

Department of Resources, Energy and Tourism

Energy and Environment Division

Request for Tender

Australian Energy Market Operator – Engagement of Executive Recruitment Firm

Any questions regarding this RFT should be addressed to:

MOWG@industry.gov.au

Lodgement of tenders

Closing Time: 3.00pm, local time in Canberra on 23 February 2008

Tenders must be lodged electronically using AusTender

Tenderers may wish to refer to *Selling to the Australian Government: A guide for business*, available from

http://www.finance.gov.au/procurement/selling_aust_govt.html

Request for Tender

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General Information

1. Background to this RFT

The Council of Australian Governments (COAG), at its 13 April 2007 meeting, agreed to the establishment of a single industry funded national energy market operator, for both electricity and gas to further improve energy market governance.

MCE Ministers met on 13 December 2007 and agreed to a detailed implementation plan for the establishment of a national single energy market operator, to be called the Australian Energy Market Operator (AEMO). The AEMO will encompass the activities of the National Energy Market Management Company (NEMMCO); the Victorian Energy Networks Corporation (VENCorp); the Retail Energy Market Company in South Australia; the Gas Market Company and the Gas Retail Market Operator in Queensland. The AEMO will also have responsibilities for the National Transmission Planner for electricity, and for gas, a Short-Term Trading Market (yet to be agreed by Ministers), a Bulletin Board and a gas market statement of opportunities. Ministers noted the value of the appointment of the AEMO board by the middle of 2008 to play a key role in actively facilitating the transition.

The MCE has set up an Implementation Steering Committee (ISC) to oversight the establishment of AEMO to ensure a smooth transition from the existing institutional arrangements. A Selection Panel, comprising of an independent *ex officio* chair, two MCE nominated representatives and two industry nominated representatives, will be established with the specific task of selecting the non-executive directors of AEMO. The Department of Resources, Energy and Tourism (DRET), on behalf of the ISC, will engage the successful applicant to this tender process.

Accordingly, the Department invites firms to submit a tender for the provision of executive search services to identify suitably qualified persons to fill the Chair, non-executive director and Chief Executive Officer (CEO) positions on AEMO.

More detailed information can be found below and in the attached documents outlined in Schedule 1 of this Request for Tender.

2. Scope of requirement

- (a) The Ministerial Council on Energy (MCE) has agreed that the Australian Energy Market Operator (AEMO) will have a Board of Directors comprising of a Chair, eight other non-executive directors and a CEO; for the 10 member AEMO Board. The non-executive directors and CEO will be selected based on the skills matrix (at Attachment A referred to in Schedule 1). The successful tenderer would be required to find suitable candidates to fill the identified positions and to provide other services to support the activities of the 'Selection Panel'.
- (b) The timeframe for delivery of the initial services is approximately March to September 2008. If a person appointed to the AEMO Board leaves or resigns from his/her position, the successful tenderer may be re-engaged by the Commonwealth at any time until July 2009 for the purposes of assisting the Selection Panel in filling the vacant position.
- (c) The Department's requirements, including timeframes, are set out in more detail in Schedule 1.
- (d) Any contract entered into as a result of this RFT will be based on the Draft Form of Contract. However, the Department may vary the terms and conditions (see clause 26(a)).

3. About this document

- (a) This RFT is made up of:
 - (i) the clauses, which set out the conditions applying to the RFT process;
 - (ii) Schedule 1, which sets out the Statement of Requirement; and
 - (iii) the Attachments, which set out the information tenderers need to include in their tenders.
- (b) A checklist is provided in Attachment 1 to assist tenderers in preparing and submitting their tenders.
- (c) The dictionary in clause 28 provides definitions of words and phrases used in this RFT.
- (d) Where this RFT provides that the Department 'may' do a thing, it may do so in its absolute discretion.

4. About AusTender

- (a) AusTender is the online tendering system for Australian Government agencies. AusTender allows tenderers to download RFT documentation and upload tender responses. Tenderers must first register with AusTender at <https://www.tenders.gov.au>.
- (b) Access to and use of AusTender is subject to terms and conditions. Tenderers must agree to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender.
- (c) It is the tenderer's responsibility to ensure that its infrastructure including operating system and browser revision levels meets the minimum standards as defined on AusTender. Neither the Department nor the Commonwealth take any responsibility for any problems arising from a tenderer's infrastructure or internet connectivity.
- (d) By using AusTender, tenderers acknowledge that, although the Commonwealth has implemented the security measures described on AusTender, the Commonwealth does not warrant that unauthorised access to information and data transmitted via the internet will not occur.
- (e) Tenderers must inform themselves concerning all security measures and other aspects of the AusTender technical environment. Tenderers must make their own assessment of the AusTender system before using it for any matter related to this RFT and no responsibility will be accepted by the Department arising in respect of any use or attempted use by any person of AusTender.
- (f) All queries and requests for technical or operational support should be directed to:

AusTender Help Desk
Telephone: 1300 651 698
Email: tenders@finance.gov.au

The AusTender Help Desk is available between 9am and 5pm, Monday to Friday (excluding ACT and national public holidays).

5. Further information about this RFT

- (a) Tenderers should direct any questions arising during the preparation of a tender or requests for clarification in writing to MOWG@industry.gov.au

- (b) The Department may refuse to answer any question received less than five business days before the Closing Time.
- (c) Where appropriate, the Department will circulate questions and answers to all other tenderers without disclosing the source of the questions or revealing the substance of a proposed tender.
- (d) If a tenderer finds any discrepancy, error or omission in this RFT, it should notify the Department in writing before the Closing Time.

6. Changes to this RFT

- (a) If the Department amends this RFT (including by adding to, altering, deleting or excluding the Department's technical requirements, changing the structure and timing of the RFT process or varying or extending any time or date in this RFT), it will issue an addendum.
- (b) Tenderers must submit their tenders in accordance with this RFT as amended by any addenda.
- (c) All conditions of this RFT will apply to addenda unless amended in the addenda.
- (d) The Department will make reasonable efforts to inform tenderers of addenda in accordance with this clause 6.
- (e) Tenderers may be informed by posting addenda on the AusTender page for this RFT.
- (f) Tenderers who have registered and downloaded the RFT documentation will be notified by AusTender via email if an addendum is issued. It is in the interests of tenderers to ensure they have correctly recorded their contact details before downloading the RFT documentation. If tenderers have not recorded their details correctly, they should amend their details and download the RFT documentation again. If a tenderer has obtained the RFT documentation other than from AusTender, it should visit AusTender, register as a user and download the RFT documentation.
- (g) Tenderers are required to log in to AusTender and collect addenda as notified.
- (h) The Department accepts no responsibility if a tenderer fails to become aware of any addendum which would have been apparent from a visit to the AusTender page for this RFT.

