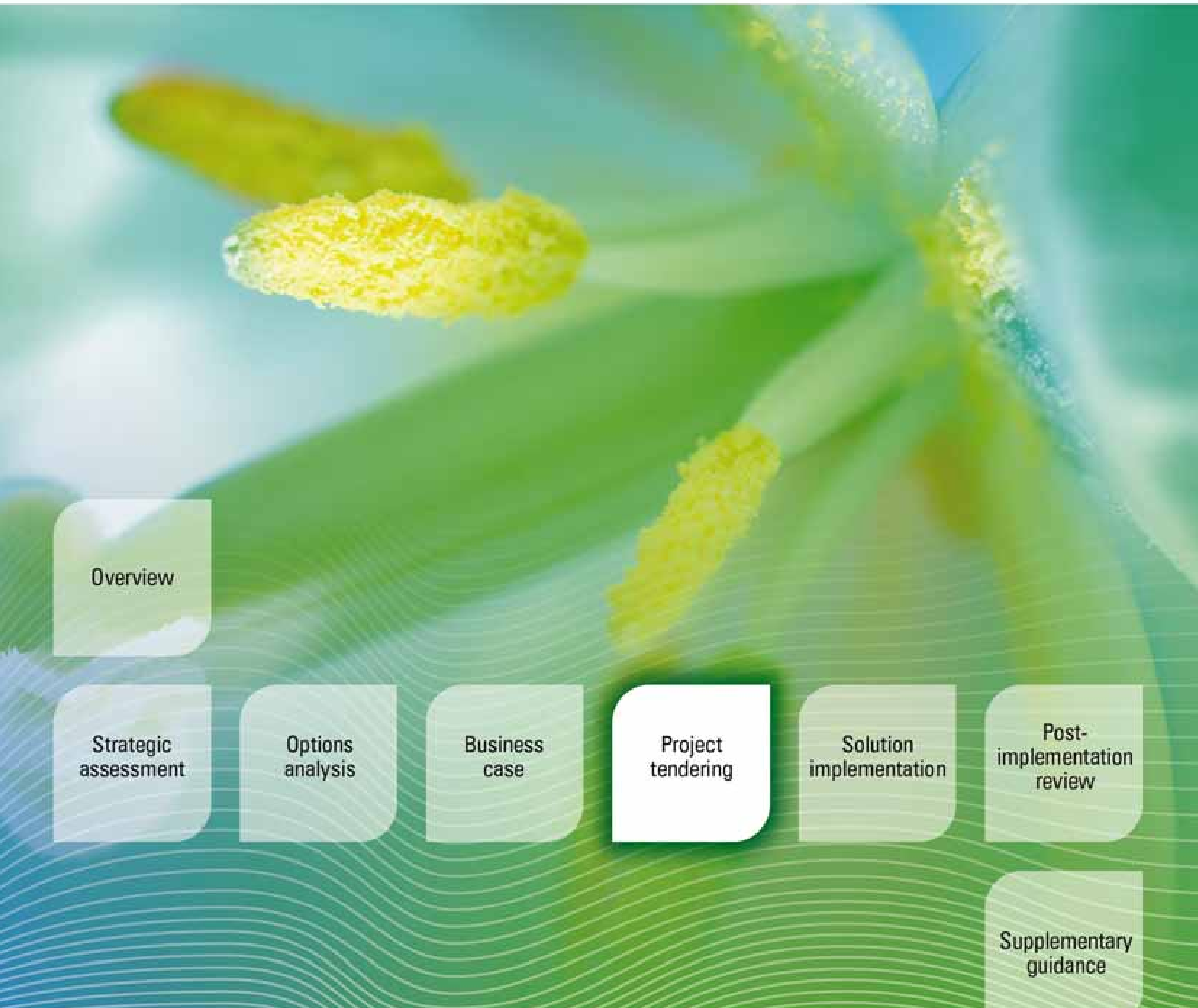
INVESTMENT LIFECYCLE GUIDELINES

Project tendering



Department of **Treasury & Finance**

Victoria
The Place To Be

Investment Lifecycle Guidelines

Project tendering

'What is the preferred delivery option?'

Version 1.0

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The Secretary
Department of Treasury and Finance
1 Treasury Place
Melbourne Victoria 3002 Australia

Tel: +61 3 9651 5111
Fax: +61 3 9651 5298
Website: www.dtf.vic.gov.au

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1 Treasury Place, Melbourne

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Overview
Strategic Assessment
Options Analysis
Business Case
Project Tendering
Solution Implementation
Post-implementation Review

More information at: www.lifecycleguidance.dtf.vic.gov.au

The Gateway Unit acknowledges the assistance of the Capital Planning and Review Division of the Victorian Department of Infrastructure in developing this guideline.

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Abbreviations

Code of Practice	Code of Practice for the Victorian Building and Construction Industry
DOI/DOT	Department of Infrastructure (former)/Department of Transport
DPC	Department of Premier and Cabinet
DTF	Department of Treasury and Finance
EOI	expression of interest
ERC	Expenditure Review Committee (of Cabinet)
RFT	request for tender (in this Guideline, RFT includes request for proposal)
VGPB	Victorian Government Purchasing Board
VIPP	Victorian Industry Participation Policy

Executive summary

Tendering is a phase of the procurement process in which government seeks to attract offers from suitable suppliers and to select the one that offers best value for money in meeting its requirements.

Tendering is also a communication process in which the government client and prospective suppliers work together for a shared understanding of what is required.

A sound understanding of the requirements is critical so that tenderers have certainty, or as much certainty as possible, when planning and pricing offers.

The tendering process sets the foundations for the project delivery relationship, preferably by introducing the project teams on both sides before tender selection is finalised (subject to probity).

This Project Tendering guideline explains how departments and agencies should carry out a tender process for a project.

It applies to public construction and other asset-related projects such as information and communication technology (ICT) projects.

It considers key activities to move the procurement strategy developed for the business case through to a contract endorsement, including establishing good contract management procedures.

The primary tasks for project teams during the tendering phase are to:

- review and refine the procurement strategy developed for the business case
- document requirements in greater detail
- establish the Tender Selection Panel and evaluation criteria
- develop and issue the RFT
- evaluate tenders
- undertake a Gateway Review Process Gate 3 and 4 (Market Readiness and Project Tendering) reviews if required
- finalise the contract, following negotiations and relevant approvals
- establish processes for good contract management.

The outcome of the tendering process is a commercial one, achieved through a formal, standard process in government. However, tendering is not just a routine. It involves strategic considerations that can lead to refining the procurement strategy.

The tendering process needs to be tailored to the requirements, the relationships with and within the supplier market and the existing commercial realities. Such matters need to be analysed before starting a tendering process so that their implications for the process and outcome are clearly understood.

Note:

It is important for public sector agencies to be well informed on commercial issues and the impact of such things as taxation when dealing with commercial suppliers. This is particularly important in complex dealings, with a significant financing component.

Government agencies should obtain professional advice from subject matter experts with relevant commercial and professional skills. This includes lawyers, financial advisers, risk specialists, procurement advisors and industry experts.

Special terms

Evaluation team	A team that assesses tenders against evaluation criteria to identify the most suitable offer
Performance measures	Quantitative and qualitative measures to assess how well a contractor is performing
Procurement strategy	The high-level plan to achieve procurement objectives through a structured program of activity (more information in the Procurement Strategy supplementary guidance)
Project plan	A plan for managing project delivery; it outlines or refers to management procedures for matters such as resource capacity, schedules, milestones, budget management, communication plans, stakeholder management and risk management.
Statement of requirements	A statement describing the essential requirements for goods, products or services, also referred to as a specification. It may include performance measures or standards.
Supplier market capability	The ability of suppliers to deliver the project and meet its time, cost and quality objectives

1 Context

Make sure the market interface involves a shared understanding of the need, with clear specifications and expectations

1.1 Investment Lifecycle Guidelines - background

The Investment Lifecycle Guidelines series (the guidelines) are designed to be applied to Victorian Government investments so they provide the maximum benefit for the State's individuals, communities and businesses.

They are mandatory for major[1] investments, but can be used for any investment, whatever its type, complexity or cost.

Every investment needs to address a basic set of questions consistently and robustly. The guidelines provide practical assistance to shape investment proposals, inform decisions about them, monitor their delivery and track the benefits they achieve. They also refer to tools best suited to help at each phase of the investment lifecycle.

The guidelines have seven parts – an Overview and one document for each of the six phases in the process. Their titles and the questions they address are:

1. ***Strategic Assessment*** (What are the business needs and the likely solution?)
2. ***Options Analysis*** (Which option will provide the best solution?)
3. ***Business Case*** (Is there a compelling case for investing?)
4. ***Project Tendering*** (What is the preferred delivery option?)
5. ***Solution Implementation*** (Is the investment proceeding as planned?)
6. ***Post-implementation Review*** (What benefits were delivered and what were the investment lessons?)

Supplementary guidance includes *Procurement Strategy* and *Risk Management* documents.

1.2 Purpose of the guidelines

The guidelines provide standards for activities carried out at various phases of an investment. The Overview explains the whole context of the series and relevant processes. Supplementary guidance material has 'how to' details about processes and methods (available at www.lifecycleguidance.dtf.vic.gov.au).

