

**The Hon. Faye Lo Po' MP**

**Minister for Community Services  
Minister for Ageing  
Minister for Disability Services  
Minister for Women**

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*Faye Lo Po'*

The Hon Dr Brian Pezzutti  
Committee Chair  
General Purpose Standing Committee No.2  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Dr Pezzutti,

I refer to your request for an early response to the question of supplying the Committee with "a copy of the tender process" used in the decision making process in relation to EOI's.

I have enclosed the relevant documentation. As you indicated in your letter of request, the question will now be recorded as having been answered.

Yours sincerely

**Faye Lo Po' MP  
Minister for Community Services  
Minister for Ageing  
Minister for Disability Services  
Minister for Women**



# **COMPETITIVE SELECTION IN FUNDING DECISIONS**

**GUIDELINES FOR THE APPLICATION OF COMPETITIVE  
SELECTION PROCESSES**

**&**

**CONTRACTING OF COMPETITIVELY SELECTED SERVICES**

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# OVERVIEW

## i INTRODUCTION

The NSW Government has released a Policy Statement on Procurement<sup>1</sup> which has at its core the principle of value for money. The Policy states that the primary objective of Government procurement is cost effective service delivery to the community, but it recognises that the best value may not necessarily be obtained for the lowest cost.

Under the Policy, key requirements of Government procurement activities are:

- ◆ efficiency and effectiveness
- ◆ probity and equity
- ◆ effective competition

The principle that Government agencies are accountable for procurement planning and outcomes is strengthened.

The Policy impacts on the procurement activities of the Department of Ageing, Disability and Home Care. All decisions made in relation to the expenditure of Government funding must be consistent, transparent and made with the highest degree of probity. They must be well documented to demonstrate accountability and to be able to sustain independent scrutiny.

The Department is also bound by the Government's adoption of service competition policy, and by the guidelines set by central agencies for complying with this policy.

In addition to meeting the Government's requirements, the Department has responsibilities to the other stakeholders involved: the community in general; service users and their carers; and service providers. These parties work together to meet common goals for older people and those with disabilities. Competitive selection and contracting arrangements must be responsive to the needs of individuals, and applied in a way that nurtures and maintains the special collaborative relationships present in the sector.

The Department uses a range of competitive processes to ensure that its decisions in the allocation of funding under its various grants programs, and in purchasing services for itself, meet the Government's requirements.

The Department's objectives in implementing a competitive process are to:

- ◆ ensure that services are responsive and relevant to service users
- ◆ ensure fair and impartial decision making
- ◆ improve the clarity of decision making
- ◆ ensure equity of access to funding for all eligible organisations, new or known

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<sup>1</sup> State Contracts Control Board Policy Statement NSW Government Procurement A whole-of government framework New South Wales Government White Paper 1999. Other available documents that comprise the policy framework are:  
Department of Public Works and Services Implementation Guidelines NSW Government Procurement New South Wales Government 1999  
Department of Public Works and Services Code of Practice NSW Government Procurement New South Wales Government 1999  
Department of Public Works and Services Code of Tendering NSW Government Procurement New South Wales Government 1999

- ◆ facilitate innovation in service provision
- ◆ ensure consistency in funding methods across programs
- ◆ obtain value for money

The purpose of this document is to provide guidelines for competitive selection processes to ensure that the Department meets its responsibility for ensuring accountability and transparency in decision-making, while facilitating the provision of appropriate, high quality services for older people, people with disabilities and their carers.

Service providers<sup>2</sup> are also required to adopt all aspects of the *Code of Practice and Code of Tendering for NSW Government Procurement*, and must comply with the NSW Government's procurement policies, practices and tendering requirements. When preparing call documents (see Section 2), staff must ensure that they ask appropriate questions and provide sufficient information for bidders to meet their responsibilities.

**This document relates to all purchasing activities conducted by the Department.**

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<sup>2</sup> 'Service providers' in this document, also refers to consultants or companies providing services direct to the Department.

## **ii METHODS OF FUNDING ALLOCATION**

### **Competitive selection**

The methods of competitive selection used by the Department at this time include:

1. calling for quotations
2. selective tendering
3. full market involvement (expressions of interest or requests for tender)

There are other methods of competitive selection not mentioned here, such as benchmarking, which are not currently used by the Department. These may be introduced over time as funding reform proceeds.

Generally, the type of process used will be determined by the level of available resources and the extent of interest in delivering the service. A discussion on selecting the appropriate process is included in section 1 of these Guidelines.