What tenderers need to do

7. Tenderer behaviour

- (a) Tenderers must not, and must ensure that their officers, employees, agents and advisors do not, in relation to the preparation, lodgement or assessment of tenders:
 - (i) make false or misleading claims or statements;
 - (ii) improperly obtain confidential information;
 - (iii) receive improper assistance;
 - (iv) engage in collusive tendering, anti-competitive conduct or other similar conduct with any other tenderer or other person; or
 - (v) attempt to improperly influence an officer of the Department or approach any Commonwealth officer other than in the manner set out in clause 5(a).
- (b) Note that the Department may exclude a tender from consideration if the tenderer fails to comply with these requirements (clause 16(c)(iii)).

8. Industry briefing

Unless otherwise notified by an addendum (see clause 6), there are no industry briefing sessions for this RFT.

9. Seek own advice

This RFT is not business, investment, legal or tax advice. Tenderers should seek their own independent professional advice in respect of all matters in connection with this RFT.

10. Bear own costs

- (a) All expenses and costs incurred by a tenderer in connection with this RFT, including preparing and lodging a tender, providing the Department with further information, giving presentations, attending interviews and participating in any subsequent negotiations, are the sole responsibility of the tenderer.
- (b) The Department is not liable for any costs or other compensation in relation to the consideration of this RFT, lodgement of any tender or participation in the RFT process by any tenderers where the Department takes any action permitted under this RFT, including any exercise of the Department's rights under clause 26.
- (c) The Department is not liable for any loss, damage, cost or expense incurred by tenderers or any other person if, for any reason, a tender or any other material or communication relevant to this RFT is not received on time, is corrupted or altered or otherwise not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

11. Satisfy the Conditions for Participation

- (a) To submit a tender, the tenderer must satisfy the Conditions for Participation (ie mandatory requirements). If a tenderer does not satisfy the Conditions for Participation, the tender will be excluded from consideration (see clause 16).
- (b) The Conditions for Participation are set out in the following table:

No.	Condition for Participation
1.	The tenderer and any subcontractors proposed in the tender must not be named as not complying with the <i>Equal Employment Opportunity for Women in the Workplace Act 1999</i> (Cth)
2.	The tenderer and any subcontractors proposed in the tender are not insolvent, bankrupt, in liquidation, or under administration or receivership
3.	The tenderer and any subcontractors proposed in the tender must have experience in recruiting executive and non-executive directors

12. What the tender needs to include

12.1 Satisfy the Minimum Content and Format Requirements

- (a) Tenders must satisfy the Minimum Content and Format Requirements (ie mandatory requirements). Subject to clause 18.1(c), if a tender does not satisfy the Minimum Content and Format Requirements, it will be excluded from consideration (see clause 16).
- (b) The Minimum Content and Format Requirements are set out in the following table:

No.	Minimum Content and Format Requirement
1.	The tender must include a substantially completed tender response form in the form of Attachment 2

12.2 Use the Attachments

- (a) A tender should include the following documents:
 - (i) a completed checklist in the form of Attachment 1;
 - (ii) a completed tenderer response form in the form of Attachment 2;
 - (iii) documents including the information required by each other Attachment to this RFT.
- (b) If the tender does not include a document addressing the information on insurance as required by Attachment 7, the tenderer is taken to confirm that it and any subcontractors can meet the proposed insurance requirements set out in Attachment 7.
- (c) If the tender does not include a document addressing the information on compliance as required by Attachment 8, the tenderer is taken to agree with all provisions of the Draft Form of Contract.
- (d) If the tender does not include a document addressing the information on confidentiality as required by Attachment 9, the tenderer is taken to agree that none of the information in its tender is confidential.

12.3 Alternative tenders

A tenderer must submit a tender that complies with the requirements of this RFT. However, the tenderer may also submit an alternative tender provided that a compliant tender is also submitted. If a tenderer submits an alternative tender, the advantages, disadvantages, limitations and capabilities of the alternative tender should be clearly stated.

12.4 Consortium tenders

A consortium may submit a tender on the basis that one legal entity will take full responsibility. The tender should provide full details of that legal entity, the consortium members and any proposed subcontractors.

13. When to lodge the tender

- (a) Tenders must be lodged before the Closing Time.
- (b) Note that any attempt to lodge a tender electronically after the Closing Time will not be permitted by AusTender.
- (c) The judgement of the Department as to the time a tender has been lodged will be final. In particular:
 - (i) the time displayed on AusTender is deemed to be the correct time and will be the means by which the Department will determine whether tenders have been lodged by the Closing Time; and
 - (ii) where electronic lodgement of a tender started before the Closing Time but finished after the Closing Time, and upload of the tender file/s has completed successfully, as confirmed by AusTender system logs, the tender will not be deemed to be a late tender (however, where a tender lodgement consists of multiple uploads, this exception only applies to the final upload).
- (d) Any tender lodged after the Closing Time or received at any location (including any Department location) other than through AusTender will be deemed to be a late tender. The Department will not accept a late tender, unless the tender is late solely because of the Department's own mishandling.
- (e) The Closing Time can only be extended by the Department issuing an addendum in accordance with clause 6.

14. How to lodge the tender

14.1 Electronic lodgement

- (a) Tenders must be lodged electronically using AusTender.
- (b) Tenders lodged by other means, including by facsimile, email or by hand, will not be considered.
- (c) Tenderers acknowledge that lodgement of their tenders on time and in accordance with this RFT is entirely their responsibility. Tenderers must allow sufficient time for tender lodgement, including time that may be required for any problem analysis and resolution before the Closing Time.
- (d) Tenderers should be aware that holding the "Lodge a Response" page in the web browser will not hold the electronic tender box open beyond the Closing Time. An error message will be issued if the lodgement process is attempted after the Closing Time.
- (e) If tenderers have any problem in accessing AusTender or uploading a tender they should contact the AusTender Help Desk (see clause 4) before the Closing Time. Failure to do so may exclude a tender from consideration.
- (f) Tenders lodged through AusTender will be deemed to be authorised by the tenderer.

14.2 Before lodging

- (a) Before submitting a tender electronically, the tenderer should:
 - (i) ensure its technology platform meets the minimum requirements identified on AusTender;
 - (ii) refer to AusTender's guidance, if required, on uploading tenders;
 - (iii) take all steps to ensure that the tender is free from anything that might reasonably affect useability or the security or operations of AusTender and/or the Department's computing environment;
 - (iv) ensure that the tender does not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by the Department; and
 - (v) ensure that the tender complies with all file type, format, naming conventions, size limitations or other requirements specified in this clause 14.
- (b) In submitting a tender electronically, the tenderer warrants that it has taken reasonable steps to ensure that tender response files are free of viruses, worms or other disabling features which may affect AusTender and/or the Department's computing environment. Tenders found to contain viruses, worms or other disabling features will be excluded from consideration.