This guideline addresses the processes and requirements of project tendering, the fourth phase of the investment lifecycle. It clarifies and validates the service need, outlines a possible solution, specifies the requirements to be tested in the market and identifies the preferred provider. It also refers to related processes and guidance material regarding procurement and tendering. A resource directory is provided for web-links.

[1] To meet current government requirements, *major* has a total estimated investment (TEI) > $5 million.

2 Project tendering

2.1 Introduction

Tendering is a phase of the procurement process in which government seeks to attract offers from suitable suppliers and to select the one that offers best value for money in meeting its requirements.

Tendering is also a communication process in which the government client and prospective suppliers work to ensure that they have a shared understanding of what is required. It is critical for both parties to have a sound understanding of the requirements, so that tenderers can plan and price their offer where that is possible, and provide other ways of settling the outcome where it is not possible.

Tendering sets the foundations for the relationship that will deliver the project. It is preferable, subject to probity, to introduce the project teams on both sides before finalising tender selection.

The primary tasks during the tendering phase are to:

- review and refine the procurement strategy developed for the business case
- document the requirements in more detail
- establish the Tender Selection Panel and evaluation criteria
- develop and issue the Request for Tender (RFT)
- carry out a Gateway Review Process Gate 3 (Market Readiness) review, if required
- evaluate the tenders
- finalise a contract, following negotiations and relevant approvals
- carry out a Gateway Review Process Gate 4 (Project Tendering) review, if required
- establish processes for good contract management.

The outcome of the tendering process is a commercial one, achieved through a formal, standard process in government. However, tendering is not just a routine. It involves strategic considerations which may require refinement of the procurement strategy.

The tendering process needs to be tailored according to the requirements, relationships with the supplier market, and within it, and existing commercial realities. Such matters need to be analysed before starting a tendering process so that their implications for the process and outcome are clearly understood.

2.2 Understanding the market and the legal and policy context

Even if a detailed procurement strategy is already in place, it should be revisited at the start of the tendering phase. The project/tender team should closely examine the supplier market, including:

- their capabilities (including commercial viability)
- the degree of competition

- the capacity available (the extent to which the market is affected by the business cycle, other tenders in the market, shortage of resources or sector-specific issues)
- other commercial circumstances.

With this understanding of the market, requirements can be described so as to meet the project objectives and give the prospective tenderers as much certainty as possible to manage the risks they perceive in doing business. It is important to reduce avoidable uncertainties and manage unavoidable ones so they do not increase costs unnecessarily.

The government team responsible for the tender should also have industry and market knowledge so they can form a view whether the offer from tenderers is reasonable. The question to be answered is whether the proposed way of engaging with the market is the most productive way to find the right supplier, encourage competition and provide an outcome that meets all the project requirements.

2.3 Project tendering tasks

The following table outlines the main tasks undertaken in the RFT phase.

Activity	Tasks
Preliminary	• Establish tender plan, probity plan and evaluation plan • Allocate resources including evaluation team • Conduct Expression of Interest (EOI) phase if applicable • Undertake market testing
Preparation of RFT documents	• Prepare background information for tenderers explaining project context • Prepare tender process conditions including evaluation criteria • Prepare statement of requirements • Prepare contract • Prepare tenderer response schedules
Tender period	• Advertise and issue RFT • Conduct industry briefings • Respond to enquiries from tenderers • Make necessary amendment by addenda • Review and observe probity plan • Receive, close and record tenders
Tender evaluation and negotiation	• Evaluate tenders against published criteria • Seek any necessary clarifications • Interview tenderers • Check references • Identify and notify preferred tenderer(s) • Contract negotiations, ‘subject to approval’
Review and approval	• Where relevant, a Gate 4 review should be undertaken before finalising the contract • Obtain all necessary process approvals • Obtain financial approval • Confirm government intention to proceed
Contract award	• Accept tender and award contract • Notify successful and unsuccessful tenderers • Execute contract • Ensure appropriate contract management arrangements

Activity	Tasks
	are in place • Disclose the contract, for example by publishing it on the Contracts Publishing System

2.4 Law and policy regarding tendering

Tendering processes are subject to policy and legal requirements. Breaches of these requirements can lead to delays, litigation, complaints and criticism from tenderers or the Auditor-General, for example.

The following textboxes briefly outline some sources of law and policy regarding Victorian public sector tendering.

Law

In practice, the following areas of law most relevant to a government tender process are:

- Misleading and deceptive conduct under the *Trade Practices Act 1974* (C'th) and the *Fair Trading Act 1999* (Vic)
- *Tender process contract:* A court may treat the relationship between the State and each tenderer as a contractual relationship in which each tenderer agrees to prepare and submit a tender according to the tender process conditions, in return for the State evaluating tenders according to the tender process conditions and following the conditions generally.

  The State is required to act fairly in the tender process. An aggrieved tenderer may seek contractual damages against the State if the tender process is not followed or if the State does not act fairly.
- *Administrative law: S*ome procurement decisions may constitute 'administrative decisions' that can be subject to judicial review.
- *Statute law, including subordinate legislation imposing requirements about tendering*: for example, ministerial directions made under section 30 of the *Project Development and Construction Management Act 1994.*

Policy

Victorian Government Purchasing Board (VGPB) policies apply to procuring goods and services other than for construction procurement (I.e. construction-related works and associated professional services). Victorian government policies regarding construction procurement are:

- Ministerial Direction No. 1, Tendering provisions for public construction made pursuant to the *Project Development and Construction Management Act 1994*, the Guide to tendering provisions for public construction, and the Practice Note for tendering provisions for public construction
- Ministerial Direction No. 2, Contractual provisions for public construction made pursuant to the *Project Development and Construction Management Act 1994*, and the Guide to contractual provisions for public construction
- The Code of Practice for the Building and Construction Industry (the Code of Practice)
- *Partnerships Victoria* policies apply to Victorian public-private partnerships.

Some other government policies apply generally to procurement, for example:

- The Premier's Policy Statement, Ensuring Openness and Probity in Victorian Government Contracts, 11 October 2000, and Implementation Guidelines from the Department of Premier and Cabinet (DPC)
- The Victorian Industry Participation Policy (VIPP)
- Ethical employment
- Fair payments
- ICT procurement policies.

Further information can be found at www.vgpb.vic.gov.au.

2.5 Success of a tender process

During the tendering phase, the broad vision for a project is translated into specific requirements and a supplier is engaged to deliver those requirements. It is common for difficulties to arise with:

- communicating the requirements clearly to the market
- setting appropriate evaluation criteria
- setting the correct parameters for project delivery.

Government needs to conduct the tender process in a fair and reasonable way so that it gets the best outcome, avoids risks that could compromise the integrity of the process, and also avoids damage to reputations or legal challenges to the outcome.

The success of a project depends on activities undertaken during the tendering phase, for example documenting requirements, selecting a contractor and negotiating commercial terms. A project is considered successful if:

- it is delivered on time and on budget
- the specifications are met, including quality and performances standards
- project objectives are achieved, including social, environmental and economic benefits.

It is important to get things right during the RFT phase. The cost of changing or rectifying requirements increases considerably as the project progresses. Failures during this phase may lead to problems during the delivery or operating phases.

Care should be taken to avoid problems in the tender process and tender process risks should be carefully managed. For example, tender teams should identify and deal with prospective conflicts of interest and avoid breaches of confidentiality. Tender process risks may best be managed through a risk plan or the probity plan, depending on the circumstances.

Good practice in the RFT process includes:

- ✓ making sure there is sufficient funding for the cost of the project and associated risks
- ✓ having clear, comprehensive and complete tender documents
- ✓ allowing enough time for tenderers to prepare tenders
- ✓ providing the opportunity for innovative solutions
- ✓ avoiding unnecessary cost to the State and tenderers.

3 Pre-tender essentials

The tender phase will progress more smoothly if the pre-tender foundation work is done. This includes securing government endorsement, checking cost estimates and reviewing the procurement strategy. Probity is another important early consideration.

The essential pre-tender tasks are to:

- obtain formal government endorsement of the project, including its objectives, scope, budget, delivery timetable and desired performance (if this has not previously been done) (this approval is at Cabinet or ministerial level or as required by relevant departmental processes)
- undertake or review a full project risk assessment
- secure the commitment and availability of sufficient funds to cover the expected project cost and associated risks
- establish a clear intention to proceed with the project, and later obtain approval to proceed to tender
- address resourcing and planning including requirements to manage probity, RFT preparation and tender evaluation
- confirm a single point of contact for the tendering process
- develop or review the probity plan
- review the procurement strategy and confirm the procurement delivery method and how tenders will be sought
- confirm that contract administration procedures are acceptable
- undertake Gateway Reviews (i.e. Gate 1: Strategic Assessment, Gate 2: Business Case and Gate 3: Readiness for Market reviews should have been completed if required).

