

Port Rail Shuttle Network

INVITATION FOR EXPRESSIONS OF INTEREST



Contents

1	Introduction	3
1.1	Expression of Interest stage	3
1.2	Request for Proposal stage	5
2	Business Context	6
2.1	PRSN concept	6
2.2	Government objectives	7
2.3	Related intermodal initiatives	8
2.4	Significant stakeholders	8
3	Commercial Principles	9
3.1	Overview	9
3.2	Assets and funding	9
3.3	Demand and pricing risk	10
3.4	Interface risk	10
3.5	Operations	10
3.5.1	Train paths	10
3.5.2	'Common user' / 'Open access' regime	10
3.5.3	Performance, reporting and commercial assurances	10
3.5.4	Compliance and suitability of contracting entity	11
4	EOI Evaluation	12
4.1	Evaluation process	12
4.2	Evaluation Criteria	12
5	Submitting an EOI Response	13
5.1	Respondent details	13
5.2	Response to Evaluation Criteria	15
5.2.1	Criterion 1: Potential to deliver the objectives and intended outcomes for the PRSN initiative	15
5.2.2	Criterion 2: Complete solution	15
5.2.3	Criterion 3: Operational readiness	15
5.2.4	Criterion 4: Commercial viability	16
5.2.5	Criterion 5: Capability and expertise	16
5.2.6	Criterion 6: Financial capacity	16
5.2.7	Criterion 7: Funding requirement	16
5.2.8	Criterion 8: Commercial arrangements	16
5.2.9	Criterion 9: Procurement principles	17
5.3	Response lodgement	17
5.4	Late responses	17

5.5 Other conditions of this EOI invitation and process	18
5.5.1 Invitation	18
5.5.2 Accuracy of invitation	18
5.5.3 Additions and amendments	18
5.5.4 Representation	18
5.5.5 Licence to use Intellectual Property Rights	18
5.5.6 Communication protocol	19
5.5.7 Requests for clarification	19
5.5.8 Complaints about the EOI invitation or process	19
5.5.9 Conflict of interest	19
5.5.10 Errors in a response	20
5.5.11 Use of a response	20
5.5.12 Clarification of a response	20
5.5.13 Discussion with Respondents	20
5.5.14 Disclosure of response information	20

1 Introduction

The Australian and Victorian Governments are interested in opportunities that support the establishment and operation of private sector port supply chains that include the movement of shipping containers between the Port of Melbourne (POM) area and outer Melbourne, via rail.

The Victorian Government (the Government) is proposing to provide this support in the form of one-off capital funding which would be made available to deliver capital works and rail infrastructure on public land. Funding would not be made available for investment on private land, operating equipment, such as rolling stock, or operational subsidies.

Details about the Government's objectives for this support, the Port Rail Shuttle Network (PRSN) and the proposed commercial principles for the potential funding are provided in this invitation for EOI participants (Respondents) to consider.

The Australian and Victorian Governments have allocated up to a combined total of \$58 million (\$38m and \$20m respectively) in support of successful proposals. There is a preference for funding to be provided in the form of one-off capital contributions in physical infrastructure that combines with private sector investment to help establish private sector intermodal operations as part of the PRSN.

It is expected that in return for the capital contributions, the private sector recipients will enter into an arrangement with the Government to use the capital funding contribution in the agreed manner, to commit to commence operations and move a minimum number of containers via their port rail shuttle from 2019 onwards. The exact nature of any such agreement, including timing, container volumes and contractual arrangements are expected to be established in the stages following this Expression of Interest (EOI) stage.

The market engagement activities are being managed by Transport for Victoria on behalf of the Government.

1.1 Expression of Interest stage

This EOI stage is seeking responses from private sector organisations or consortia, which are in a position to use a one-off capital funding contribution to supplement their own investments to establish a port supply chain that includes the movement of shipping containers between the POM area and outer Melbourne via rail.

In particular this EOI is seeking details about:

- the proposed port rail shuttle operations;
- the associated supply chain elements and details of proposed commercial arrangements with interface providers, such as port stevedores, rail network operators or key tenant customers;
- the proposed private sector investments, and how the one-off capital funding from the Government would be used;
- other support that could be provided by the Government, for example facilitating engagement with rail network operators to establish access arrangements; and
- the resulting number of shipping containers that Respondents would be willing to commit to move via the port rail shuttle in the coming years, in return for the funding.