14.3 File format, name and size

- (a) Tenderers should lodge their tenders in accordance with the requirements for file format/s, naming conventions and file sizes set out in this clause 14 or otherwise advised by the Department or required by AusTender. Failure to comply with any or all of these requirements may result in the tender not uploading successfully or may eliminate the bid from consideration.
- (b) Where there is any inconsistency between the tender lodgement procedures set out on AusTender and those set out in this RFT, this RFT will prevail.
- (c) **File format:** Tenders should be lodged in Microsoft Word, Microsoft Excel or PDF format.
- (d) **File names:** The tender file name/s should:
 - (i) incorporate the tenderer's name;
 - (ii) reflect the various parts of the bid they represent, where the tender comprises multiple files;
 - (iii) not include spaces, non-alpha numeric characters and symbols; and
 - (iv) not exceed 20 characters.
- (e) **Multiple uploads permitted:** A tender can consist of multiple uploads. AusTender will accept up to a maximum of five files in any one upload of a tender. If a tender consists of multiple uploads, due to the number of files or file size, tenderers should ensure that transmission of all files is completed before the Closing Time.
- (f) **File size:** Tender files:
 - (i) cannot exceed a combined file size of 5 megabytes per upload;
 - (ii) should be uploaded from a high level directory on a tenderer's desktop, so as not to impede the upload process; and

- (iii) should be zipped (compressed) together for transmission to AusTender.
- (g) Each upload should not exceed the combined file size limit of 5 megabytes. If an upload would otherwise exceed 5 megabytes, the tenderer should either:
 - (i) transmit the tender files as a compressed (zip) file not exceeding 5 megabytes; and/or
 - (ii) lodge the tender in multiple uploads ensuring that each upload does not exceed 5 megabytes and clearly identifying each upload as part of the tender.
- (h) **Signed pages:** Scanned images of signed and/or initialled pages within the tender, including Attachment 2, are permitted. In the event that clarification is required, the Department may require a tenderer to courier or security post the originals of the signature and/or initialled pages to the Department.
- (i) **Proof of lodgement:** When a tender lodgement has successfully completed, an official receipt is provided on screen. The on-screen receipt will record the time and date the tender was received by AusTender and will be conclusive evidence of successful lodgement of a tender. Tenderers should save and print this receipt as proof of lodgement. A separate email confirming receipt of the tender will also be automatically dispatched to the email address of the registered user whose details were recorded at login. Failure to receive a receipt means that lodgement has not completed successfully.

15. After lodging the tender

15.1 Correcting tenders or providing additional information

If, after lodgement, a tenderer becomes aware of any discrepancy, error or omission in its tender, it may submit a correction or provide additional information. The correction or additional information must be provided by the Closing Time by lodging it electronically using AusTender.

15.2 Tender validity period

In lodging a tender, the tenderer acknowledges that its tender remains valid and open for acceptance by the Department for a period of six months from the Closing Time.

15.3 Ownership of tender documents

- (a) All tender documents become the property of the Department on lodgement. However, subject to clause 15.3(b), ownership of the intellectual property in the tender documents will remain unchanged.
- (b) The Department may use and copy the tender documents as it requires for the purposes of the RFT process, evaluating tenders, negotiating and preparing an agreement, audit requirements and complying with governmental and parliamentary reporting requirements including requests for information by Parliament or Parliamentary Committees.

15.4 Publicity

Tenderers must not furnish any information, make any statement or issue any document or other written or printed material concerning the acceptance of any tender in response to this RFT for publication in any media without the prior written approval of the Department.

Department's evaluation process

16. Step 1 – Screening

- (a) The Department will screen all tenders received for completeness, unintentional errors of form, clarity and compliance with this RFT.
- (b) The Department will exclude a tender from consideration if:
 - (i) subject to clause 13, the tender is lodged after the Closing Time;
 - (ii) the tenderer does not satisfy the Conditions for Participation;
 - (iii) subject to clause 18.1(c), the tender does not satisfy the Minimum Content and Format Requirements;
 - (iv) the tender includes electronic files that cannot be read or decrypted;
 - (v) the tender is lodged electronically and is found to contain a virus, worm or other disabling feature; or
 - (vi) the Department believes the tender potentially contains any virus, malicious code or anything else that might compromise the integrity or security of AusTender and/or the Department's computing environment.
- (c) The Department may at any time exclude a tender from consideration if:
 - (i) the tender is incomplete;
 - (ii) prices are not clearly and legibly stated;
 - (iii) the tenderer or tender does not comply with this RFT;
 - (iv) the tenderer is not fully capable of undertaking a contract in the form of the Draft Form of Contract;
 - (v) the tender is clearly uncompetitive when compared with the other tenders received;
 - (vi) the tender is rated unsuitable or unsatisfactory against one or more of the Evaluation Criteria; or
 - (vii) the tenderer does not substantially comply with the Draft Form of Contract.

17. Step 2 – Evaluating remaining tenders

- (a) Tenders will be assessed on the basis of value for money through the application of the Evaluation Criteria. Value for money is a comprehensive assessment that takes into account both price and the value represented by the assessment of capability and capacity, in the context of the risk profile presented by each tender.

- (b) The Evaluation Criteria are set out in the following table:

No.	Evaluation Criteria
1.	Capability The capability of the tenderer to provide the goods or services in accordance with the Statement of Requirement. For example: • tenderer's skills, experience and past performance in recruiting executive and non-executive directors • skills, experience and past performance of the tenderer's personnel in recruiting executive and non-executive directors
2.	Capacity The capacity of the tenderer to provide the goods or services in accordance with the Statement of Requirement. For example: • availability of tenderer's personnel and time allocation to the task • ability to meet project deadlines • capacity to provide the goods or services over the required period
3.	Price All costs, fees, allowances and charges associated with the implementation and completion of contract obligations
4.	Risk Any risks inherent in the tender. For example: • any actual or perceived conflict of interest • level of compliance with this RFT (including the Draft Form of Contract) • adequacy of insurance proposed by the tenderer

- (c) Tenders will be evaluated using the following approach:
- Assessment of the technical worth of tenders using Evaluation Criteria 1 and 2 (Capability and Capacity);
 - Financial assessment of tendered prices; and
 - Assessment of best value for money by a comparison of technical worth as against tendered prices and risks associated with tenders, to determine best value for money.
- (d) The Department is not obliged to accept the lowest priced tender. Value for money involves assessing various factors over the entire procurement cycle.