3.1 Government endorsement

Obtain formal government endorsement and secure funding before requesting tenders. This is done:

- through a decision of Cabinet (Expenditure Review Committee, ERC) – for large projects
- at ministerial or departmental level (according to delegations or other authority) – for smaller projects
- from Treasury – for capital projects of $5 million or more (where undertaken by statutory authorities and government owned businesses.[2]

[2] DTF, *Investment Evaluation Policy and Guidelines*, 1996

- Failure to obtain sufficient funding before issuing an RFT is poor tendering practice and may breach the Code of Practice for the Building and Construction Industry (Code of Practice).

3.2 Probity

It is a requirement for all major projects (exceeding $10 million, complex or involving high risk) to have a probity plan in place and to have independent oversight of probity.[3] Although probity is relevant to all stages of procurement, it is critical during the tender phase.

Before starting the RFT phase, appoint a probity adviser or auditor, or both, and develop an appropriate probity plan (if this has not already been done). Review the probity plan before beginning the RFT phase. Follow the plan throughout. Revisit the plan regularly to ensure that necessary probity reviews are undertaken and that the requirements are appropriate and are being followed.

The VGPB Code of Conduct for Commercial Engagements and the *Partnerships Victoria Practitioners' Guide* (Chapter 22) detail probity requirements for projects.

The Building Commission has a template probity plan suitable for public construction projects on its website www.buildingcommission.com.au.

3.3 Pre-tender cost estimate

Before preparing RFT documents, project/tender teams should validate the expected total project cost drawing on the high-level project cost estimate from the business case, which will have been endorsed and funded by government.

As further design and development work is done, the likely total project cost can be estimated more accurately and the total project budget revised. The pre-tender estimate of project cost should be validated, for example, with assistance from a quantity surveyor, an engineer and other relevant professional experts.

The reassessment should consider not only the target or most likely cost for the contract, but also how emerging events or circumstances are affecting costs, positively or negatively. This should be a normal part of the ongoing review of project risk.

As well as reviewing the estimated contract value, consider the other significant elements of cost that could impact on the project including:

- process costs, for example, project management, legal and procurement advice, rent for accommodation for project/evaluation team, the environmental approvals process

- other project costs, for example, professional advisors, land acquisition

- costs outside the project, i.e. not chargeable to the project, but that might need to be taken into account in making decisions (for example, supplementary work to implement the project successfully or system upgrades)

- post project-delivery costs, for example, maintainability and operational costs

- change management processes and training.

An unrealistically low pre-tender budget can lead to problems at a later stage. For example:

[3] Premier's Policy Statement, *Ensuring Openness and Probity in Victorian Government Contracts*,

- The project may be cancelled after tenders are received if sufficient funds are unavailable.
- There may be a perception of cost 'blow-out' if the government is asked for additional capital or recurrent funding.
- If tenderers are required to cut scope to fit an unrealistically low budget, there will be delays and the outcome may be below expectations.

Include a schedule of separable portions that can be excluded by the client from the project scope – to manage cost and schedule growth.

A soundly based pre-tender cost estimate will also assist in tender evaluation.

3.4 Procurement strategy review

Before starting work on the RFT, revisit the procurement strategy. When developing the procurement strategy for the business case, some questions that affect the RFT should have been considered; for example:

- Will the contract cover delivery only or will it include maintenance or operations as well?
- Will the design and delivery be done in multiple stages?
- Should the requirements be specified in physical or performance terms?
- How will the components be packaged?
- Which party is to manage the program and bear the integration risk?
- What is the appropriate contractual framework for delivery?
- Does the procurement strategy support government priorities, such as security of critical infrastructure, timelines on event-driven projects, or working in an operational environment?
- Will the tender process involve one or more stages?
- Will the contract execution be affected by an operating service or facility?
- What are the occupational health and safety and industrial relations issues to be considered during the tender?

The procurement strategy should be reviewed and may need further refinement before the RFT process is started.

High or medium-risk projects may be subject to a Gate 3 review (Readiness for Market) before the project tendering stage. If there was no Gate 3 review, the procurement strategy should be reviewed at the start of the project tendering stage. This can confirm the business case and check that:

- government is committed to funding and implementation of the project
- the procurement strategy is robust and the development and delivery approach are still appropriate
- the project plan is appropriately detailed and realistic

- the project governance, controls and organisation are defined
- financial controls are in place
- resources, including funding, are available for the whole project
- suppliers' market capability and track record, or the existing supplier's capability and performance, is fully understood
- the approach will facilitate a good client-supplier relationship
- appropriate project performance measures and tools are being used
- quality procedures have been applied consistently since the previous review
- occupational health and safety and sustainability requirements are considered.

4 The RFT phase

4.1 Overview

Once all the pre-tender essentials are completed, the RFT phase can start. The RFT phase usually involves the steps shown in Figure 4.1.

Figure 4.1: Key steps in the tendering process

4.2 Specify the requirements (Step 1)

Specifying the project requirements well is critical to achieving a good outcome. If the market does not clearly understand what is required, the investment is unlikely to meet expectations.

4.2.1 Develop the requirements

A top-down approach to developing the requirements is recommended, taking the steps outlined below.

Action	Signoff by
1. Confirm the project objectives of the business case	• Project owner
2. Confirm the success criteria of the business case	• Project 0wner
3. Specify the business functionality and user requirements to meet the success criteria	• Relevant departmental executives • Key users • Project owners • Key stakeholders • Service delivery partners
4. Specify the technical requirements and/or performance criteria required to achieve the business functionality and user requirements	• Relevant departmental executives • Key users • The client/s • Key stakeholders • Service delivery partners

Good practices for developing a statement of requirements include:

- Develop the project requirements and obtain sign-off according to the steps above.
- Be clear who the client is (particularly if there is more than one) and who is the authorised client representative.
- Identify and involve all key stakeholders, service delivery partners and parties who can adversely affect the delivery of the project or whose input can improve the project's success.
- Use clear, accurate and unambiguous language.
- Avoid being too specific where this is not necessary.
- Clearly distinguish between what is mandatory and what is desirable.
- Ensure that requirements are traced throughout the development process.

A poor statement of requirements may:

- increase project costs
- exclude potential tenderers
- result in fewer tenders or fewer compliant tenders
- discourage innovation.

Appendix A has more information about preparing a statement of requirements.

4.2.2 Managing requirements development

An essential part of requirements gathering is managing the requirements including, tracing their development. For effective traceability, it may be important to record:

- the requirement
- its rationale
- its source
- relevant stakeholder(s)
- who is authorised to modify the requirement
- modification history
- relationship to other requirements
- related deliverables.

The project/tender team can assess the implications of modifying a requirement using this information. It can be critical to understand the impact of modifying a requirement while the complete set of requirements is being developed. Managing the requirements systematically assists with:

- reporting appropriately to stakeholders; stakeholders' traceability needs differ according to their goals and priorities
- developing and maintaining a coherent set of requirements
- developing appropriate tender evaluation criteria that reflect project requirements
- evaluating tenders against the requirements quickly and thoroughly
- effectively assessing project deliverables against requirements.

A number of requirements traceability software tools are available to assist in this task. These are used in the software development industry. Examples include DOORS, RequisitPro, CaliberRM and RTM.

4.3 The EOI phase (Steps 2 and 3)

4.3.1 What is the EOI phase?

The EOI phase is an optional step in the tender process. It is the first stage of a two-stage tender process.

A two-stage tender process involves:

1. seeking EOIs to develop a short-list
2. seeking tenders from the short-listed organisations.

Careful consideration should be given to whether an EOI process is appropriate. An EOI phase may be chosen to:

- alert industry to a forthcoming tender and gauge the likely market interest in the project

- obtain information about the types of solutions the market may be able to offer in response to the requirement (particularly in technology-related projects)
- survey the market to see who is available to tender, before finalising the contracting model
- obtain feedback on the approach being proposed
- minimise the cost of tendering to the industry and to government by limiting the number of tenderers completing the full documentation to those who demonstrated suitability. For construction projects, the Code of Practice recommends that generally three to six tenderers only should complete full tender documentation

The EOI process is preliminary to the RFT stage and has shorter response times than an RFT because it seeks less detailed information. Although it is less complex and less formal than an RFT, it still must be conducted properly with clear rules about the process (e.g. closing time, date and place for lodging EOIs, evaluation criteria and confidentiality).

4.3.2 Content of an invitation for EOI

An invitation for EOI usually includes:

- a statement that the EOI process is the first of a two-stage tender process and a brief explanation of what is anticipated in each stage
- a description of the project and the requirement to be tendered
- the conditions applying to the EOI process, including the evaluation criteria for short-listing, the closing date, time and place for lodging the EOI.

It may also include:

- an overview of the likely commercial structure or indicative commercial terms
- the proposed project timetable
- detailed project-specific information which can be included as appendices
- a schedule for respondents to complete detailing relevant information such as company details, a capability statement, and the company's approach to meeting the requirements
- a request for particular information needed to prepare the RFT documents.

4.4 RFT (Step 4)

The purpose of seeking tenders is to select the best value offer from the organisation assessed as best able to deliver the requirements. In the public sector, the tender process should meet high standards of probity to ensure open competition and a fair process.