This EOI stage is open to any interested parties with relevant credentials and proposals that align with the Government's proposition, objectives and commercial principles. It is expected that responses might come from freight and logistics companies or transport operators, with in-principle agreements or consortia arrangements with other parties involved in the port rail shuttle element of the supply chain.

In circumstances where a consortium is not able to be fully formed before the closing date, the EOI response must provide a clear plan and timeline for formation of the proposed consortium to be completed before April 2018.

EOI responses received will be assessed in accordance with the evaluation process described in this invitation (refer to Section 4) to inform the next stage in this process.

Timeline for the EOI

Milestones	Dates
EOI invitation released	11 September 2017
Information session (see details below)	19 September 2017
Closing time and date for EOI responses	5pm AEDST on 31 October 2017

Information Session:

An information session for parties interested in the EOI process will be held as follows:

Date and time: 3.00pm Tuesday 19 September 2017

Venue: Apple Room, Mercure Hotel, Spring Street, MELBOURNE VIC

All attendees will be required to register either via email to the Project Manager at david.e.harris@ecodev.vic.gov.au before the event, or at the venue before the session commencement time.

Transport for Victoria contact for enquiries:

Enquiries about the EOI can be made to the Project Manager (**David Harris**) by email to: david.e.harris@ecodev.vic.gov.au

Transport for Victoria commits to maintaining high standards of probity during this process to ensure that:

- the process is fair, unbiased and impartial at each stage;
- EOI responses are assessed objectively and consistently in accordance with the evaluation process;
- the process is transparent;
- conflicts of interest, whether perceived, actual or potential, are avoided and, where they arise, are identified and appropriately managed; and
- the confidentiality of information is maintained.

To this end Transport for Victoria will engage an independent probity advisor to oversee the process. Details of this appointed probity advisor will be provided as an addendum to this EOI and you should direct any concerns about the probity of this process to them.

1.2 Request for Proposal stage

Depending on the outcome of the EOI stage, the next stage in the process could be a Request for Proposal (RFP).

Where the EOI is an open process, any RFP stage will be by invitation only, and will involve the submission of fully developed proposals and funding applications from invited Respondents. The Government will then evaluate these proposals with a view to making an offer of funding to successful Respondents. The Government reserves the right to determine whether the RFP stage proceeds, and to invite one or more EOI Respondents to enter into the RFP stage, which may take the form of a direct negotiation or a structured RFP process.

Any resulting proposals or offers will ultimately be assessed on a range of criteria including, but not limited to, those described in this invitation.

Indicative timelines for RFP stage*

Indicative stages and milestones	Target date
RFP released to shortlisted Respondents	December 2017
Closing date for RFP responses	February 2018
Respondents advised of RFP outcome	April 2018
Execute commercial agreements with successful Respondents	April – May 2018

* The stages and dates shown above are indicative only. There is no guarantee of an RFP stage. Stages following this EOI stage will be determined, once EOI responses have been evaluated.

2 Business Context

2.1 PRSN concept

Previous governments have considered various options for supporting the establishment of rail-based supply chains for containers that move through the POM with an origin or destination in metropolitan Melbourne. Some of these options have been explored through market sounding activities and reflected in previous transport and land-use policies. The Government's concept for such an arrangement is the PRSN.

The PRSN will ultimately see the establishment of an integrated system of intermodal terminals and operations serving Melbourne's main metropolitan freight catchments, linked to the POM area by rail shuttles (as illustrated in Figure 1). A core driver for the PRSN remains improving the efficiency of the freight and logistics industry, and reducing the impact of transport congestion on our importers and exporters. A shift in mode, from road to rail, is also expected to deliver benefits for communities in the port's surrounding areas.

The PRSN may also include private-sector led consolidation of supply chain components including container staging depots, customer distribution centres, empty container parks and supporting business services with intermodal terminals. This EOI process is seeking responses from parties or consortia willing to commit to implementing and operating the supply chains that will represent the delivery of the PRSN in the short to mid-term.