A publicly advertised process, such as EOI, or selective tendering caters for the special features of the sector by:

- ◆ facilitating responsiveness to service user needs
- ◆ offering service providers, both existing and new, an opportunity to display their particular capabilities
- ◆ incorporating flexibility to allow innovation
- ◆ helping the Department gain a clearer understanding of the market, and the nature and quality of service being provided
- ◆ enabling the Department to better assist existing service providers in becoming increasingly competitive

### **Direct Allocation**

In certain circumstances, the Department may allocate funding to a service provider without undertaking a competitive selection process. This decision will be discretionary and will be made in compliance with a range of considerations and policies not outlined in these Guidelines.

These allocations will be made primarily to assist organisations in dealing with financial viability issues, to provide support services to individuals in crisis, or for other purposes, such as equipment purchase or training.

A decision to allocate funding in this manner will apply only in respect of one-off funding. Clear parameters for the allocation of such resources must be met.

### **iii PROBITY**

It is crucial that probity be maintained through any competitive selection process. The process must be transparent and demonstrate accountability for all decisions made. It must incorporate provisions to deal with any appeals or conflicts of interest.

#### **Confidentiality**

All information provided by a prospective service provider as part of a competitive selection process must be kept in confidence. It may be released outside the Department only where the intention to do so has been clearly stated when bids were sought. This not only includes material provided as part of a bid, but any other interaction an organisation may have with Departmental staff prior to submitting a bid.

Bids may be subject to Freedom of Information (FOI) applications. Any FOI requests should be directed to the FOI coordinator in the Legal Unit. Appropriate third parties will be consulted before any application is determined and internal FOI procedure, reflecting the FOI legislation, will be followed.

#### **Documentation**

Any decision making process must be fully documented and able to sustain independent scrutiny. Any deviation from these Guidelines and any undertakings made in seeking bids must be documented, together with a justification that meets probity requirements.

The documentation that is to be produced and maintained through the process should be determined before bids are sought. Wherever possible, documentation must be maintained in standard formats and all records must be kept on official files.

#### **Conflicts of Interest**

No individual or group with an interest in the outcome of any competitive selection process is permitted to be involved in the process in a way that allows them to have an impact on the outcome, or that might lead others to perceive they have had an impact on the outcome.

The Department's *Code of Conduct for Members of Steering Committees, Advisory Groups and Other Committees* clearly describes the obligations and behaviour expected of Committee Members and other groups providing advice or professional guidance to the Department. Similarly there is a *Code of Conduct* for staff of the Department which addresses potential areas of conflict in carrying out their duties.

There are two key areas of potential conflict in the implementation of any competitive selection process run by the Department:

1. the involvement of regional staff in providing advice for the preparation of bids, as a result of their role in the support and development of existing funded services. This role must be cautiously managed throughout the competitive selection process, to ensure that the support provided to existing funded providers is not inequitable with that being provided to new or unfunded organisations, and to avoid any perception that this is the case.
2. the inclusion of service expertise on assessment panels where the source of that expertise may be limited to individuals or groups who may have an interest in the outcome of the selection process. If this situation is unavoidable, the conflict of interest must be clearly identified and declared, and the person or people involved must give undertakings to act as individuals and not as representatives of interest groups.

# GUIDELINES FOR THE APPLICATION OF COMPETITIVE SELECTION PROCESSES

These Guidelines have been developed to ensure that probity issues are fully addressed in implementing any competitive selection process. They provide information to ensure that all individuals participating in such processes are aware of their responsibilities and have access to the tools available to make the best decisions possible in the circumstances.

A checklist indicating the documentation required for each stage of the process, and the person or group responsible for managing that stage, is at **Appendix 1**.

## Stages

1. Determining which process to use.....
2. Preparing call documents .....
3. Establishing and briefing assessment panel(s).....
4. Calling bids.....
5. Interacting with prospective providers .....
6. Holding information sessions
7. Receiving, opening & registering bids .....
8. Evaluating bids.....
9. Obtaining endorsement for recommendations.....
10. Taking action if no bid is submitted or no applicant recommended.....
11. Notifying and providing feedback to applicants.....
12. Developing and implementing a contract.....
13. Dealing with complaints .....

**Note: The stages identified here may not occur chronologically, may overlap or precede each other, and not all stages may be relevant in a given process. The manner in which each stage is progressed will be determined in accordance with the nature of the allocation.**

# 1 DETERMINING WHICH PROCESS TO USE

Before starting any competitive selection process, the Department must determine the most appropriate method of selection.

In order to make this decision the Department must have a clear understanding of the objectives of the funding available for allocation, including any parameters or constraints on its use. This may involve legislative or program directions, central agency directives or Government policy<sup>3</sup>.