Tasks during the RFT phase are:

- Determine an appropriate risk allocation between the parties, including the delivery timeframe, price and project-specific risks.
- Determine liquidated damages or other gain-share/pain-share mechanisms.
- Ensure that the contract clearly reflects the risk allocation.

- Select the right solution and tenderer through a fair selection process.

4.4.1 Good tendering practices

The Code of Practice contains requirements for all parties involved in public construction tendering. Some of the requirements are good practice for other large public sector asset procurement.

The Code of Practice says:

- During the planning phase, clients must allow sufficient time for project definition, design and documentation, and must undertake adequate, robust project feasibility evaluation and begin effective construction planning during design.
- Clients must ensure that adequate project funding is available before starting the tendering process (that is before EOI release for some procurements, for example *Partnerships Victoria* projects).
- Tender documents must specify requirements clearly and precisely and be appropriate for the particular procurement strategy.
- All parties must consider the cost of tendering and seek to constrain it.
- Clients should encourage innovation and alternative solutions by using performance-based specifications where appropriate, by making innovation a high-priority evaluation criterion and by allowing a sufficient tender period.
- Tender documents should clearly specify what constitutes a complying tender; tenders that do not comply in a material way must be rejected.
- Tender documents must have sufficient detail to avoid undue design and documentation work before selecting a tender, unless the client offers to pay.
- Clients are obliged to issue complete tender documents and avoid amendments; the recommended practices regarding addenda should be followed in circumstances where amendments are unavoidable.
- Documents should be clear – to minimise the need for post-tender clarification.

4.4.2 Content of an RFT

An RFT invites tenders for delivering the project requirements. The content of the RFT varies according to the nature of the requirements and the chosen procurement strategy. However, the RFT usually includes:

- background information about the project, the client and the context
- conditions applying to the RFT process, including evaluation criteria, tender closing time/date, place for lodgement
- statement of requirements, specification, designs and other information about the project requirements
- contract terms reflecting the client's preferred risk allocation
- tenderer response schedules that provide for all the information needed to evaluate the tender.

Documentation

For a major project, the RFT documentation can be extensive. There may be a core RFT document and supplementary material. Some RFT documentation is so extensive that a data room is set up to allow tenderers to inspect the documents.

RFTs can take six months or more to develop, depending on the project complexity and project resources available. The RFT should not be issued until it is complete and properly reviewed.

As a general rule, the more detailed and accurate the information provided to tenderers, the better the quality of the tender. There is no benefit in withholding information from tenderers. However, it may be appropriate to warn tenderers that the State does not warrant the accuracy of certain information provided.

Changes and addenda

If changes are to be made to the RFT, this should be done by issuing an addendum. You should notify all tenderers if addenda are issued. All tenderers should have access to the same information and should have the same time to respond. Tenderer response schedules should require tenderers to note receipt of addenda so it is clear that all tenderers have received the same information and made offers on the basis of complete information.

Evaluation

The RFT should be drafted to elicit the information necessary to assess tenders against the evaluation criteria and to compare them with each other. In the case of fixed-price tenders, request detailed cost information by separately costing individual items within the tender, for example.

Develop evaluation criteria and weight each criterion to focus on the project's requirements. The evaluation criteria should help the evaluation team assess which attributes will lead to success. Government tells tenderers the criteria for selection and indicates their relative importance (for example, by identifying project-critical criteria). However, it should not limit itself by committing to detailed formulae or other evaluation approaches that may need review or revision. Consider other quantitative and qualitative information that may be identified during the RFT phase.

Examples

Tender documents used on comparable projects are useful references. Many EOI and RFT documents are publicly available and can be useful reference for a new project.

4.4.3 Industry comment on the draft RFT

There may be significant benefits in seeking industry comment on draft tender documents. Benefits may include:

- providing advance notice to industry on the general structure and content of the RFT
- improving the statement of requirements before releasing the final tender documents
- obtaining frank industry advice on the request documentation, the deliverability of the requirement and the reasonableness of the timeframes and approach being proposed.

Factors that may influence a decision to circulate a draft RFT for comment include:

- whether there is sufficient time to conduct such consultation

- the number of tenderers expected (as consultation may be impractical with too large a group of potential tenderers)
- the level of practical experience the client has had with similar projects.

Whether or not departments and agencies seek formal industry comment, there may be value in seeking external advice from subject matter experts. The confidentiality of the tender documentation must be considered in these cases. Advisers to a project should be excluded from submitting bids of their own or acting as advisers to tenderers, to preserve the probity of the tender process.

Minutes of meetings held with tenderers, file notes, tenderer queries and responses should be kept on file and referenced during tender evaluation and contract execution.

Additional information about preparing an RFT can be found in the appendices:

- Appendix A: Preparing a statement of requirements
- Appendix B: Content of an RFT
- Appendix C: RFT release and communicating with tenderers
- Appendix D: Evaluation criteria and tender evaluation
- Appendix E: Contract negotiation and execution
- Appendix F: Framework for stakeholder management communication plan.

4.4.4 Interactive tendering

The interactive tender process provides an opportunity for an appropriate amount of direct interaction between the client and tenderers during the tender phase, particularly when preparing their initial response to the RFP documentation.

Individual tenderers have an opportunity to discuss their bid development, including the commercial and technical aspects, and to seek clarification and feedback in the context of the project brief and the client's expectations and requirements. This opportunity for discussion usually happens before bids are submitted.

The interactive tender process is mainly relevant for complex projects, particularly *Partnerships Victoria* projects. An Advisory Note has been prepared to clarify and expand on the process It outlines:

- the project risks that lead to the adoption of an interactive tender process
- previous projects that have used the process
- issues to consider in implementing an interactive tender process, including probity
- some suggested guidance (example protocols).

4.5 Evaluate tenders (Step 5)

Tender evaluation must be conducted properly for a good outcome and to avoid process problems. It is important to:

- appoint a probity adviser and/or auditor
- appoint suitably qualified evaluation team members, including external technical advisers, if required
- establish and follow a sound evaluation plan and probity plan

- evaluate tenders according to the evaluation criteria and the evaluation plan
- properly document decisions.

The tender evaluation process is described in detail in Appendix D. For advice on procedures or techniques that have been used with success in the past, consult experienced tender evaluation practitioners.

The Code of Practice notes that clients must:

- not engage in any conduct which would defeat the purpose of a fair and transparent selection process and must avoid any practice which gives one party an improper advantage over another
- predetermine the tender evaluation criteria and apply those criteria fairly
- use selection and engagement procedures which are auditable, transparent and accountable
- have tenders assessed by persons with relevant skills and knowledge
- respect the intellectual property rights of all parties and not use intellectual property submitted with a tender to obtain prices from, or negotiate with, other tenderers for like or similar scope

During evaluation, it may be necessary to clarify aspects of a tender. This should generally be done before negotiations start.

4.6 Negotiate contract and select preferred tender (Step 6)

4.6.1 Recommended contract negotiation practices

Prepare for negotiations carefully, with a clear picture of project objectives. The procurement strategy and probity plan will guide conduct during negotiations. The outcome of the tender process should be sustainable for the successful tenderer. Contractor resources are unlikely to be properly focused if the contractor is extracting profit from an under-priced bid or coping with risks that it did not foresee.

The Code of Practice has strict requirements about contract negotiation, including:

- Clients should respect the intellectual property rights of all parties and not use intellectual property submitted with a tender to obtain prices from, or negotiate with, other tenderers for like or similar scope.
- If no tender is acceptable, the client must not trade off one tenderer's price against another in an attempt to obtain a lower price.
- The client must exhaust negotiations with the initial best value tenderer before negotiating with subsequent tenderers.
- Clients must not negotiate with more than one tenderer at a time in an attempt to obtain a lower fee.

It is important to maintain a competitive environment among tenderers until all significant commercial issues are settled, so that:

- the risks presented by a tender, including all significant commercial issues, can be fully evaluated
- the preferred tender is clarified and contract negotiations are finalised before the preferred tenderer is publicly advised and competitive tension is released.

Partnerships Victoria projects are subject to separate guidance on contract negotiation and tender selection.

Clarify the bids of more than one tenderer until all significant commercial issues regarding the terms of the bids are settled satisfactorily. Sometimes there is a formal best and final offer (BAFO) process involving a request for tenderers to revise their bids. But more often there is a less formal process in which tenderers are asked to clarify all commercial aspects of their bids. A tenderer with no prospect of success should not be subjected to this process.

It is not always the case that competitive tension during the negotiation process will drive best value offers and lead to concessions benefiting government. Some concessions may be illusory in practice. For example, a successful tenderer whose profitability is threatened by a concession may later adopt strategies to improve their position through contract claims that lead to delays and cost increases.

4.7 Confirm funding and obtain contract approval (Step 7)

The first steps after tender evaluation are to confirm that the tenders fit within the funding amount made available by government and identify any risks or shortfalls noted during the tender process. If tenders are broadly in line with expectations, a formal review of the business case is not generally required. However, if there are significant discrepancies between tenders and the expectations reflected in the business case, this must be addressed. The business case will need to be reviewed if tenders do not meet cost estimates or other significant expectations.