The Government anticipates that the PRSN could include intermodal terminals located in the key industrial areas of Melbourne's west (Truganina and Laverton/Altona areas), north (Somerton and Beveridge areas) and south east (Dandenong area). Intermodal terminals in locations such as these could connect to the POM area via the existing rail network, which could be accessed outside of peak transport times to avoid congestion of the rail corridors. When future interstate rail freight terminals commence operating, the PRSN may also operate on the new rail connections into these terminals. Characteristics of a PRSN could also include:

- Co-location of the supply chain components at intermodal terminals – including container staging, customer distribution centres and empty container storage;
- Intermodal capability to transfer containers on and off shuttle trains – both at or near the POM, and at the intermodal terminals; and
- Use of spare capacity on the existing rail network operating between or outside of the peak rail services for high efficiency rail shuttles between the POM area and inland terminals.

Responses to this invitation will inform the next stage in the process and subsequent agreements and implementation.

Figure 1 – PRSN concept



2.2 Government objectives

The Government's main objectives in supporting establishment of the PRSN are:

- to improve the productivity of the metropolitan port container freight task;
- to increase the landside container capacity at the POM;
- to reduce the impacts of increasing inner-urban road congestion on container freight and POM operations; and
- to reduce the environmental and local amenity impacts of the increasing container truck movements in Melbourne's inner west.

Expected benefits of the PRSN include:

- a more productive freight industry;
- reduced bottlenecks in the transfer of freight in the POM and Dynon precinct; and
- improvement of the local and global environment.

2.3 Related intermodal initiatives

The Government remains committed to supporting the role of rail and intermodal supply chains in the container freight task, and is currently undertaking a range of related intermodal initiatives that strengthen the opportunity for a PRSN in Melbourne. Some of the relevant initiatives include:

- *Inland Rail Project (IRP)*

The Australian Government, through the Australian Rail Track Corporation (ARTC) is developing the Inland Rail Project. It will consist of a new 1,700 kilometre freight rail line that provides a road competitive service connecting Melbourne to Brisbane, and is currently proposed to be operating by 2025. Significant mode-shift to rail is forecast due to the efficiency improvements enabled by the IRP. The PRSN has potential to enhance IRP outcomes by efficiently shuttling freight between the POM and a new Melbourne interstate rail freight terminal that can handle trains up to 3,600 metres long with double stacked containers, which the existing Dynon terminals cannot efficiently handle.

- *Port of Melbourne rail access strategy*

The new POM Operator (POMO) is required under the *Port Management Act 1995 (Vic)* to prepare a Rail Access Strategy by November 2019. One of the options that it must consider is a Port Rail Shuttle. POMO has already commenced development of the Strategy.

2.4 Significant stakeholders

Respondents will naturally consider the interests of their business customers and associates in relation to submitting an EOI response. In addition, Respondents need to consider the existing (or potential) supply chain roles of other stakeholders that might have a significant influence on the success of their PRSN proposals. These stakeholders may include, but are not limited to:

- Rail agencies – such as ARTC, V/Line and VicTrack;
- Metro Trains Melbourne (MTM);
- Rail freight operators;
- Road freight operators;
- Owners and operators of freight terminals and container parks;
- Major freight customers;
- POMO;
- Stevedores at the POM; and
- Local councils.

3 Commercial Principles

3.1 Overview

The Government is seeking to provide a one-off capital funding contribution to private sector entities, in a way that supports the establishment of private sector port rail supply chains consistent with the PRSN concept, and results in rail shuttle operations handling part of the metropolitan container freight from 2019 onwards.

In order to facilitate participation by the private sector, the Government recognises the need for it to establish commercial arrangements with the private sector that ensure certainty for both parties, support the establishment of efficient operations and interface arrangements, and allow the private sector operators and investors flexibility to provide commercially viable and sustainable services to its freight customers.

To this end, the Government is prepared to consider requests for funding or other support for elements such as:

- track improvements, or similar, in the existing rail network to improve capacity or certainty of operability;
- sidings or rail connections between the existing network and a PRSN terminal; and
- terminal facilities on public land.