## METHODS OF SELECTION

There are three methods of competitive selection<sup>4</sup> currently used by the Department:

1. calling for quotations
2. selective tendering
3. full market involvement (Expressions of Interest or requests for tender)

The method chosen in a particular situation will depend on a range of factors, including:

- ◆ The number of service providers available and/or interested
- ◆ The capacity of known providers to deliver the services efficiently and within prescribed quality parameters
- ◆ The Department's understanding of the scope, capacity and nature of the market
- ◆ The quantum of funds available for allocation
- ◆ The time available to run the process
- ◆ The nature of the available funding – for general growth or targeted to meet a specific need
- ◆ The range of services required – vast or limited
- ◆ The parameters for the delivery of the service – whether a particular method or approach is being sought for the service delivery, or whether flexibility is desirable

The following section gives guidance for choosing the appropriate selection process in light of some of these factors.

In larger processes, where multiple services are being sought, a mix of these processes may be used.

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<sup>3</sup> For example: the Public Employment Office Guidelines for the Engagement and Use of Consultants (1996); State Contracts Control Board Updates to the General Purchasing Delegation under the Public Sector Management (Goods and Services) Regulation 1995 (commonly referred to as 'NSW Supply Guidelines' and published in the Public Service Notices); NSW Government Procurement policies and codes referred to in footnote 1.

<sup>4</sup> Direct allocation is another method available to the Department, but it is not addressed in this guide.



## CHOOSING THE APPROPRIATE METHOD

### 1. Calling for Quotations

This involves requesting written bids from at least three potential providers who are believed to be capable of providing the services.

The Department prepares a letter of invitation which specifies the requirements of the service. The bids received will show the nature and scope of the proposed service and the cost.

#### ***When is it appropriate?***

This method is used only for one-off funding, where the quantum of funding available is within the range of \$20,000 to \$100,000.<sup>5</sup>

It is appropriate for selecting providers for extraordinary services or consultancies, such as specialised training or research and development projects. It may be used to purchase services for a particular user with particular needs, or where it is known that the number of providers capable of delivering the service is extremely limited.

It is a low cost option which can be used to provide urgently needed services in the minimum time. However it does not access the full range of service providers in the market and offers little opportunity for flexibility in service provision.

### 2. Selective Tendering

This involves inviting bids for the delivery of a defined service from known providers who are believed, from records of past performance, to be capable of providing the required service(s).

The Department prepares a bid document detailing in full the requirements for the service, as it would for a publicly advertised process. Although the number of prospective service providers is limited, they are required to submit the same information in support of their bids as they would to participate in a publicly advertised process.

#### ***When is it appropriate?***

This is a useful process where the nature of the service being sought is well defined, eg. in terms of a specific methodology or approach, or where the range of services required is limited, eg. to a particular region, service type or user group.

The process is used only where the funding is targeted to meet a specific need. It offers savings in time and cost, but is applicable only where the Department has a good knowledge and understanding of the market and is sure that the number of providers capable of providing the service(s) is limited.

This process does not encourage new service providers or innovation. **It should not be used** where little is known of the market, where the services being sought are not clearly defined, or where innovation in service delivery or reshaping of existing service models would be of benefit to service users and to the Department.

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<sup>5</sup> For funding allocations of less than \$20,000, three quotations may not be necessary. See Footnote 3.

### **3. Full Market Involvement**

Full market involvement means seeking the participation of all potential providers, known or unknown, through public advertisement.

There are two generic types of full market involvement process: the calling of expressions of interest and requests for tender. These processes can operate independently or in conjunction with each other.

A key advantage of these processes is that unknown or new providers may emerge, creating opportunities for the development of innovative, cost effective and quality focused services. The processes can also facilitate the diversification or reshaping of services delivered by known providers, offering them an opportunity to review their current service delivery methods and their effectiveness in meeting the needs of service users.

Full market involvement processes can provide the Department with a clearer understanding of the market, and the nature and quality of services being provided. The Department will then be in a better position to assist service providers to improve their competitiveness, eg. by reshaping services, or implementing quality and performance measures. This will help to develop a balanced and innovative market which is truly responsive to the needs of individuals or target groups.

#### **i) Calling for Expressions of Interest**

The Expression of Interest (EOI) process involves issuing public invitations to potential providers to demonstrate a willingness to provide the service, or range of services, being sought.

An EOI process gives potential providers the opportunity to display their ability to provide a service in line with broadly defined specifications and criteria prescribed by the Department. Whilst minimum performance parameters and quality requirements are clearly defined, the specification is not prescriptive, and prospective providers are offered flexibility to determine the manner in which the required outputs/outcomes will be achieved and the standards met.