In the event that a decision is made not to accept any bids following a tender process, the Code of Practice recommends that the client should consider reimbursing tenderers for the reasonable costs of tendering.

Appropriate financial and process approvals must be obtained before a tender is accepted and the contract awarded. Process approval requirements differ according to the contract value, asset type and departmental arrangements. Financial approval requirements depend on the delegations and other financial management arrangements within the client department.

4.8 Award and execute contract (Step 8)

There are four main activities for this step.

4.8.1 Award contract

After advising the successful and unsuccessful tenderers of the outcome, arrange for matters that are needed before contract execution, for example:

- bank guarantee or other contract securities
- insurance
- notifying successful tenderers of the superintendent (if required)

4.8.2 Execute contract

The person or people signing the contract on behalf of each party should be authorised to do that. Contracts for major projects are often signed by ministers or authorised senior staff. Media coverage of the contract signing may be involved.

4.8.3 Contract management arrangements

Ensure that appropriate arrangements are in place to administer and manage the contract properly. This includes managing the relationship with the contractor during the course of the contract. Ideally, this should cover making sure that those responsible for contract management thoroughly understand the tender process and its outcome, including the strategy embodied in the contract and the reasons for particular contractual conditions.

4.8.4 Payments on contract execution

Some contracts may provide for paying the contractor a deposit or mobilisation payment on contract execution. Ensure that appropriate paperwork is completed to allow for this.

5 Project assurance

There is a range of options for reviewing projects and making sure they have effective governance. Gateway Reviews may be required for medium or high-risk projects. Whether required or not, it may be useful to review the issues that would normally be considered in a Gateway Review.

The third and fourth Gateway Reviews (Readiness for Market and Tender Decision) are relevant here. They assess:

- whether the business solution is well defined in readiness for procurement
- whether the market appetite and capacity is understood
- value for money provided by the market in meeting the proposal requirements
- the robustness and effectiveness of contractual and contract management arrangements
- whether the project is ready to be implemented'

There is more information at www.gatewayreview.dtf.vic.gov.au and in the Gateway Review Process guidance material.

5.1 Gate 3: Readiness for Market

Gate 3 assesses the level of understanding of the supplier market and proposed procurement approach for achieving delivery of the project's objectives. If appropriate, the review considers whether the project is ready to invite proposals or tenders from the market.

The aims of the review include, but are not limited to:

- confirmation of the business case now the project is fully defined, and its alignment with required objectives and outputs
- confirmation that the procurement approach is robust and appropriate
- confirmation of funding availability for whole project
- checking that the supplier market capability and track record is understood
- confirmation that the procurement approach will help create good client/supplier relationships
- for a procurement project conformation that there is an appropriate procurement plan in place that ensures compliance with legal compliance and applicable VGPB rules, while meeting the project's objectives and keeping procurement timescales to a minimum
- confirmation of stakeholder support for the project
- confirmation that appropriate project performance measures and tools are being used
- confirmation that the risk and issue management plans have evolved as the project lifecycle has progressed
- conformation that internal organisational resources and capabilities will be available as required for future phases of the project.

Documentation reviewed during Gate 3 includes:

- tender documents (including specifications, the contract, conditions of tender and tenderers' responses), tender evaluation strategy and updated risk register
- the Business Case
- project costs to date against budget
- the Business Change Management Plan
- the procurement/acquisition approach and documented justification for it
- the tender evaluation strategy and specified expected outputs
- the updated risk register
- outline project plans (to completion)
- results of business, commercial or technical benchmarking
- the proposed implementation strategy
- updated market intelligence and supplier assessment
- specification of expected outputs and outcomes
- updated Communications Strategy and Plan
- updated project quality documentation.

5.2 Gate 4: Tender Decision

Gate 4 (Tender Decision) confirms that the recommended tender decision is appropriate – before the contract is placed with a supplier or partner. This gives an assurance on the process used to select the supplier or partner rather than the selection itself.

The aims of the review include, but are not limited to:

- confirmation that the business case includes an updated benefits management plan, now that the bid information has been confirmed
- confirmation that the desired objectives and outputs are still aligned with the wider organisational business strategy
- checking that necessary statutory and procedural requirements were followed throughout procurement
- confirmation that the approved procurement strategy has been followed
- confirmation that technical implications have been addressed
- confirmation that the recommended contract decision will deliver specified outputs on time, within budget and that it will provide value for money
- confirmation that management controls are in place
- confirmation that plans for risk, issue and change management have been updated
- checking that the proposed procurement is within the approved funding amount.

Documentation reviewed during Gate 4 includes:

- the evaluation report (containing recommendations and justification of the selected supplier)
- project management documents (including risk and issues management, change management, service management, change management and the delivery strategy)
- an updated business case and benefits plan
- an updated communications plan

- realistic plans from the supplier for development and implementation (including an updated time schedule)
- confirmation of funds and the authority to proceed.

Resource directory

Further information may be obtained from the following publications/websites. Please advise the Department of Treasury and Finance if your agency, or other agencies, have additional information that should be included in this listing.

Resource name	Access details
Investment Management Standard	
Problem Definition (Investment Logic Map)	www.dtf.vic.gov.au/investmentmanagement investmentmanagement@dtf.vic.gov.au
Solution Definition (Investment Concept Brief)	
Benefit Definition (Benefit Management Plan)	
Business Case	
Investment Reviews	
Benefit Report	
Gateway Review Process	
Project Profile Model	www.gatewayreview.dtf.vic.gov.au gateway.helpdesk@dtf.vic.gov.au
Program Reviews	
Gate 1 Review: Strategic Assessment	
Gate 2 Review: Business Case	
Gate 3 Review: Readiness for Market	
Gate 4 Review: Tender Decision	
Gate 5 Review: Readiness for Service	
Gate 6 Review: Benefits Evaluation	
Investment Lifecycle Guidance	
Overview	www.lifecycleguidance.dtf.vic.gov.au
Strategic Assessment	
Options Analysis	
Business Case	
Project Tendering	
Solution Implementation	
Post-implementation Review	
Supplementary Guidance	
Investment Evaluation Policy and Guidelines	www.lifecycleguidance.dtf.vic.gov.au
Project Alliancing Practitioners' Guide	
Procurement Strategy Supplementary Guideline	
Melbourne Water Triple Bottom Line	
Asset Investment Reporting	www.dtf.vic.gov.au/assetinvestmentreporting
Asset Management Policy	www.dtf.vic.gov.au/assetmanagementpolicy
Multi Year Strategy	www.dtf.vic.gov.au/multiyearstrategy
Partnerships Victoria Guidance	www.partnerships.vic.gov.au
Other Guidance	
Building Commission Guidance	www.buildingcommission.com.au
Capital Development Guidelines	www.dhs.vic.gov.au/capdev.htm
Construction Supplier Register	www.doi.vic.gov.au
Environmental Sustainability Framework	www.dse.vic.gov.au
Health Privacy Principles	www.health.vic.gov.au/hsc/
Human Rights Charter	www.justice.vic.gov.au
Information Privacy Act	www.privacy.vic.gov.au
Multimedia Victoria	www.mmv.vic.gov.au/policies
Standards Australia	www.standards.org.au
Tender Documentation	www.tenders.vic.gov.au
Whole of Government Contracts	www.vgpb.vic.gov.au

Glossary

Asset management framework: A Victorian Government initiative to allow the Expenditure Review Committee to exercise greater strategic control over the asset base, with a tighter focus on adapting the asset base to better support output delivery. The framework has a series of linked strategies (service strategy, asset strategy and multi-year strategy) that guide investment planning in departments and agencies.

Appraisal: The process of defining objectives, examining options and weighing up the costs, benefits, risks and uncertainties of those options before a decision is made.

Asset option: An asset option is a means of satisfying service needs by investing in existing assets or creating new assets.

Asset strategy: Sets the direction and communicates up-front the assumptions and decisions about levels of service and who provides them; is the means by which an entity proposes to manage its assets over all phases of their lifecycle to meet service delivery needs most cost-effectively.

Assets: Service potential or future economic benefits controlled by an entity (e.g. a department) as a result of past transactions or other past events. Assets may be physical (e.g. plant, equipment or buildings) or non-physical (e.g. financial investments). Assets may also be current (having a store of service potential which is consumed in one year or less) or non-current (having a store of service potential that is consumed over a period of more than one year).

Base case: The base case is a realistic option that involves the minimum expenditure to sustain existing standards of service delivery or to achieve previously agreed service standards. Therefore, the base case does not always mean 'do nothing'; rather it is the minimum essential expenditure option (e.g. carrying out obligatory works to meet safety and health regulations).

Benefit: The value that the investment will provide to the organisation or its customers. Benefits are normally a positive consequence of responding to the identified driver. Each claimed benefit must be supported by key performance indicators that demonstrate the investment's specific contribution to the identified benefit.

Benefit management plan: A short document that defines the pre-requisites for delivering each expected benefit, how the delivery of each benefit will be measured, and who will be responsible for measuring and realising each benefit.

Benefit reports: Regular reporting of the delivery of benefits, which are tracked and reported consistently with the benefit management plan.