18. Additional steps

18.1 Clarification, additional information and corrections

- (a) After the Closing Time, the Department may engage in any discussions with, or seek clarification on any matter from, any tenderer.

- (b) The Department may require a tenderer to submit additional information to allow further consideration of its tender.
- (c) If the Department considers that there is an unintentional error of form in a tender, the Department may give the tenderer an opportunity to correct the error. If the Department gives a tenderer an opportunity to correct an unintentional error of form, it will give the same opportunity to all tenderers in the same position.

18.2 Independent inquiries

- (a) The Department may make independent enquiries about any of the matters that may be relevant to the evaluation of any tender.
- (b) The Department reserves the right to contact tenderers' referees, or any other person, directly and without notifying tenderers.

18.3 Short listing

The Department may short list tenders at any time.

18.4 Presentations, interviews, site visits and samples

- (a) Some or all tenderers may be required to give a presentation.
- (b) Some or all tenderers may be required to attend an interview.
- (c) The Department may undertake a visit to some or all tenderers' sites as part of its evaluation process.
- (d) Some or all tenderers may be required to provide samples for inspection or testing by the Department.
- (e) The requirements, if any, for tenderer presentations, interviews, site visits or samples will be notified to the relevant tenderers by the Department after the Closing Time.

18.5 Security, probity and financial checks

- (a) The Department may conduct such security, probity and financial (including credit) checks as it deems necessary on tenderers, their partners, associates or related entities (including consortium members) or their officers or employees, for the purpose of evaluating tenders or at any other stage of the RFT process. These checks may require individuals to sign forms verifying information relating to that individual and authorising the provision of confidential or personal information.
- (b) Tenderers must provide, at their own cost, all reasonable assistance required by the Department in undertaking and conducting the security, probity and financial checks.
- (c) The Department reserves the right to request financial statements and other information relevant to determining the financial viability of tenderers, their partners, associates, or related entities including consortium members.

19. Negotiations with tenderers

- (a) After the Closing Time, the Department may enter into negotiations with any one or more tenderers.
- (b) Without limiting clause 19(a), during the negotiations the Department may engage in detailed discussions with the goal of maximising the benefits to the Department, as measured using the Evaluation Criteria.
- (c) Without limiting its other rights under this RFT, if in the Department's view during final negotiations a preferred tenderer retracts, or attempts to retract, agreements under which

material business, financial, technical and legal issues were resolved during negotiations, the Department may reject the preferred tenderer's tender, discontinue negotiations with that tenderer, re-enter negotiations with other tenderers (including or excluding the preferred tenderer), and exercise any other right the Department has under this RFT, at law or otherwise.

20. Execution of formal agreement

- (a) Nothing in this RFT, or the submission of any tender in response to it, or any conduct or statement whether before or after the issue of this RFT constitutes a contract, express or implied, with the Department. The Department intends that no contract will be formed unless and until the Department signs a formal contract with a preferred tenderer.
- (b) The Department will require the execution of a formal contract and a preferred tenderer must, within seven days after being required in writing by the Department to do so, execute such a contract based on the Draft Form of Contract.
- (c) If the circumstances of the RFT process give rise to a pre-award contract, contrary to clause 20(a), the Department's liability for breaching the pre-award contract is limited to expenditure reasonably incurred by the relevant tenderer in tendering for this project, and does not include liability for any loss of profits or opportunity, or any other losses of the tenderer.

21. Advice to unsuccessful tenderers and opportunity for debriefing

After the end of the RFT process, the Department will notify each unsuccessful tenderer that its tender has not been accepted, and will offer the opportunity for a debriefing (at the time and in the manner the Department reasonably determines).

General conditions

22. Ownership of RFT documents

- (a) All documents comprising this RFT remain the property of the Department. Each tenderer is permitted to use them for the purpose only of compiling a tender and, where relevant, negotiating the terms of an agreement with the Department.
- (b) All copyright and other intellectual property rights contained in this RFT are and remain vested in the Department and any third party who has given the Department permission to incorporate them in this RFT.

23. Return or destruction of Department's information

The Department may, at any stage, require all written or electronically stored information (whether confidential or otherwise and without regard to the type of media on which such information was provided to any tenderer) provided to tenderers (and all copies of such information made by tenderers) to be:

- (a) returned to the Department – in which case the tenderer must promptly return all such information to the address identified by the Department; or
- (b) destroyed by the tenderer – in which case the tenderer must promptly destroy all such information and provide the Department with written certification that the information has been destroyed.

24. Important notices about this RFT

- (a) Tenders are made on the basis that each tenderer acknowledges that:
 - (i) it has examined the RFT, any documents referred to in it, and any other information made available in writing by the Department to tenderers for the purpose of participating in the RFT process;
 - (ii) this RFT is designed to summarise information concerning the Department's requirement only and is not necessarily a comprehensive description of it;
 - (iii) to the maximum extent permitted by law, neither the Department, nor its employees, advisers or agents will in any way be liable to any person or body for any cost, expense, loss, claim or damage of any nature arising in any way out of or in connection with the statements, opinions, projections, forecasts or other representations, actual or implied, contained in or omitted from this RFT or by reason of any reliance on them by any person or body;
 - (iv) it has sought and examined all necessary information which is obtainable by making reasonable enquiries relevant to the Department's requirement including the risks and other circumstances which may affect a tender;
 - (v) in lodging its tender, it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the Department other than as expressly contained in this RFT or an addendum to this RFT issued by the Department;
 - (vi) it did not use the improper assistance of Departmental employees;
 - (vii) it has satisfied itself as to the correctness and sufficiency of its tender; and

- (viii) it will comply with the terms and conditions set out in this RFT.
- (b) The Department believes the contents of this RFT to be accurate at the date of this RFT. The accuracy of any statements, opinions, projections, forecasts, representations or other information (**Statements**) contained in this RFT may change. Where any Statement relates to future matters, no steps have been taken to verify that the Statement is based on reasonable grounds, and, to the maximum extent permitted by law, no representation or warranty, expressed or implied, is made by the Department, or any of its officers, employees, advisers or agents that the Statement is accurate.

25. Disclosure of tender information

25.1 Freedom of information

Tenderers should be aware that the Department is subject to the operation of the *Freedom of Information Act 1982* (Cth), which allows public access to Government documents. If this is of concern, the Act provides avenues for submissions to be made that particular information about the business, commercial or financial affairs of an entity or undertaking should not be disclosed.