Government funding, in the form of one-off capital contributions, will only be provided to private sector entities willing to make their own capital investments to establish their port rail supply chains and become PRSN providers. In return for Government funding, the private sector entities must commit to delivering minimum volumes of the port container task on rail from 2019 onwards. As part of the proposed commercial principles, risks regarding volume, access, operations, assets, customer pricing, interface arrangements, and future investment obligations will be the responsibility of the PRSN providers.

The Government expects that the information provided by Respondents can be relied upon for the purpose of evaluating the EOI responses, and will be representative of the proposals that will be taken forward to the next stage where applicable. As part of their responses, Respondents should provide an indication of the certainty associated with any costs and estimates, which should be underpinned by supporting information as part of the response.

The following sections summarise the Government's position on various commercial aspects of the PRSN. Respondents are asked to consider and respond to these aspects in their EOI responses.

3.2 Assets and funding

The Government is willing to consider investment in assets and infrastructure on public land and the rail network to support the establishment of a PRSN.

The Government does not propose to undertake investment in assets or infrastructure on private land. This would be the responsibility of the Respondent. The Respondent will be responsible for all planning approvals required to implement their PRSN proposal.

The Government will not be responsible for the acquisition, operation and maintenance of rail rolling stock (locomotives and wagons) that will be required to operate the PRSN.

Within these limitations, Respondents are to consider what capital funding they would require (if any) from the Government and how it would be invested to facilitate a commercially viable operation.

3.3 Demand and pricing risk

Demand risk will be the responsibility of the PRSN providers. However, as achievement of the Government's objectives for the PRSN are dependent on maximising the number of containers moving to and from the POM area on the PRSN, the Government is seeking a commitment by Respondents that their proposal will result in a minimum number of containers per annum being carried on the PRSN. This commitment could be in the form of a schedule of Twenty-foot Equivalent Units (TEU) per year, including a ramp-up period in the early years.

The Government's preference is to not regulate for pricing and access arrangements within the PRSN. However, the Government will require Respondents to identify how they propose to manage pricing.

The Government may consider regulating pricing through an access regime in circumstances where monopoly conditions could arise within the PRSN.

3.4 Interface risk

Respondents will be responsible for the commercial and operating interfaces within their PRSN proposal, such as with the POM, stevedores, Rail Network Managers, other rail and transport operators (both passenger and freight), customers/users, and any other relevant agency or organisation.

The Government will not be liable for any interface risks regarding development or operation of PRSN proposals.

3.5 Operations

3.5.1 Train paths

Access agreements will need to be negotiated directly between the Respondent and the Rail Network Manager under the existing track access arrangements. Where a proposal is considered beyond the EOI stage, the Government may at its sole discretion choose to facilitate discussion/negotiation between a Respondent and the Rail Network Manager to assist in the successful completion of a network access agreement governing track access, train control and path times. However, the Government will not be responsible for ensuring or guaranteeing ongoing acceptable train paths for any Respondent.


3.5.2 'Common user' / 'Open access' regime

The Government does not want potential customers/users or operators of future elements of the PRSN to be prevented from using the network. The Government does not intend to support access arrangements that guarantee exclusive rights to public infrastructure or with certain common elements of the PRSN. For intermodal terminals, the preference is for 'common user' / 'open access' regimes which:

- ensure access to the PRSN for all customers/users, including those who are not co-located at intermodal terminals; and
- enables users co-located at a terminal to use road and rail services, to transport containers between intermodal terminals and the POM.

3.5.3 Performance, reporting and commercial assurances

In connection with any capital funding contribution, the Government will require reporting around performance. Depending on the nature of the agreement, this could include reporting on the extent to which the capital works and other associated private sector funding has been delivered compared to plan, and the volume of containers handled by the rail shuttle element of the operations.



The Government will also require appropriate contractual protections and enforcement mechanisms which may include performance bonds or agreed measures in the event the private sector does not meet its obligations. This could include mechanisms to support service continuity in the event of failure of operations in the future. The best contractual mechanisms to provide the Government with appropriate protections for its investments will be explored in future stages.

3.5.4 Compliance and suitability of contracting entity

In order for the Government to enter into an agreement with the private sector it must satisfy itself that the entity represents a suitable contracting party and an acceptable level of risk to the Government. This includes:

- Level of accreditations and suitable safety records and practices;
- Compliance with the relevant policy and legislations such as Major Projects Skills Guarantee, Foreign Investment Review Board and Victorian Industry Participation Policy, to the extent they apply to this project; and
- Suitable levels of experience, capability and financial capacity for the relevant services and investments.

