health Service  |
| Peninsula Health                        | Frankston Hospital  |
|   | Rosebud Hospital  |
|   | Mt Eliza Geriatric Hospital   |
| Barwon Health                           | Geelong Hospital  |
|   | Grace MacKellar Centre  |
| Eastern Health                          | Box Hill Hospital   |
|   | Maroondah Hospital  |
|   | Peter James Centre  |

|  |                             |
|--|-----------------------------|
|  | Yarra Ranges Health Service |
|  | Angliss Health Service      |

**Attachment A2****List of Clinical Specialities for which Temporary Nursing Services may be required, by Site.**

| Clinical Speciality                |
|------------------------------------|
| Acute Medical or Surgical Nursing  |
| Anesthetics                        |
| Aphaeresis                         |
| Cardiac Catheterisation Laboratory |
| Cardiothoracic Nursing             |
| Chemotherapy                       |
| Coronary Care                      |
| Day Procedures                     |
| Diagnostic Imaging                 |
| Dialysis                           |
| Drug & Alcohol Treatment           |
| Emergency Nursing                  |
| Endoscopy                          |
| Hematology                         |
| Intensive Care                     |
| Midwifery                          |
| Neonatal Intensive Care            |
| Nephrology                         |
| Neurosciences                      |
| Neurosurgical Nursing              |
| Oncology                           |
| Operating Room Nursing             |
| Paediatric Nursing                 |
| Psychiatric Nursing                |
| Recovery Nursing                   |
| Transplant Nursing                 |

**Attachment A3****Temporary Nursing Services – Staff Categories Required**

| Division | Grade or Level            | Year | Award Classification |
|----------|---------------------------|------|----------------------|
| RN Div 1 | 1                         |      | ZW1                  |
|          | 2                         | 1    | ZW2                  |
|          | 2                         | 2    | ZW3                  |
|          | 2                         | 3    | ZW4                  |
|          | 2                         | 4    | ZW5                  |
|          | 2                         | 5    | ZW6                  |
|          | 2                         | 6    | ZW7                  |
|          | 2                         | 7    | ZW10                 |
|          | 2                         | 8    | ZW11                 |
|          | Clinical Nurse Specialist |      | ZW8                  |
|          | 3A                        | 1    | ZW9                  |
|          | 3A                        | 2    | ZX1                  |
|          | 3B                        | 1    | ZX2                  |
|          | 4A                        | 1    | ZX5                  |
|          | 4A                        | 2    | ZX6                  |
|          | 4B                        | 1    | ZX7                  |
| RN Div 2 | 1                         |      | IB21                 |

|           |                          |   |      |
|-----------|--------------------------|---|------|
|           | 2                        |   | IB22 |
|           | 3                        |   | IB23 |
|           | 4                        |   | IB24 |
|           | 5                        |   | IB25 |
|           | 6                        |   | IB26 |
|           | 7                        |   | IB27 |
| RPN Div 3 | 1                        |   | NP11 |
|           | 2                        | 1 | NP21 |
|           | 2                        | 2 | NP22 |
|           | 2                        | 3 | NP23 |
|           | 2                        | 4 | NP24 |
|           | 2                        | 5 | NP25 |
|           | 2                        | 6 | NP26 |
|           | 2                        | 7 | NP27 |
|           | 2                        | 8 | NP28 |
|           | Psych Clin<br>Specialist |   | PC11 |
|           | 3A                       | 1 | NP31 |
|           | 3A                       | 2 | NP32 |
|           | 3A                       | 3 | NP33 |
|           | 3A                       | 4 | NP34 |