

Our ref: 02206594

9 April 2002

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A/g General Manager
Adjudication Branch
Australian Competition & Consumer Commission
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By mail and by fax (02) 6243 1211

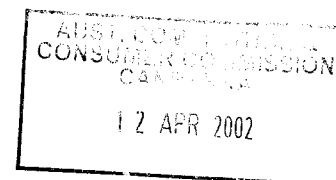
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cc:

Mr Gavin Jones
Contact Officer
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
Dickson ACT 2602
By mail and by fax (02) 6243 1211



Dear Mr Grimwade

Application for Authorisation Nos A90811 & A90812 lodged by Health Purchasing Victoria

We are writing on behalf of our client, Health Purchasing Victoria ('HPV'), to advise you of changes to the proposed tender for nurse agency services, the subject of our client's application for authorisation Nos A90811 and A90812, in response to the Department of Human Services ('DHS') direction of 1 March 2002 to address the issue of nurse agency utilisation.

As you will no doubt be aware, the Secretary of DHS issued a direction under section 42 of the Health Services Act 1988 (Vic) on 1 March 2002 to address the issue of nurse agency utilisation by Victorian public hospitals and metropolitan health services. The direction regulates the maximum price which can be paid for agency nursing services and the conditions by which agency nursing services may be utilised. Of relevance to the current matter, the direction requires that all public hospitals, metropolitan health services and multi-purpose services identified in Schedules 1, 2 and 3 of the Health Services Act 1988 (Vic) must

Please notify us if this communication has been sent to you by mistake. If it has been, any privilege between solicitor and client is not waived or lost and you are not entitled to use it in any way.

engage agency nursing services, from the commencement of the first nursing shift on Thursday 4 April 2002, only in accordance with the following conditions:

2. Replacement Grade

Where an agency nurse is required to perform services that would otherwise be performed by a permanently employed nurse, the replacement nurse must be engaged and paid at the same grade as the permanently employed nurse.

4. Maximum Price

The amount that any Victorian public hospital pays to any employment agency for the services of a temporary nurse must not exceed:

- 80% above the basic award rate for the replacement grade nurse; plus
- 15\$ above the allowances provision included in the award.

The Request for Tender and the Services Agreement (together, 'the Tender Documents'), as lodged with the application for authorisation on 30 November 2001 and subsequently amended on 16 January 2002, have now been amended so that the Tender Documents are consistent with the conditions of engagement of agency nursing services set out in the DHS direction. These amendments involved changes to the provisions requiring a conforming tender to comply with conditions regarding the remuneration of agency nurses and the fees payable for the provision of nurse agency services. We attach a copy of the amended Tender Documents (to the mailed version of this letter only) with the changes to the Tender Documents the subject of this letter marked up.

We are available to discuss any questions you may have regarding either the amendments to the Tender Documents referred to in this letter or in relation to our client's application for authorisation generally.

Yours sincerely



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Simon Uthmeyer
Partner

Encl

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16 January 2001



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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 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 and the Sisters of Charity Health Service's agreement referred to in clause 2.2, 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 SantDennis O'Keefe
Acting Chief Executive Officer
Health Purchasing Victoria
260 Kooyong Rd
Caulfield, Vic 3162
Facsimile number: 03 9276 6781
Email hpv@hpv.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 these requirements set out in clauses 3.3.1 and 3.3.2 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.~~

3.3.1 A temporary nurse supplied by the tenderer to perform nursing services that would otherwise be performed by a permanently employed nurse must be engaged and paid at the same grade as the permanently employed nurse.

3.3.2 The maximum price payable to the tenderer for the supply of a temporary nurse must not exceed:

- 80% above the basic Award / EBA rate for the replacement grade nurse; plus
- 15% above the allowances provision included in the Award / EBA for the replacement grade nurse.

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 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 ability to provide consistent and reliable services;
 - 4.2.4 financial viability;
 - 4.2.5 workforce capabilities and the tenderer's key personnel who will be devoted to providing the services;
 - 4.2.6 past experience and current work;
 - 4.2.7 responsiveness of services;
 - 4.2.8 operational stability;
 - 4.2.9 depth and strength of management;
 - 4.2.10 a commitment to support all reasonable requests made by Health Services personnel;
 - 4.2.11 relevant quality management, risk management, industrial relations and occupational health and safety policies and standards;
 - 4.2.12 references provided by tenderer; and
 - 4.2.13 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.