Business case: A document that forms the basis of advice for executive decision-making for an asset investment. It is a documented proposal to meet a clearly established service requirement. It considers alternative solutions, and identifies assumptions, benefits, costs and risks. The development of the business case is based on the logic in the investment logic map.

Capital expenditure: Expenditure involved in creating or upgrading assets.

Change: The things that must be done by the business if the benefits are to be delivered. The changes provide detail of how the strategic intervention defined in the objective will actually happen.

Cost: An expense incurred in the production of outputs.

Cost-benefit analysis: Cost-benefit analysis is a technique that can express in a comparable (monetary) way the net effect of the costs and benefits associated with an investment proposal.

Demand management: A management technique used to identify and control demand for services.

Depreciation: The allocation of the cost of an asset over the years of its useful life.

Disposal: The process in which an asset is disposed of or decommissioned – resulting in removal from an entity's balance sheet.

Dis-benefit: A negative impact that might occur as a direct consequence of implementing a particular solution.

Driver: The reason that action needs to be considered at this time. Drivers are normally couched in negative terms such as 'Climate change is demanding new ways of living in Australia'. A driver should capture the essence of what is broken and the consequences.

Economic cost (or opportunity cost): The value of the most valuable of alternative uses.

Enabling asset: Any physical asset that must be built or purchased for the identified changes to occur. This may be, for example, a hospital, a pipeline or an IT system.

Evaluation: The process of defining objectives, examining options and weighing up the costs and benefits before a decision is made to proceed.

Financial analysis: An investment evaluation technique that is confined to the cash-flow implications of alternative options and is undertaken from the perspective of the individual department or agency or government as a whole.

Gateway Review Process: A review of a procurement project or a program of works/activities carried out at critical points of a project/program's development by a team of experienced people, independent of the project team. These critical points are known as Gateways or Gates. There are six gateways during the lifecycle of a project and reoccurring program reviews for programs of works/activities.

***Growing Victoria Together*:** A ten-year Government vision that articulates what is important to Victorians and the priorities that the Victorian Government has set to build a better society.

ICT-dependent: Information and communications technology (ICT)-dependent projects meet any of the following conditions: The ICT component of the project is critical to the overall success of the investment; or $5 million or more of the total estimated investment (TEI) is assigned to the ICT component; or 50 per cent or more of the TEI is assigned to the ICT component. Examples of ICT components include hardware purchases, software development and IT project management costs (i.e. anything that is covered by the whole-of-Victorian Government ICT classification.

Impact: The cost, benefit or risk (either financial or socio-economic) rising from an investment option.

Investment: The expenditure of funds intended to result in medium to long-term service, or financial benefits rising from the development or use of infrastructure or assets by either the public or private sectors. A single investment proposal may contain a number of related investment expenditures addressing the same service need.

Investment concept brief: A two-page document that shows the logic underpinning an investment and identifies the likely costs, risks, dependencies and deliverables of the proposed solution. It summarises the merits of an investment and allows decision-makers to prioritise competing investments before proceeding to the business case.

Investment logic map: A simple single-page depiction of the logic that underpins an investment. It provides the core focus for an investment and is modified to reflect any changes to the investment logic throughout its lifecycle.

Investment Management Standard: A best-practice approach applied over the life of an investment that aims to reduce the risk of investment failure, provide greater value-for-money and drive better outcomes. It has been designed to enable the *investor* to shape and control investments throughout their lifecycle.

Investment reviews: Formal scheduled periodic reviews that aim to confirm that the logic for an investment remains valid.

Investor: The person who has an identified business problem (or opportunity), will be responsible for making (or advocating) a decision to investment, and who will be responsible for delivering the expected benefits. This person is often referred to as the 'senior responsible owner'.

Lifecycle cost: Lifecycle cost is the total cost of an item or system over its full life. It includes the cost of development, production, ownership (operation, maintenance, support), and disposal, if applicable.

Key performance indicator (KPI): A measure that has been selected to demonstrate that a benefit expected from an investment has been delivered. The KPI must be directly attributable to the investment.

Multi-year strategy: An agreed listing of asset and non-asset initiatives intended to be implemented in the medium term (generally, the next 5-10 years).

New asset option: Acquisition, transfer or commissioning of an existing asset, or creation of a new asset.

Non-asset option: Under this option, service capacity is met without creating additional assets. This could be done through reconfiguration of the way the services are provided (contracting out, increased use of existing or private assets, or reduction of demand through selective targeting).

Objective: The high-level action (or strategic intervention) that is proposed as the response to the identified driver. This intervention must be framed within the context of the organisation's purpose.

Optimism bias: The demonstrated systematic tendency for appraisers to be over-optimistic about key project parameters, including capital costs, operating costs, works duration and benefits delivery.

Options analysis: A process in which a range of options (both asset and non-asset) are evaluated. The most cost-effective options are then selected for more detailed evaluation through a business case.

Outcome(s): In the Government's output/outcome framework, outcomes equate to benefits.

Partnerships Victoria: The Victorian framework for a whole-of-government approach to the provision of public infrastructure and related ancillary services through public-private partnerships. The policy focuses on whole-of-life costing and full consideration of project risks and optimal risk allocation between the public and private sectors. There is a clear approach to value for money assessment and the public interest is protected by a formal public interest test and the retention of "core" public services. Partnerships Victoria is most useful for major and complex capital projects with opportunities for innovation and risk transfer.

Project alliancing: A form of procurement where the State or another government entity collaborates with one or more service providers to share the risks and responsibilities in delivering the capital phase of a project. It seeks to provide better value for money and improved project outcomes through a more integrated approach between the public and private sectors in the delivery of infrastructure. Project alliancing should generally only be considered in the delivery of complex and high-risk infrastructure projects, where risks are unpredictable and best managed collectively.

Project lifecycle: The stages of an asset lifecycle between the identification of the need and the delivery and handover of an initiative.

Proposal: An idea for a policy, program or project that is under development and appraisal

Residual value: The net value applied to the asset at the end of the investment lifecycle or evaluation period; this may result in either a positive or a negative value.

Resources: Labour, materials and other inputs used to produce outputs.

Revenue: Inflows or other enhancements, or savings in outflows, of service potential or future economic benefits in the form of increases in assets or reductions in liabilities of the entity (other than those relating to contributions by owners) that result in an increase in equity during the reporting period.

Risk: Risk is often characterised by reference to potential events, consequences, or a combination of these and how they can affect the achievement of objectives. Risk is often expressed in terms of a combination of the consequences of an event or a change in circumstances, and the associated likelihood of occurrence.

Risk versus uncertainty: Uncertainty is the extent of variability in the capacity to achieve the desired outcomes or the outcomes themselves. Risks lead to uncertainty.

Scenario analysis: Scenario analysis is a procedure for providing the decision-maker with some information about the effect of risks and uncertainties on an investment. In a scenario analysis, a set of critical parameters and assumptions that define a particular scenario are identified and varied to reflect a best-case and a worst-case scenario.

Service strategy: The strategy for the supply of appropriate services to the community, which is consistent with the entity's corporate goals. It is based on strategic analysis and review of how services are presently provided.

Social benefit: The estimated direct increase in the welfare of society from an economic action. It is the sum of the benefit to the agent performing the action, plus the benefit accruing to society as a result of the action.

Social cost: The estimated direct total cost to society of an economic activity. It is the sum of the opportunity costs of the resources used by the agent carrying out the activity, plus any additional costs imposed on society from the activity.

Strategic assessment: The phase of the project lifecycle during which a need is translated, where justified, into a proposal where outcomes, purpose, critical success factors and the level of strategic alignment are clearly defined.

Value management: Value management is a technique that seeks to achieve optimum value for money, using a systematic review process. The essence of value management is a methodical study of all parts of the product or system to ensure that essential functional requirements are achieved at the lowest total cost. Value management examines the functions required from a product, functions actually performed, and roles of the product's components in achieving the required level of performance. Creative alternatives which will provide the desired functions better or a lower cost can also be explored.

Weighting and scoring: A technique that assigns weights to criteria, and then scores options in terms of how well they perform against those weighted criteria. Weighted scores are summed, and then used to rank options.

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Appendix A: Preparing a statement of requirements

In preparing the statement of works, all aspects of the requirement need to be documented so that potential tenderers properly understand the requirements and are able to cost their bids properly. For quality responses, it is essential that requirements documentation:

- states clearly what the government is seeking to achieve
- avoids ambiguity and internal inconsistency
- minimises duplication.

What to include in the statement of requirements

Information about requirements will usually be found in the business case. As the project progresses and decisions are made on how the project is to be delivered, the statement of requirements will also develop. A statement of requirements can be written in different ways. Depending on the preference of the project and industry, for example, it can be a:

- *product or technical specification* that describes the product required on delivery expressed in absolute physical terms, detailing dimensions, loads and strength, capacity and materials, for example
- *functional or performance specification* expressing what functions the deliverable will perform.

The advantages and disadvantages of each approach are detailed in the table below.

Specifications for construction and civil works are often technical. They may deal with detailed standards and specific technical information, and often assume a solution to a problem rather than seeking innovation or a solution. Other construction and civil projects prefer to use performance specifications, especially where the project is being delivered under a design and construction contract or under a *Partnerships Victoria* framework (which will generally detail the performance or output outcomes required). The Code of Practice says that clients should encourage innovation and alternative solutions by using performance-based specifications where appropriate.