The process allows service providers to tailor their services to meet the specific needs of service users, and can facilitate the involvement of service users in decisions made regarding their interests.

A budget for the provision of the service may be set, however it will be the responsibility of the provider to manage delivery of the service so as to effect maximum cost-efficiencies within this budget.

A contract is entered into with the successful provider which reflects the offers made in the EOI.

#### ***When is it appropriate?***

**The EOI process is the Department's preferred process for general growth funding at this time.** It is also appropriate for specifically targeted funding. It applies where a broad range of services is required, eg. where statewide funding is available or there is a range of service types, user groups, etc.

EOIs are called:

- ◆ where the Department has a limited understanding of the market and wishes to access services from new providers
- ◆ where it is desirable to diversify or expand the services of existing providers
- ◆ where innovative or new approaches to the delivery of services are sought

## ii) **Requests for Tender**

The Request for Tender (RFT) process involves issuing public invitations to potential providers to demonstrate a commitment to provide the service, or range of services being sought.

RFTs may be called independently, or be preceded by an EOI process to shortlist a number of suitable providers. In the latter case, the calling of RFTs seeks to consolidate the claims made at the EOI stage. The second stage provides the Department with an opportunity to more clearly specify its requirements, based on information gained from the EOI stage.

In both cases, the RFT requires the prospective service provider to demonstrate in precise terms the nature, extent and cost of the services to be provided.

A contract is entered into with the successful provider which reflects the offers made in the RFT bid.

Whilst independently called RFTs do not ignore issues of quality and performance, there is greater emphasis on the ability of the provider to deliver a service at a lower cost than in other processes. Although the service sought is generally very specific and well defined, and at a specific cost, this does not preclude prospective providers from proposing a method of delivery that is innovative or new in its approach.

### ***When is it appropriate?***

RFTs are called:

- ◆ where the services to be provided are precisely defined and the manner in which they are to be delivered is prescribed
- ◆ where a major factor is the price of the service to be delivered
- ◆ where it is desirable to allow limited flexibility for potential providers
- ◆ where it is desired to lock providers into delivering a specific style and quantity of service at a **particular** price
- ◆ where there is **little concern** for the cost and time required for potential providers to complete complex submissions

As funding reform strategies such as the introduction of output based funding and unit costing are introduced it may be that the Department will move towards the prescriptive RFT model, however this transition will take some time.

## **ENDORSEMENT OF THE PROCESS**

A **submission** is made to the Director, Director General or Minister, seeking endorsement of the broad strategy and the proposed funding allocation process. The submission will contain:

- ◆ the background to the project and purpose of the funding allocation
- ◆ the proposed method of selection, and reasons for this choice
- ◆ any contentious issues
- ◆ the identity of the project manager
- ◆ the proposed timeframe
- ◆ the proposed advertisement and information package.<sup>6</sup>

A sample submission is at **Appendix 2**.

## **NOTIFICATION OF STAKEHOLDERS**

All relevant stakeholders are notified of the approved process. Stakeholders may include:

- ◆ existing funded organisations
- ◆ peak bodies and sector representatives
- ◆ individual users who are affected and their carers/families
- ◆ other agencies involved in the project
- ◆ internal stakeholders

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<sup>6</sup> Submissions may need to be made in 2 stages: the first to endorse the proposed methodology; and the second to endorse the proposed management of the process and information for providers.