25.2 Disclosure of contracts

The Department is subject to a number of specific requirements, which support internal and external scrutiny of its tendering and contracting processes. These include:

- (a) the requirement to publish details of its agreements, Commonwealth contracts and standing offers with an estimated liability of \$10,000 or more in AusTender;
- (b) the requirement to report a list of contracts valued at \$100,000 or more and to identify confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts; and
- (c) the requirement to publish information about certain procurements in Annual Reports.

25.3 Confidentiality

- (a) Tenderers may specify information contained in their tender that they consider to be confidential information, and subject to this clause 25.3, the Department will treat such information as confidential, and will only use that information for the purposes of the RFT process.
- (b) The Department may, without the need to notify any tenderer, disclose or allow the disclosure of, at any time, any information provided by tenderers, including their tenders:
 - (i) to the Department's advisers or employees solely in order to evaluate or otherwise assess the tender;
 - (ii) to the Department's internal management personnel for purposes related to the RFT process;
 - (iii) to the responsible Minister;
 - (iv) in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (v) within the Department, or with another department or agency, where this serves the Commonwealth's legitimate interests;
 - (vi) where information is authorised or required by law to be disclosed; or
 - (vii) where the information is in the public domain otherwise than by a Commonwealth disclosure.

- (c) Following contract award, clause 25.3(a) will cease to apply to a successful tenderer. After that time, the Department will only keep information provided by a successful tenderer confidential where:
 - (i) the tenderer requested in the tender that specific information be kept confidential;
 - (ii) the specific information is by its nature confidential; and
 - (iii) the Department agrees to that request.
- (d) Tenderers should indicate in their response (see Attachment 9) what information they consider should be protected as confidential information following contract award, if selected as successful, and the reasons why they consider that information is confidential. Tenderers should understand that Commonwealth policy is that information should not be subject to an obligation of confidence unless there is a good reason to do so. In this regard, tenderers should have regard to the Department of Finance and Administration's publication "Confidentiality of Contractors' Commercial Information" (available at http://www.finance.gov.au/procurement/confidentiality_contractors_info.html).
- (e) Information that the Department agrees to keep confidential following contract award will be described in the contract entered into with the successful tenderer.

25.4 Australian National Audit Office

- (a) The attention of tenderers is drawn to the *Auditor-General Act 1997* (Cth), which provides the Auditor-General or an authorised person with a right to have, at all reasonable times, access to information, documents and records.
- (b) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Auditor-General Act 1997* (Cth) on their participation in the RFT process.

26. Department's rights

Without limiting its rights at law or otherwise, the Department may:

- (a) amend this RFT;
- (b) suspend or discontinue the RFT process (including during negotiations), where the Department considers that:
 - (i) it is in the public interest to do so;
 - (ii) no tender meets the Minimum Content and Format Requirements;
 - (iii) no tenderer meets the Conditions for Participation;
 - (iv) no tenderer is fully capable of undertaking a contract in the form of the Draft Form of Contract; or
 - (v) no tender represents value for money;
- (c) before final selection (with or without short listing) enter into negotiations with one or more tenderers (including parallel negotiations with more than one tenderer or negotiations with all tenderers without short listing);
- (d) discontinue negotiations with any tenderer at any time for any reason;
- (e) require additional information or clarification from any tenderer or anyone else;
- (f) provide additional information or clarification;

- (g) negotiate with any person who is not a tenderer and enter into a contract with that person on such terms as the Department in its absolute discretion accepts, in circumstances where direct sourcing is permitted by the Commonwealth Procurement Guidelines;
- (h) add to, alter, delete or exclude the Department's technical requirements;
- (i) publish or disclose the names of tenderers (whether successful or unsuccessful);
- (j) allow or not allow a related body corporate to take over a tender in substitution for the original tenderer;
- (k) change the structure and timing of the RFT process;
- (l) vary or extend any time or date in this RFT at any time and for such period as the Department in its absolute discretion considers appropriate; or
- (m) enter into any contractual arrangements or arrangements which will best meet the Department's needs.

27. Relevant laws

- (a) The law applying in the Australian Capital Territory applies to this RFT and to the RFT process.
- (b) Each tenderer must comply with all relevant laws and Commonwealth policy in preparing and lodging its tender and taking part in the RFT process.

28. Dictionary

In this RFT, unless the contrary intention appears:

Closing Time	means the Closing Time specified on the front page of this RFT, as amended by any addendum in accordance with clause 6.
Condition for Participation	means a Condition for Participation set out in clause 11(b).
Department	means the Commonwealth of Australia as represented by the Department of Resources, Energy and Tourism.
Draft Form of Contract	means the draft contract provided with this RFT.
Evaluation Criteria	means the Evaluation Criteria set out in clause 17(b).
Minimum Content and Format Requirement	means a Minimum Content and Format Requirement set out in clause 12.1(b).
RFT	means this request for tender, including the Draft Form of Contract.
Statement of Requirement	means Schedule 1.

29. Glossary of Terms/Acronyms

AEMO	means the Australian Energy Market Operator
COAG	means the Council of Australian Governments
MCE	means the Ministerial Council on Energy
Selection Panel	means the Panel that will select the AEMO Board of Directors
Skills Matrix	A matrix setting out the requisite and desirable skills of the AEMO Board of Directors (see Attachment A)

Schedule 1 – Statement of Requirement

The Council of Australian Government (COAG) announced an initiative in April 2007 to establish a national energy market operator for both electricity and gas by June 2009. To implement COAG's initiative, a detailed implementation plan has been developed by the Ministerial Council on Energy (MCE) which includes the appointment of executive and non-executive directors of the Australian Energy Market Operator (AEMO) a year prior to the commencement date of AEMO. This is to allow the directors sufficient time to familiarise themselves with the operations of the AEMO and to facilitate a smooth and seamless transition from existing market operators to the new operator.

The MCE has agreed that there will be an Implementation Steering Committee (ISC) to oversee the establishment of AEMO as well as an independent Selection Panel which will select the Chair and the non-executive directors of AEMO.

The ISC comprises the CEOs of the existing electricity and gas market operators and nominated senior jurisdictional representatives. The committee's role is to oversee the implementation process of the AEMO to ensure that the transition is as smooth as possible. One of ISC's key milestones is to ensure that the non-executive directors of AEMO are selected by the end of June 2008 (or as close as possible) to enable the directors to be familiar with the operations of AEMO a year prior to its commencement and to play an active role in facilitating the transition. Once the non-executive directors have been appointed, they will be responsible for appointing a CEO of AEMO as soon as possible. Whilst the ISC will not take an active role in the appointment process of the AEMO Board, it will oversee the work to be carried out by the successful tenderer and the Selection Panel to ensure that the process is on track. The Commonwealth, as represented by the Department of Resources, Energy and Tourism, will Chair the ISC and be the counterparty to the contract with the successful tenderer.