Specification type	Advantages	Disadvantages
Technical product specification	• Provides a clear expectation to industry of the required deliverable • Suitable for requirements that are non-developmental or commercially available • Suitable when a design already exists and is to be used	• Limits industry innovation • Leaves the customer responsible for design errors
Functional or Performance Specification	• Allows industry to provide innovative solutions when a design is not developed or when multiple design solutions exist • Passes responsibility for design to industry. • Encourages a wider range of possible solutions • Focuses on results rather than design.	• Customer loses control of design activity and may not have necessary skills in that area to monitor contractor performance • May result in highly unusual design approaches that are inconsistent with existing related infrastructure

Determining which requirements are critical

A typical statement of requirements includes many elements that tenderers need to address in their tenders. These elements are not equally important. Some may be critical; others will be less significant. The statement of requirements should reflect the relative importance of different requirements and their corresponding evaluation criteria. A common approach is to classify requirements as:

- Essential: the project cannot be delivered effectively if this requirement is not met
- Highly desirable: this requirement adds significant value to the project
- Desirable: this requirement adds some value to the project.

Consideration of the objectives of the project, mainly through reference to the endorsed business case and consultation with key stakeholders, should assist in determining which aspects of the statement of requirements are essential and which are not.

Appendix B: Content of an RFT

Background information

The background information section of the RFT provides tenderers with an understanding of the background to the project and the environment in which it will be delivered. It may describe the customer, how they operate, who the key stakeholders are and social or environmental considerations. This broad discussion should be separate from the statement of requirements and other elements of the RFT.

Background information can include consultants' reports, historical performance reports, existing conditions reports, field surveys, service plans, operating schedules and other background documents.

Conditions of tender

These conditions describe how the tender process will be conducted. They include the tender closing date, time and place, format and other requirements for tenders, the evaluation criteria, points of contract for queries, how late or incomplete tenders will be treated and other administrative details. The conditions of tender should specify the basis on which alternative bids can be put if these are invited. Some departments have standard tender conditions.

The conditions of tender should be as clear and as simple as possible. Only mandate things that are essential and avoid unnecessary formality and inflexibility. It is essential to have clarity and certainty about the tender process. Within that sound framework, it is also important to have appropriate and limited discretion to vary the tender process. This can maximise the value for money the tender can achieve, and minimise the chance of the process being challenged if government does vary it.

Statement of requirements

The statement of requirements is a detailed statement of the required deliverables. Appendix A has more detail.

Contract and commercial framework

This section outlines the commercial framework in which the project is to be delivered and how the project interacts, at a contractual level, with that framework.

The preferred risk allocation between the parties (usually presented in a proposed risk allocation matrix) should also be included here, or in a section of its own.

The draft contract outlines the commercial basis on which the State proposes to engage the contractor. It should include the pricing mechanisms, unless these are to be tendered. The draft contract will be blank in areas that can only be completed after the successful tenderer is selected.

Tenderers are sometimes required to disclose areas of non-compliance. However, the contract should be presented as the State's preferred commercial terms, with tenderers expected to comply with them. There may be a limited number of negotiable clauses.

Standard form contracts are to be used for construction, IT and some other procurement.

Tenderer response schedules

It is important to specify the structure for tenderers' responses. Consistent responses will make evaluation simpler and more reliable.

Each schedule relates to an aspect of evaluation. For example, schedules may seek information on:

- corporate and contact information
- the proposed approach to particular project elements
- tenderer's experience
- responses to evaluation criteria
- tender price breakdown
- conflict of interest.

The information requested in the response schedules should be sufficient for the evaluation team to make judgements using the evaluation criteria. Tenderers should not be asked for irrelevant or unnecessarily onerous information. Identify any non-mandatory information clearly.

Appendix C: RFT release and communicating with tenderers

Issuing RFT documents

Departmental protocols may require RFTs to be approved for release. They can be issued in hard copy or electronically. Tenderers can download RFT documents published on the Victorian government tenders website www.tenders.vic.gov.au. The site can also be used to distribute amendments or updates, easing the distribution burden.

Hard-copy RFT documents are issued in some tenders for particularly large or complex projects. This is often restricted to invited, short-listed or pre-qualified tenderers. For large construction and civil works projects, it is usual to distribute both hard and electronic copies to short-listed tenderers only.

The means of RFT release depends on a number of factors, including the number of tenderers and the amount of documentation.

Keep a register of entities receiving RFT documents for advising them of changes.

Tender briefing sessions

Industry briefing sessions are often conducted following the release of the RFT. These sessions can give government an early indication of industry reaction and areas of misunderstanding or concern. Tenderers learn about project objectives directly from the organisation and can seek immediate answers to questions. Briefings are usually held approximately a week after the RFT is issued.

When preparing for the briefings, consider likely questions and the sort of information that should or should not be disclosed. Prepare appropriate answers.

Where the RFT is issued to a small number of tenderers, it may be preferable to brief each of them separately. This can allow for more open questions from tenderers without fear of intellectual property or ideas being disclosed to competitors. Procedures for conducting such briefings should be developed with the probity auditor so that tenderers have equal opportunities. This guards against real or perceived probity problems.

Briefing sessions and interviews are sometimes recorded (audio or video) to provide a full and accurate record of what was said. The recordings are generally accessed only in the event of a dispute.

Enquiries and questions

The industry commonly raises questions before tenderers submit responses. All enquiries should be managed strictly according to tendering conditions and the probity plan. Questions and answers should be communicated through the nominated contact person. All questions and answers (whether oral or written) should be logged and auditable.

Questions and answers are generally made available anonymously to all registered tenderers. This can be done through the government tenders website. If very sensitive information or intellectual property is involved, confidentiality of questions and answers may be necessary. The probity plan usually provides processes for managing tenderers' questions.

Appendix D: Evaluation criteria and tender evaluation

Tender evaluation must be conducted fairly, thoroughly and in a defensible way. Evaluation must be against the stated criteria and according to the process advised to tenderers. Failure to do this can lead to administrative and legal challenges. Such challenges can cause delay and significant costs. In some cases, a tender process may be re-started or even abandoned because of a challenge.

The evaluation process can include assessments, industry briefings, interviews, site visits, referee checks, report writing and debriefing unsuccessful tenderers. This can take up to six months or longer on larger projects. The evaluation process often requires input from people from different organisations and with different professional skills and qualifications.

Tender evaluation planning

A tender evaluation plan should be developed to describe the evaluation and selection process. The plan should reflect project risks and the overall goals of the evaluation process, including achieving the best outcome and high standards of probity. The method and detailed processes set out in the plan guide the evaluation of tenders and assist with consistency and probity.

Depending on the nature of the tender and whether there is a probity plan covering such items, the tender evaluation plan may include:

- the evaluation team, working groups and special advisers
- evaluation criteria
- the evaluation schedule
- a process for handling questions
- a process for assessing alternative proposals and non-conforming tenders
- a process for debriefing unsuccessful tenderers
- a process for holding briefings, interviews, site visits, visits to tenderers or reference sites for example; issues to cover include how the briefings and interviews will be scheduled, managed and recorded; whether tenderers will be given an opportunity to present; whether there should be an independent recorder and whether all evaluation team members are expected to attend all interviews.

Establishing an evaluation team

The tender evaluation team is normally made up of a team leader and team members from specialist areas with the requisite skills to undertake detailed evaluation of bids. Specialists from financial, commercial, legal, technical and environmental disciplines are often required. The skills required will depend on the project. External support may be required for aspects of the evaluation.

Evaluation criteria

Each tender must be assessed against the evaluation criteria published in the RFT. The evaluation criteria cannot be changed after the RFT is issued, without written notification to tenderers of this change in the conditions of tender. If there is a change, tenderers may need additional time to take it into account in their offers.

Evaluation criteria focus on project requirements and aspects of a tender that most closely predict its likely success in project delivery. Depending on the circumstances, evaluation criteria might address:

- whether the solution (or product or service) meets all mandatory items in the statement of requirements
- the technical fit of the solution with the remaining requirements
- the suitability of the solution proposed
- the supplier's capability (for example, whether they have the skills and experience to do the job)
- the supplier's capacity (for example whether they have enough staff to deliver according to the project schedule, given other commitments)
- the supplier's financial viability
- if relevant, the reasonableness of the rates or price, relative to market prices; tendered price is usually evaluated separately to determine value for money
- the risk to government of the supplier's position regarding contractual terms.

Evaluation criteria should allow for considering uncertainty in bids. In particular, government agencies should consider whether there is any possibility of any additional risks to government of what is finally delivered compared with what the tenderer offers initially. This might be because there are significant unresolved commercial terms of the contract, or because some other aspects of the deal are not settled (such as the terms of any required financing).

Projects often develop a number of sub-criteria that help to define and measure performance against the main criteria. A set of consistent, defined assessment ratings may then be developed for evaluation team members to use.