4 EOI Evaluation

4.1 Evaluation process

EOI responses, and any proposals included as part of these responses, will be evaluated in relation to:

- the evaluation criteria identified in Section 4.2 below; and
- the overall proposition presented in the response.

Any EOI response which is clearly incomplete or inadequate in respect of the provision of information sought in the invitation, and has no reasonable prospect of meeting the evaluation criteria compared to other responses, may be excluded from further evaluation.

4.2 Evaluation Criteria

EOI responses and associated proposals will be evaluated against the following Evaluation Criteria:

Number	Criterion	Description
1	Potential to deliver the objectives and intended outcomes for the PRSN initiative	The extent to which the Proposal will help to achieve, and be consistent with, the objectives and planned outcomes of the PRSN concept
2	Complete solution	The extent to which the Proposal represents a technically viable and complete solution covering all operational aspects of a port rail shuttle service
3	Operational readiness	The extent to which the Proposal is sufficiently advanced, and demonstrates readiness to operate from 2019 onward
4	Commercial viability	The extent to which the Proposal demonstrates the potential of the proposed activity to be or become profit-making without financial support, other than any Government funding requested
5	Capability and expertise	The extent to which the Proposal demonstrates the ability, expertise and capacity of the Respondent and other participants to undertake and deliver the proposal
6	Financial capacity	The extent to which the financial capacity of the Respondent and other participants is commensurate with the scale of the Proposal
7	Funding requirement	The extent to which any Government funding request aligns with Government's preferences, fits within the available funding, and represents value-for-money
8	Proposed commercial arrangements	The extent to which the Proposal demonstrates an understanding of and accepts the Government's commercial principles and proposed risk allocation
9	Procurement principles	The extent to which the Proposal addresses the procurement principles that have particular significance for Australian and Victorian Government funding initiatives

5 Submitting an EOI Response

5.1 Respondent details

Please provide the following information for the Respondent.

Respondent information
Trading name:
Registered name:
Australian Company Number:
Australian Business Number:
Address of registered office:
Principal office in Victoria (if applicable):

Contact details
Name of contact person:
Position title:
Address:
Postal address (if different to above):
Email:
Website:
Telephone number: Mobile:

Where the Respondent consists of a consortium of two or more participants (which may be a sub-contractor), the Respondent is required to provide details of each consortium participant, and outline the scope of each participant's role and responsibilities in relation to the Proposal.

Please provide the following information for each other participant.

Participant information
Trading name:
Registered name:
Australian Company Number:
Australian Business Number:
Address of registered office:
Principal office in Victoria (if applicable):
Role of the participant:

Signed for and on behalf of the Respondent:

I warrant that in submitting this response, I have read and accept the conditions of the EOI.

Where the response is a consortium response, each consortium participant should complete this acceptance.

Respondent:

Name:

Position:

Address:

Email:

Signature of Respondent's
authorised officer:

Date of execution:

5.2 Response to Evaluation Criteria

The format of the EOI response should be as follows:

- Submitted in A4 portrait format;
- Set out in no smaller than Arial 10-point font; and
- Not include unnecessarily elaborate or excessive attachments beyond that sufficient to present a complete and effective response.

The Government would prefer that Respondents contain responses to no more than forty (40) pages (excluding case studies and financial credentials).

Responses should address and include the information requirements outlined below in respect of each of the Evaluation Criteria.

5.2.1 Criterion 1: Potential to deliver the objectives and intended outcomes for the PRSN initiative

Respondents must demonstrate that their Proposal will help to achieve, and be consistent with the objectives and planned outcomes of the PRSN. Responses should include:

- The number per annum of TEU that the Respondent will commit to carrying over the first 5 years of operation;
- How the Proposal will improve the productivity of the metropolitan port container freight task and improve capacity at the POM;
- How the Proposal will reduce congestion around the POM; and
- How the Proposal will benefit the environment and local communities.