The Selection Panel will consist of five members and is tasked with the responsibility of selecting the Chair and the non-executive directors of AEMO. The Selection Panel comprises an *ex officio* Chair, two representatives nominated by government and two representatives nominated by the energy industry. This approach has been adopted to maintain both government and industry involvement in the appointment of directors to AEMO and provides ongoing independence and transparency in the selection process. The successful tenderer will predominantly be working in conjunction with the Selection Panel to select the most suitable candidates for the AEMO Board in accordance with the skills matrix which forms the key reference point for the Selection Panel in making assessments of candidate adequacy. The successful tenderer's role will be to identify suitable candidates for interview by the Selection Panel.

The successful tenderer will also be required to identify suitable candidates for consideration to be appointed as CEO by the nine non-executive directors once appointed. It is proposed that the CEO selection process commence prior to the appointment of non-executive directors so that these directors can appoint a CEO as soon as possible.

Governments are seeking independent advice on the AEMO Board remuneration. The remuneration currently provided to NEMMCO and VENCORP should provide an indicative guide to the likely level of remuneration for the AEMO Board.

In the initial appointment, directors' terms expire on a staggered basis with 3 directors to retire every year. (That is, 3 directors will be appointed for 1 year, 3 directors for 2 years and 3 directors for 3 years.) The Chair will be one of the directors appointed for 3 years. All directors will be eligible to be re-appointed for a further 3 years. For the purpose of the staggered appointments, director terms begin from the commencement of operation of AEMO (that is 1 July 2009).

A minimum of 3 and a maximum of 6 non-executive directors are to have relevant industry experience. The Board as a whole is to be classified as independent as defined by the ASX Corporate Governance Principles. The Chair is required to be independent and the Chair cannot also be the CEO of AEMO.

It is anticipated that the AEMO head office will be based in Melbourne with the possibility of other state offices being established once AEMO is fully operational.

Potential tenderers are to have regard to the following documents:

- a. The Australian Energy Market Operator Skills Matrix (hereafter referred to as the "skills matrix") – see **Attachment A**;
- b. The terms of reference for the Australian Energy Market Operator Implementation Steering Committee (hereafter referred to as the "ISC terms of reference") – see **Attachment B**;
- c. A timeline of key dates for the appointment of AEMO directors derived from the Detailed Implementation Plan agreed by the Ministerial Council on Energy (hereafter referred to as the "timeline") – refer to **Item 3 "Timing" below**; and
- d. The Public Consultation Paper on Governance Arrangements for the Australian Energy Market Operator (hereafter referred to as the "AEMO public consultation paper") – see **Attachment C**. *This public consultation paper forms the basis of the Implementation Plan agreed by the MCE. This paper is provided for guidance and background purposes only. The Implementation Plan is not a public document.*

1. Details of the services required

The Department of Resources, Energy and Tourism is the lead department on this initiative and is seeking to engage a professional recruitment firm to assist in the process of engaging ten directors to AEMO which include:

- a. The (non-executive) Chair of AEMO;
- b. Eight other non-executive directors; and
- c. A Chief Executive Officer (CEO).

The successful tenderer will be required to work in conjunction with the Implementation Steering Committee (ISC), the Selection Panel and, once appointed, the non-executive directors of AEMO with respect to the selection of the CEO.

It is most important that tenderers have experience in recruiting executive and non-executive directors. Familiarity with recruitment in the energy sector and the ASX Principles of Good Corporate Governance and Best Practice Recommendations would be desirable. The successful tenderer will be required to look for potential applicants within Australian and New Zealand.

The successful tenderer will be required to travel to a major Australian city to assist the Selection Panel in the selection process.

If a person appointed to the AEMO Board leaves or resigns from his/her position, the successful tenderer may be re-engaged by the Commonwealth at any time until July 2009 for the purposes of assisting the Selection Panel in filling the vacant position.

Proposed Plan

Tenderers are requested to provide a detailed plan to deliver a suitably qualified AEMO Board in accordance with the skills matrix (**Attachment A**).

In preparing a plan, tenderers must include the following details:

- a. a structured methodology to identify suitable candidates for consideration by the Selection Panel within the timeline indicated in Clause 3 below;

- b. a fixed cost structure outlining the costs involved in recruiting all ten members of the AEMO Board in accordance with Clause 1(a), (b) and (c) above;
- c. a separate advertising plan with details of costs in meeting this plan;
- d. develop strategies for interacting with the Selection Panel; and
- e. any other services or consideration relevant to this tender.

2. **Specific Deliverables**

- a. The successful tenderer will be required to provide a list of names and supporting background on potential candidates to fill each of the ten positions specified above in accordance with the skills matrix.
- b. The successful tenderer will provide advice and identify the most suitable candidates for consideration by the Selection Panel for appointment to the AEMO Board.
- c. The successful tenderer will also be required to commence processes for identifying the most suitable candidates for the CEO position so that the CEO can be appointed by the non-executive directors as soon as possible after their appointment.
- d. The services and advice to be provided may also include contacting referees. The successful tenderer may also need to assist the Selection Panel in providing reports to the ISC (see Clause 5 below).
- e. The successful tenderer would be expected to be available to travel to a major Australian city to assist the Selection Panel in the AEMO Board selection process.

3. **Timing**

The timing for the delivery of the list of potential candidates is in accordance with the timeline set out below:

Deadline	Task
29 January	Release tender on AusTender
23 February	Closing date for tender submissions
3 March	Successful tenderer notified and contract sent to tenderer
7 March	Successful tenderer to have signed contract returned to Department
11 March	Commence advertising for positions
21 April	Shortlist of AEMO Board member candidates to be presented to the Selection Panel and commence process to identify suitable candidates for CEO of AEMO
21 April -29 May	Provide advice to the Selection Panel on suitable Chair and non-executive director candidates
30 May	Chair and eight other non-executive AEMO directors to be selected/finalised
2 June	AEMO Board to be appointed
3-29 June	Provide advice to AEMO Board on suitable CEO candidates
30 June	Finalisation of shortlist of potential CEO candidates
4 August	CEO candidate to be appointed

Tenderers will be required to indicate whether they are capable of meeting the timeline specified above. It is expected that the services would finish upon the CEO candidate being appointed. The contract end date will be 30 September 2008.

4. Performance standards

- a. The successful tenderer must have the ability to source candidates within Australia and New Zealand in accordance with the skills matrix.
 - The successful tenderer will need to demonstrate that it has undertaken an exhaustive search of potential AEMO candidates.

5. Progress Report and meeting requirements

The successful tenderer will be expected to meet the timeline requirements set out in Item 3 above. To meet the MCE commitment, it is most important that the non-executive directors of AEMO be selected prior to the end of the 2007/08 financial year.