In establishing the evaluation criteria, the project should consider what evidence needs to be viewed for a valid assessment. It should seek this information explicitly in the tender response schedules.

If evaluation criteria are to be weighted in construction tenders, the Code of Practice requires that these weightings are disclosed to tenderers. Where weightings for evaluation criteria are published, these must be applied.

Mandatory criteria relate to matters that are essential for undertaking the contract. They are generally pass or fail criteria that are not weighted or scored. Tenderers who do not meet mandatory criteria are not assessed further.

Difficulties can arise if the RFT over-prescribes mandatory criteria and tenderers are unable or unwilling to meet those criteria. Tenders should only include as mandatory evaluation criteria matters that are absolutely essential for performing the requirement, for example, registration or licences to do certain work, or no unacceptable conflicts of interest.

A tender should never be chosen on the basis of price or capability alone. The evaluation criteria should clearly indicate that the preferred tenderer is selected on the basis of an overall judgement about value for money, taking into account assessments against the evaluation criteria.

Clarification questions

During detailed evaluation, team members will frequently raise questions that cannot be answered in the information provided by the tenderer. In such cases, it is necessary to send a clarification question to the tenderer. Copies of all clarification questions and responses should be kept on the evaluation record.

Treatment of non-conforming tenders

Tendering conditions outline the approach to take for non-conforming tenders. In some situations, non-conforming tenders may be excluded from further consideration. In others, there is flexibility to consider them. In planning for the tender, minimise the chance of non-conforming tenders. For example, only strictly necessary requirements should be in the mandatory evaluation criteria. For construction projects, the Code of Practice provides guidance on the managing non-conforming tenders.

Where a tender is assessed as non-conforming and excluded from further consideration, projects must document the basis for that decision.

Documenting the outcomes

The evaluation process and outcome is usually documented in a tender evaluation report. The report usually includes an executive summary, a description of the processes, assessment summaries, tenderer rankings and recommendations of the preferred tenderer. The report will often also attach reports from individual evaluation working groups and external advisers, evaluation database reports, risk assessments, probity audit reports and other outputs of the evaluation process. The report may be audited.

Releasing and advising unsuccessful tenderers

There is a significant cost to tenderers in preparing tenders and keeping bid teams operational after tenders are lodged. Tender processes should be designed to minimise these costs. One way of doing this is to short-list tenderers during the tender evaluation process. Where a tender is clearly unacceptable, it should be excluded from further evaluation and the tenderer notified.

Excluding unacceptable tenders after the initial tender evaluation means the evaluation can concentrate on a smaller number of more suitable tenders. It will also save project time and cost. However, the apparent competitiveness of a bid can alter as evaluation proceeds, clarifications are provided and prices are risk adjusted. (For example, in public-private partnerships, a tenderer with a substantially better price may move back in the field following clarification about the level of risk the tenderer is willing to accept.)

Once the selection process is complete, tenderers should be informed of the outcome. Detailed written reasons are not generally provided. However, tenderers may request or be invited to a debriefing interview. Debriefing usually addresses the strengths and weaknesses of the particular tender.

Tender evaluation problems

Mistakes and problems can arise in a tender process. Here are some common ones:

1. RFT documents contain errors or ambiguities, requiring amendments to be issued or causing difficulties for evaluation.
2. Required endorsements are not obtained from probity auditors.
3. Misleading representations are made to tenderers in RFT documents or in other ways.
4. Requirements change between RFT release and tender evaluation.
5. The tender evaluation team does not have the required expertise or competence or does not function well; technical specialists are not used for evaluation where required.
6. Too few tenders (or conforming tenders) are received.
7. Favouritism towards one or more tenderers is displayed or perceived.
8. Responses received fail to meet need or to fit within the approved budget.
9. Evaluation criteria are inappropriate or insufficient to distinguish between tenderers.
10. Formal evaluation procedures are not established or not understood by evaluation teams; the evaluation is not conducted according to the evaluation plan; tenders are not evaluated consistently.
11. Referee checks, site visits and other checks are not conducted or not conducted well.
12. Evaluation is not completed within timeframes.
13. Tenderers' queries are not answered sufficiently.
14. Late tenders are not handled correctly.
15. Security of tender documents is not maintained.
16. Communications with tenderers are not restricted to the nominated individual; procedures for responding to enquiries are not adopted or followed.
17. The validity period for tenders expires before a decision is made.
18. The tender process is not designed with enough flexibility for the best value, most suitable offer to be selected.

Appendix E: Contract negotiation and execution

During tender evaluation and in subsequent discussions with the preferred tenderer, issues can arise about the specification or other elements of the contract that need to be negotiated.

Set agenda and timeframes

Contract negotiations are often a long and complex process. It is therefore important to take a structured approach to the negotiations, setting out expected timeframes. A negotiation plan or agenda agreed between the parties can help them to align their resources and activities. The negotiation agenda should be agreed before negotiations start. As negotiations often depart from the plan, it must be updated as they progress.

Establish negotiation team and advisers

The Government project team should bring together a small, skilled group of staff to conduct negotiations. The team should be capable of addressing all disciplines included in the project requirements. The negotiation team should be lead by an experienced manager who has the authority to finalise a suitable deal. It may also be appropriate to have a number of specialist advisers available to support the negotiation team. The team members must be good communicators, preferably trained in basic negotiation. Including an experienced contract manager (or the person to be appointed as the contract manager) can promote awareness of contract management issues.

Contract negotiation directive and authority to negotiate

In setting up the negotiating team, the following issues should be taken into account:

1. Who is formally authorised to negotiate on behalf of the Government?
2. What are the limits within which the contract may be negotiated (such as price, performance, schedule)?
3. Are there any specific issues that must be successfully resolved during negotiations?
4. What limits, if any, are there on the period of time for negotiations?
5. What are the briefing and reporting requirements to senior government managers during the negotiation period?

Preparation

Contracts including specifications are often complex, with significant interrelationships. It is therefore important for the negotiation team to be prepared and briefed for all aspects of the negotiations. There should be no point during negotiation where the team is negotiating without full knowledge of the issues at hand and the Government’s preferred position.

Good preparation takes time, and the negotiation agenda must allow for each party to research issues and draw up their strategies before meeting face to face. Pre- and post-negotiation briefs are important for the negotiation team to form a firm understanding on all the matters it is addressing.

Trading in negotiation

Contract negotiation is the process of finalising the agreement between the parties. A tenderer will not normally give up planned profit or take on risk during negotiations, without some form of offset from the Government. The Government, too, should not compromise on important areas of scope during the negotiations, without suitable recompense from the tenderer.

In the case of public construction, the Code of Practice prohibits parallel negotiations, i.e. simultaneously negotiating with two or more tenderers.

Record of negotiations

All negotiation activities should be documented. This means that any commitments or understandings made during the negotiation can be revisited later if there is a misunderstanding. It is also an important aspect of maintaining an audit trail. Senior government managers may want to understand why a particular solution was reached. The record can show the detailed processes that were followed and how the negotiations stayed within the limits specified in the negotiation directive.

The record of negotiation should include a suitably marked-up version of the draft contract. All changes to the contract as a result of negotiations should be revision-marked and configured in such a way that both parties can be sure of the nature of the changes that have been made. Version control and data management are important skills for maintaining control over contract changes.

For all major or complex negotiations, it is recommended that the discussions be taped. The negotiating parties must agree to this.

Appendix F: Framework for stakeholder management communication plan

This framework was adapted from the *Good Practice Guidelines, Developing a State Purchase Contract Business Case* from DTF's Victorian Government Procurement Group,

Group	Timing	Method	Information/Messages
Departmental stakeholders			
Accredited Purchasing Unit (APU) or equivalent for process oversight Procurement manager Contract managers Buyers	Initial briefing Regular status updates (forum)	Face to face forums (road show and programmed meetings)	**Initial briefing:** Overall process, intended outcome, senior managers' support, mandate, desire for feedback/ input and set of messages to address implicit and explicit concerns and confidentiality **Updates:** Provide feedback to attendees of programmed update meetings on progress, issues and status
Senior stakeholders			
Ministers Secretary or Deputy Secretary, CEO etc. Lead department Client department	Initial briefing As required status updates	Face to face, 1-1 or small groups	**Initial briefing:** Overall process, intended outcome, role of senior managers' support (and actions required), mandate issues, set of messages to address implicit and explicit concerns of senior stakeholders **Updates:** As required, short status reports
Procurement team			
Project sponsor Project manager Procurement team members	Frequent (team meeting) Regular with procurement group (user and tender teams)	Face to face in programmed meetings	**Updates:** Regular status reports (initially could be weekly) for each team member to report on progress/issues regarding each of their key responsibilities for the period – to be tabled and discussed at each project meeting; wider procurement group to be kept updated on activity as project unfolds

Group	Timing	Method	Information/Messages
External stakeholders			
Suppliers Public, community and interest groups Media Service delivery partners	Initial briefing to suppliers As required by project leader	Face to face initial briefings Ongoing via written communications	**Initial briefing:** Suppliers to be invited to briefing session to gain understanding of process, objectives, requirements, timing, evaluation, methodology, restrictions on discussions with internal stakeholders and behavioural requirements