5.2.2 Criterion 2: Complete solution

The Proposal must be a technically viable and complete solution capable of providing port rail shuttle services from the POM to one or more intermodal terminals located in the suburbs of Melbourne. Responses should include:

- A high level operating plan describing the proposed operation;
- The proposed delivery structure including roles and responsibilities of all participants, and how the interfaces will be managed;
- Key risks associated with the solution, and how these will be managed;
- Infrastructure requirements, and how these will be addressed; and
- The delivery plan that the Respondent plans to follow in order to implement their Proposal.

5.2.3 Criterion 3: Operational readiness

Respondents must demonstrate that their Proposal is sufficiently advanced and could be implemented in the near term. Responses should include:

- Where the Respondent alone would not provide a complete solution, they should demonstrate that they have in place, or are in a position to secure agreement with providers of the additional services required to provide a complete solution, including stevedores and accredited rail operators;
- Respondents must demonstrate that they have in place, or are in a position to secure, agreements for access to terminals at the POM, and approvals from Metro Trains/VLine/ARTC for the train paths required for their estimated volumes;
- Respondents must demonstrate commitment to the construction of required intermodal terminal, rail access and road access works; and
- Responses must describe proposed timelines and activities to achieve operation.

5.2.4 Criterion 4: Commercial viability

The Respondent's Proposal should have the ability to compete effectively in the marketplace, and to be, or become, profitable without financial support other than any Government funding requested for their Proposal.

In order to demonstrate the commercial viability of the Proposal, the Respondent should provide a high level business plan and financial projections (on a confidential basis).

5.2.5 Criterion 5: Capability and expertise

The Respondent must demonstrate that it and other participants undertaking the proposed activity, currently have the capability, expertise and capacity to successfully implement the Proposal and deliver a complete solution. Responses should outline:

- The experience of the Respondent and other participants in leading and delivering similar operational requirements;
- The Respondent's capability and resources, including people, systems, assets and processes, and how these will support effective and efficient delivery of the proposed solution; and
- Where any material capability or experience gaps exist, how these will be addressed as part of implementation of the Proposal.

5.2.6 Criterion 6: Financial capacity

The financial capacity of the Respondent should be commensurate with the scale of the Proposal and the proposed PRSN activities.

Responses must demonstrate the financial capacity of the Respondent and other participants associated with delivering the Proposal. It is preferable that financial capacity is demonstrated through audited financial statements.

5.2.7 Criterion 7: Funding requirement

Any request for Government funding as part of the Proposal needs to align with the Government's preferences for providing this funding, and represent value-for-money.

The Respondent must clearly state whether or not they require capital funding from Government to deliver the Proposal. If capital funding is required, the Respondent must identify the amount of funding required and what this funding would be invested in to deliver the proposal. The Respondent must also provide details of its own capital investments that will be made in order to deliver the Proposal.

The Government expects that the information provided by the Respondent can be relied upon for the purposes of evaluation, and will be representative of the proposal that will be taken forward to the next stage where applicable. To inform this criteria, the Respondent is required to provide an indication of the certainty associated with any costs and estimates, which should be underpinned by supporting information as part of the response.

5.2.8 Criterion 8: Commercial arrangements

The extent to which the Respondent's Proposal demonstrates an understanding of and accepts the Government's commercial principles and proposed risk allocation. The Respondent must provide details of their proposed commercial arrangements including:

- Outline of expected form of agreement between the Government and Respondent, for provision of funding or other support and commitment to containers moved;
- Proposed governance arrangements during implementation and operations;
- Measurement and management of performance;
- Expected commitment term; and
- Any departures from the Government's commercial principles.

5.2.9 Criterion 9: Procurement principles

The extent to which the Proposal addresses the procurement principles that may have particular relevance for Australian and Victorian Government funding initiatives, such as:

- Local Industry Participation – for which both the Australian and Victorian Governments have policies;
- Social Procurement – which involves using the procurement process to generate positive social outcomes for Victorian communities in addition to the efficient delivery of goods and services;
- Sustainable Procurement – which involves organisations meeting their needs for goods, services, works and utilities in a way that achieves value for money on a whole-of-life basis, in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising the impact to the environment; and
- Australian Government Building and Construction WHS Accreditation Scheme and Building Code 2016.