The successful tenderer may need to assist the Selection Panel in preparing written progress reports to be provided to the ISC detailing the processes which have been adhered to and the outcome being achieved.

Description of terms used in this Schedule

Descriptor	Meaning
Most Important	Requirements described as Most Important are integral or critical to the business solution being sought. It is expected that tenderers will address these requirements to an extremely high standard ensuring that all claims are substantiated. Any failure to address these requirements may result in the tender being non-preferred.
Highly Desirable	Requirements described as Highly Desirable are important to the solution and should be highly regarded but they may not be integral or critical to the overall solution. Any failure to address these requirements will greatly diminish the potential scoring ability of the tender overall.
Desirable	Requirements described as Desirable are an expressed wish or request that the Department has a preference for obtaining within the solution but the solution could be acceptable and/or sound without the particular elements. Any failure to address these requirements may diminish the potential scoring ability of the tender overall.

Attachment 1 – Checklist

The following checklist is provided to assist in preparing and submitting a tender. The checklist is a guide only. Tenderers should satisfy themselves that they have met all conditions in this RFT, and should not rely on the checklist for this purpose. The tenderer should complete and submit this checklist with its tender.

	Action	Reference	Completed Y/N
	Before submitting a tender		
1.	Read the RFT including the Schedule and Attachments	-	
2.	Confirm the tenderer satisfies the Conditions for Participation	clause 11	
3.	Note the Closing Time	front page	
4.	Note the permitted method for lodging a tender	clause 14	
5.	Note the Department's evaluation process	clauses 16, 17 and 18	
6.	Attend the industry briefing (if any)	clause 8	
7.	Consider seeking independent professional advice	clause 9	
8.	Check that all addenda have been received	clause 6	
9.	Check that the conditions of participation are satisfied	Clause 11	
	Submitting a tender		
10.	Complete the tenderer response form	Attachment 2	
11.	Prepare the document addressing the Conditions for Participation	Attachment 3	
12.	Prepare the document on the tenderer's capability	Attachment 4	
13.	Prepare the document on the tenderer's capacity	Attachment 5	
14.	Prepare the document on price	Attachment 6	
15.	Prepare the document on insurance. If the tender does not include this, the tenderer is taken to that confirm it and any subcontractors can meet the Department's proposed insurance requirements	Attachment 7, clause 12.2(b)	
16.	Complete the compliance statement. If the tender does not include this, the tenderer is taken to agree with all provisions of the Draft Form of Contract	Attachment 8, clause 12.2(c)	
17.	Prepare the document on confidentiality. If the tender does not include this, the tenderer is taken to agree that none of the information in its tender is confidential	Attachment 9, clause 12.2(d)	

	Action	Reference	Completed Y/N
18.	Prepare a copy of the tender for your records	-	
19.	Ensure the tender: • is free from anything that might reasonably affect useability, security or operations of AusTender or the Department's computing environment • does not contain macros, script or executable code • complies with the file type, format, naming conventions and size limitations	clause 14	
20.	Submit the tender, including this Attachment 1	-	

Attachment 2 – Tenderer Response Form

The tenderer should complete and submit this Tenderer Response Form with its tender.

1. RFT No.

2. Tenderer name

If a company	Company name	
	ACN	
If a partnership	Trading name (if any)	
	Full name of partners	
If a sole trader	Trading name	
	Full name of sole trader	
If any other type of organisation	Name of organisation	
	Type of organisation	

3. ABN

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4. Trust status

If the tenderer is a trustee and is tendering as trustee of the trust

Name of trust

--

Note that the Draft Form of Contract requires a tenderer who is a trustee to warrant that it enters into the contract personally and in its capacity as trustee.

5. Contact for liaison and notices

Name	
Postal Address	
Telephone	
Facsimile	
Email	

6. Small to medium enterprise

Is the tender a small to medium enterprise (ie an entity employing fewer than 200 full time equivalents)?

Y/N

7. Electronic payment

Is the tenderer willing and able to accept electronic payment?

Y/N

8. Conflicts of interest

The tenderer confirms that there are no circumstances or relationships which constitute or may constitute a conflict or potential conflict of interest in relation to this RFT or the tenderer's obligations under any contract resulting from this RFT other than:

--

The tenderer undertakes to advise the Department in writing of any additional actual or potential conflicts of interest immediately after becoming aware of it.

9. Confirmation

9.1 The tenderer:

- (a) offers to supply the services described in the RFT at the prices specified in the tender;
- (b) confirms that the tender remains valid and open for acceptance by the Department for a period of six months from the Closing Time;
- (c) confirms that it and any proposed subcontractors are not currently named as non-compliant with the *Equal Employment Opportunity for Women in the Workplace Act 1999* (Cth);
- (d) confirms that it and any proposed subcontractors are not insolvent, bankrupt, in liquidation, or under administration or receivership;
- (e) confirms its capacity to tender and enter into a contract in the Draft Form of Contract and that there is no restriction under any relevant law to prevent it from tendering; and
- (f) consents to the Department undertaking checks in accordance with this RFT.

9.2 The tenderer warrants that neither the tenderer nor any of its officers, employees, agents, and subcontractors has, in relation to the preparation, lodgement or assessment of the tender:

- (a) improperly obtained confidential information;
- (b) received improper assistance;
- (c) engaged in collusive tendering, anti-competitive conduct or other similar conduct with any other tenderer or other person; or
- (d) attempted to improperly influence an officer of the Department or approached any Commonwealth officer (other than as permitted by the RFT).

9.3 The tenderer notes that giving false or misleading information is a serious offence, and confirms that all information in its tender is true and correct in every material respect.

10. Signature on behalf of tenderer

[Note: To be signed by the tenderer personally, or if the tenderer is not an individual, by someone authorised to sign on behalf of the tenderer, eg managing director]

Signature

Name

Position

Signature of witness

Name of witness

Address of witness

Date

Attachment 3 – Conditions for Participation

1. The tenderer should provide a document addressing the Conditions for Participation as required by this Attachment 3.
2. The tenderer and any subcontractors proposed in the tender must have experience in recruiting executive and non-executive directors as set out in Clause 11.

Attachment 4 – Capability

1. The tenderer should provide a document including the information on the tenderer's capability as required by this Attachment 4.
2. The tenderer should demonstrate its capability to provide the services in accordance with the Statement of Requirement.
3. The tenderer should provide:
 - (a) information on whether the tenderer can meet all of the requirements in the Statement of Requirement
 - (b) information demonstrating its understanding of the required [goods/services]
 - (c) information on how it proposes to provide the [goods/services]
 - (d) information on its experience in providing similar [goods/services] over the past 3 years, including purchaser, period and value
 - (e) information on its personnel who will provide the services, including:
 - (i) skills, qualifications, experience and past performance;
 - (ii) curriculum vitae for key personnel(s);
 - (f) information on any subcontractors it proposes to use in providing the services, including:
 - (i) name and ABN;
 - (ii) address; and
 - (iii) work to be carried out by the subcontractor
 - (g) contact details for at least 2 referees for whom the tenderer has provided similar services;
 - (h) a detailed plan on how the tenderer proposes to deliver a suitably qualified AEMO Board in accordance with the skills matrix (see Schedule 1 – Statement of Requirement for more information about the plan).
4. A tenderer's response to this Attachment 4 should not be longer than 6 pages.

Attachment 5 – Capacity

1. The tenderer should provide a document including the information on the tenderer's capacity as required by this Attachment 5.
2. The tenderer should demonstrate its capacity to provide the services in accordance with the Statement of Requirement.
3. The tenderer should provide:
 - (a) if the tenderer is lodging the tender for a consortium, details of the consortium arrangement, all members and proposed subcontractors
 - (b) details of its strategies for resourcing (staff, equipment and facilities)
 - (c) information on how it proposes to meet the required deadlines
 - (d) information on availability and allocation of personnel to provide the [goods/services]
 - (e) names of the tenderer's senior management
 - (f) information on corporate and ownership structure, including information on related bodies corporate
 - (g) if a company, names of all shareholders holding 10% or more of any issued share capital
 - (h) name of ultimate holding entity (if applicable)
 - (i) details of its enterprise profile, including the size, location of sites and principal locations for the provision of the services
 - (j) information on how long it has been in business
 - (k) confirmation that there is no past, current, pending or finalised litigation against the tenderer, or an explanation of any such litigation
 - (l) particulars of any petition, claim, action, judgement or decision which is likely to affect the tenderer's performance
4. A tenderer's response to this Attachment 5 should not be longer than 4 pages.

Attachment 6 – Price

1. The tenderer should provide a document including the information on price as required by this Attachment 6.
2. All prices should be given on a GST inclusive basis with any GST component separately identified.
3. All prices for services, outlined in clause 4 below (other than clauses 4(e) and (f)), must be a **fixed price**.
4. Following the specifications set out in Schedule 1, please provide a detailed costing in relation to the following:
 - a. Services to appoint the Chair of AEMO;
 - b. Services to appoint 8 other non-executive directors of AEMO;
 - c. Services to appoint the CEO of AEMO;
 - d. A detailed costing of the different advertising options proposed in accordance with Schedule 1;
 - e. An hourly rate for assisting the Selection Panel in preparing progress reports.
 - f. Services to appoint a replacement should an appointed Chair, non-executive director or CEO vacate their position before July 2009.
5. It is essential that tenderers provide the prices following the structure of Clause 4 above to enable comparison, noting that the Department may choose to undertake only certain components of the project.
6. Tenderers should provide details of any discounts tendered (e.g. volume discounts or discounts for payments in advance).
7. All tendered prices, fees, rates and charges are to be inclusive of:
 - (a) all taxes; and
 - (b) all things necessary and incidental to the provision of the required services and the due and proper performance of a contract with the Department substantially in the form of the Draft Form of Contract.
8. Travel and accommodation at non-SES rates may be approved for reimbursement by the Department on a case by case basis pursuant to the Draft Form of Contract. Tenderers should specify a proposed cap on the amount of travel and accommodation expenses.

Attachment 7 – Insurance

1. If the tender does not include a document including the information on insurance as required by this Attachment 7, the tenderer is taken to confirm that it and any subcontractors can meet the Department's proposed insurance requirements.
2. The Department proposes that the following insurance requirements apply under the contract with the successful tenderer:
 - (a) Workers compensation insurance as required by law
 - (b) public liability insurance for an insured amount of **\$2 million** per claim
 - (c) professional indemnity or errors and omissions insurance for an insured amount of **\$1 million** per claim
3. Note that any subcontractor engaged by the tenderer will be subject to the same insurance requirements.
4. The tenderer should:
 - (a) confirm that it and any subcontractors can meet the Department's proposed insurance requirements; or
 - (b) propose alternative insurance requirements.

Attachment 8 – Compliance statement

1. If the tender does not include a document addressing the information on compliance as required by this Attachment 8, the tenderer is taken to agree with all provisions of the Draft Form of Contract.
2. Using the compliance table in this Attachment 8, the tender should state any provisions of the Draft Form of Contract with which the tenderer partially agrees or does not agree or considers are not applicable (ie the compliance table is to be completed on an exceptions basis).
3. If the tenderer partially agrees or does not agree with a provision, it should provide the reason why, the relevant qualification, any proposed change to the Draft Form of Contract and any differences in costs or pricing associated with those changes.
4. If the tender states that a particular provision is not applicable, it should also state the reason why.
5. In this Attachment 8:
 - (a) **“agrees”** means that the contractual condition, obligation, characteristic or performance requirement imposed by the provision in the Draft Form of Contract *can be met by the tenderer with no qualifications*;
 - (b) **“partially agrees”** means that the contractual condition, obligation, characteristic or performance requirement imposed by the provision in the Draft Form of Contract *can be substantially met by the tenderer, subject to certain qualifications*;
 - (c) **“does not agree”** means that the complete contractual condition, obligation, characteristic or performance requirement imposed by the provision in the Draft Form of Contract *could not be met by the tenderer or the tenderer does not agree to meet it*; and
 - (d) **“not applicable”** means that, due to the nature of the offer, or of the tenderer, the question of adherence to the provision in the Draft Form of Contract does not arise.

Compliance table:

The tenderer agrees with all provisions of the Draft Form of Contract other than as follows:

Provision (eg clause, paragraph...)	Partially agrees/does not agree/not applicable	Reasons/qualification	Proposed alternative wording	Differences in costs or pricing

Attachment 9 – Confidential information

1. The tenderer should specify any information contained in the tender that it considers should be protected as confidential information.
2. The tenderer should provide reasons why this information should be protected as confidential information and the period for which the tenderer proposes it be protected.
3. Note that the Department will consider each request to keep information confidential on its merits. Whether or not the Department will agree to a request to keep information confidential will depend on the circumstances and negotiations with the successful tenderer.
4. The Department reserves the right, in its discretion, to accept or refuse a request to treat information as confidential.
5. See clause 25.3 for further information.
6. If the tender does not include a document addressing the information on confidential information as required by this Attachment 9, the tenderer is taken to agree that none of the information in its tender is confidential.

Item	Reason	Period