The response should identify whether such principles are applicable to the Proposal, and describe how the Proposal addresses the relevant principles.

5.3 Response lodgement

The closing time and date for lodgement of EOI responses is 5pm Australian Eastern Daylight Saving Time (AEDST) on Tuesday 31 October 2017.

Responses must be lodged by email to: <https://www.tenders.vic.gov.au/tenders/home.do> and meet the requirements described in this invitation (unless Transport for Victoria has advised otherwise in writing prior to the closing time).

Respondents should ensure that responses are lodged via the internet with sufficient time to allow receipt from TendersVic by the closing time. Lodgement at least 2 hours early is recommended.

If you have any technical problems with the website, contact the helpdesk on (03) 8683 2932 between 9 am and 5 pm AEDST (Monday to Friday) or at email tenders@dtf.vic.gov.au

5.4 Late responses

If a response is lodged after the closing time, it may be disqualified from the invitation process and may be ineligible for consideration unless:

- The Respondent can clearly document to the satisfaction of the Transport for Victoria that an event of exceptional circumstances caused the response to be lodged after the closing time; and
- Transport for Victoria is satisfied that accepting a late response would not compromise the integrity of the market approach.

The determination of Transport for Victoria as to the actual time that the response is lodged is final. All responses lodged after the closing time will be recorded by Transport for Victoria.

Transport for Victoria will inform a Respondent whose response was lodged after the closing time as to their ineligibility for consideration.

5.5 Other conditions of this EOI invitation and process

5.5.1 Invitation

Legal entities, companies, consortiums and alike are invited to submit responses in accordance with this invitation.

Nothing in this invitation is to be construed, interpreted or relied upon, whether expressly or implied, as an offer capable of acceptance by any person, or as creating any form of contractual, promissory, restitutionary or other rights.

No binding contract or other understanding (including any form of contractual, promissory, restitutionary or other rights) for the supply of the goods or services will exist between the Government and any Respondent unless and until the Government has signed a formal written contract to that effect.

All entities (whether or not they submit a response) having obtained or received this invitation may only use it, and the information contained in it, as set out in this invitation.

5.5.2 Accuracy of invitation

Transport for Victoria will not be liable for any discrepancy in or omission from the content of this invitation or any related information provided.

If a Respondent finds any discrepancy, ambiguity, error or inconsistency in the invitation or any related information provided by Transport for Victoria (other than minor clerical matters), the Respondent must immediately notify Transport for Victoria by email, so that there is fair opportunity to consider what corrective action is necessary (if any).

If there is any inconsistency between any of the documents, or parts of the documents constituting this invitation, the Project Manager will determine the order of precedence. The Project Manager will notify all Respondents in writing where a determination is made pursuant to this clause.

5.5.3 Additions and amendments

Transport for Victoria reserves the right to change any information and/or to issue addenda to the invitation before the closing time. Where Transport for Victoria exercises its right to change information in accordance with this clause, Transport for Victoria may seek amended responses from Respondents and may amend the closing time to allow Respondents sufficient time to amend their response.

5.5.4 Representation

No representation made by or on behalf of Transport for Victoria in relation to this invitation (or its subject matter) will be binding on Transport for Victoria unless the representation is expressly incorporated into the contract(s) ultimately entered into between the Government and a Respondent.

5.5.5 Licence to use Intellectual Property Rights

Persons obtaining or receiving this invitation and any other documents issued in relation to the invitation may use the documents only for the purpose of preparing a response.

Such Intellectual Property Rights as may exist in the invitation and any other documents provided to the Respondents by or on behalf of Transport for Victoria in connection with the invitation process are owned by (and will remain the property of) Transport for Victoria except to the extent expressly provided otherwise.

5.5.6 Communication protocol

Except for the lodgement of responses to the TendersVic website, all communications relating to this invitation and the EOI process must be directed by email to the Project Manager at david.e.harris@ecodev.vic.gov.au.

Communications (including promotional or lobbying activities) with staff of Transport for Victoria or consultants assisting Transport for Victoria with the invitation process are not permitted during the invitation process except as provided in this clause, or otherwise with the prior written consent of the Project Manager.

Nothing in this clause is intended to prevent communications with staff of, or consultants to, Transport for Victoria to the extent that such communications do not relate to this invitation or the EOI process.

Respondents must not engage in any activities or obtain or provide improper assistance that may be perceived as, or that may have the effect of, influencing the outcome of the invitation process in any way. Such activities or assistance may, in the absolute discretion of Transport for Victoria, lead to disqualification of a Respondent.

5.5.7 Requests for clarification

Any questions or requests for clarification or further information regarding this invitation or the EOI process must be submitted to the Project Manager by email to david.e.harris@ecodev.vic.gov.au **at least five days prior to the closing time**.

Transport for Victoria is not obliged to respond to any question or request.

Transport for Victoria may make available to other Respondents registered on the TendersVic website, details of such a question or request together with any response, in which event those details shall form part of this invitation.

5.5.8 Complaints about the EOI invitation or process

A Respondent with a complaint about this invitation or the invitation process which has not been resolved in the first instance with the Project Manager must follow the Tender Complaint Management Procedure which is available at www.ecodev.vic.gov.au

Any complaint about the EOI invitation or process must be submitted to the Chief Procurement Officer, Level 15, 1 Spring Street, Melbourne Vic 3000 in writing immediately upon the cause of the complaint arising or becoming known to the Respondent. The written complaint must set out:

- The basis for the complaint (specifying the issues involved);
- How the subject of the complaint (and the specific issues) affects the person or organisation making the complaint;
- Any relevant background information; and
- The outcome desired by the person or organisation making the complaint.

5.5.9 Conflict of interest

Respondents and their representatives must not place themselves in a position that may give rise to an actual, potential or perceived conflict of interest between the interest of the Government and the Respondent's interests during the invitation process.

Respondents are required to disclose any conflicts of interest in their response and also notify Transport for Victoria if any conflict of interest arises after lodgement of their response.

Transport for Victoria may disqualify a Respondent from the invitation process if the Respondent fails to notify it of any conflict of interest.

5.5.10 Errors in a response

If a Respondent identifies an error in their response (excluding clerical errors which would have no bearing on the evaluation), they must promptly notify Transport for Victoria.

Transport for Victoria may permit a Respondent to correct an unintentional error in their response where that error becomes known or apparent after the closing time, but in no event will any correction be permitted if Transport for Victoria reasonably considers that the correction would materially alter the response.

5.5.11 Use of a response

Upon submission, all responses become the property of Transport for Victoria. The Respondent will retain all ownership rights in any intellectual property contained in their response however each Respondent, by submission of their response, is deemed to have granted a licence to Transport for Victoria to reproduce the whole, or any portion of their response for the purposes of enabling Transport for Victoria to evaluate the response.

5.5.12 Clarification of a response

To enable thorough evaluation of EOI responses, it may be necessary for Transport for Victoria to request clarification of information provided in a response. To the extent practicable, clarifications will be sought via email.

If in the opinion of Transport for Victoria, a response is unclear in any respect, Transport for Victoria may seek clarification from a Respondent. Failure to supply clarification to the satisfaction of Transport for Victoria may render the response liable to disqualification.

Transport for Victoria is under no obligation to seek clarification, and reserves the right to disregard any clarification that it considers to be unsolicited or not in keeping with the requirements of the invitation.

5.5.13 Discussion with Respondents

Transport for Victoria may in its absolute discretion:

- Interview, negotiate or hold discussions with any Respondent or prospective Respondent on any matter contained (or proposed to be contained) in a response to the exclusion of others; or
- Request some or all Respondents to conduct site visits, provide references and additional information, and/or make themselves available for panel interviews.

5.5.14 Disclosure of response information

Responses will be treated as confidential by Transport for Victoria, which will not disclose response contents and information except:

- As required by law (including, for the avoidance of doubt, as required under the *Freedom of Information Act 1982* (Vic) (FOI Act);
- For the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;
- To external consultants and advisers of Transport for Victoria engaged to assist with the EOI invitation or process; or
- General information from Respondents required to be disclosed by government policy.

Authorised by the Victorian Government
Transport For Victoria, 1 Spring Street Melbourne Victoria 3000
Telephone (03) 9651 9999

© Copyright State of Victoria,
Department of Economic Development, Jobs, Transport and
Resources 2017