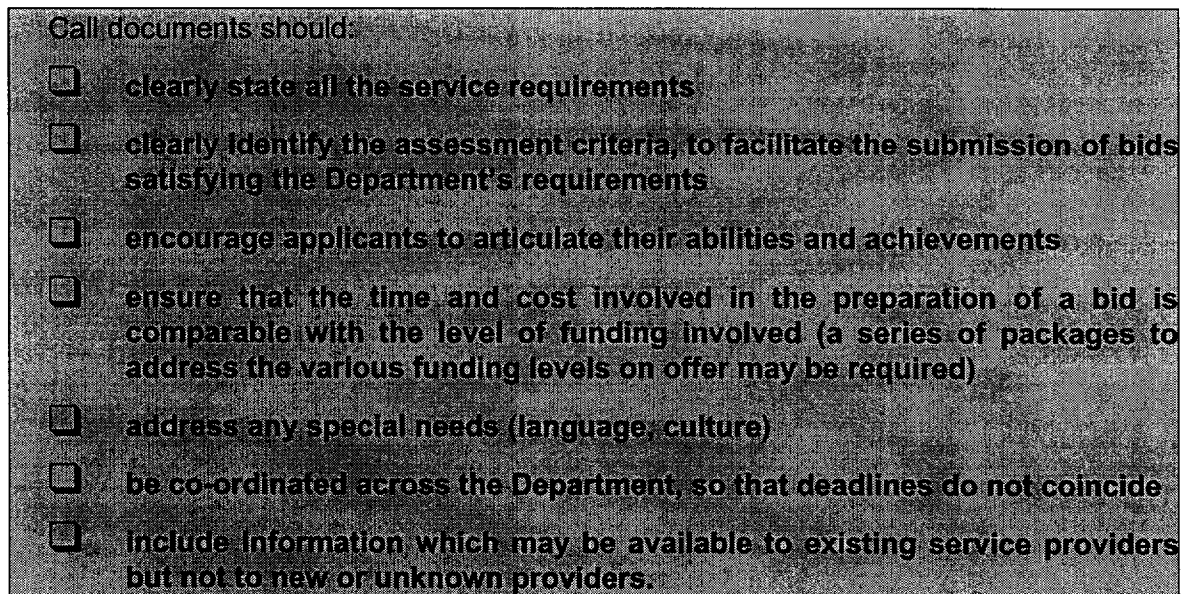
## 2 PREPARING CALL DOCUMENTS

All documentation required for calling bids must be prepared and approved **before** bids are sought. Information Packages must be ready for distribution when the advertisement initially appears in the press, or letters of invitation are distributed.

Clear and precise service and performance specifications are essential to ensure that the Department's requirements and expectations are recognised and met in the delivery of services. The assessment criteria for the bids must also be clear and precise, to ensure that the right service provider is selected and that the selection process is transparent.

It is essential that the specifications are clearly linked to the information requested in the bids and the criteria upon which the bids will be assessed. This will assist prospective providers to prepare bids which adequately address the Department's requirements and best describe their capabilities. Where the Department has particular expectations about the standard, content or formatting of submissions, these expectations must be made clear. Examples of the supporting documentation which could be included in the submissions may be provided, to assist prospective providers in understanding what is required.

The quality of the information available to prospective providers has a significant impact on the quality of the bids received. If the submissions received do not address the service requirements and the assessment criteria, or are otherwise deficient, assessment panels will find decisions difficult to make and almost impossible to substantiate.



The call documents may include:

- ◆ the advertisement
- ◆ **letters seeking bids** (for selective tendering processes only)
- ◆ **letters of notice** to known providers (where applicable)
- ◆ the **information package and application form**

## **ADVERTISEMENTS OR LETTERS SEEKING BIDS**

These should include as a minimum:

- ◆ a brief description of service being sought, including regional detail if applicable
- ◆ the geographic location of the services sought
- ◆ a contact name and phone number for obtaining the information package
- ◆ the closing date (a minimum of 4 weeks from the date of the advertisement)<sup>7</sup> and where bids are to be submitted to
- ◆ the locations and dates of information sessions (if relevant)

Letters may also be sent to existing service providers who are known to have the capacity to provide the required service, notifying them of the Department's actions and enclosing a copy of the advertisement. This action is an important part of maintaining existing relationships with providers. The letters do not provide more information than is contained in the advertisement.

Draft advertisements and letters are prepared by the project manager, who arranges endorsement by the appropriate delegated officer. That endorsement covers both the content of the letter and the providers who will be invited to bid.

A sample letter and sample advertisement are included at **Appendices 3 and 4**.

## **INFORMATION PACKAGES**

**Information Packages must be prepared using the appropriate template documents maintained by the Contract Management Unit. See Appendix 5 for a list of the templates and their applications.**

Templates are available to suit the following:

- ◆ generic service types, such as those provided under the HACC and Ageing Program
- ◆ placement of individual service users

In order to prepare a complete Information Package, the following information is inserted into the template documents:

- ◆ service specifications
- ◆ assessment criteria
- ◆ schedules for completion by prospective service providers
- ◆ special guidelines for preparing bids, if appropriate
- ◆ performance requirements
- ◆ monitoring procedures

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<sup>7</sup> A minimum of 8 weeks should be provided for submission of bids where the process is operated on a statewide level and information sessions are to be held for prospective providers.

## **1. Service Specifications**

As a minimum, the service specifications will include:

- ◆ a description of the service to be provided, including the service type and its quantum, the geographic area covered, the community group being targeted, the context within a program and any specific methods of service delivery which must be incorporated
- ◆ the desired outcomes for users of the service, or the required outputs
- ◆ general requirements, such as performance standards, guidelines, policies, or planning priorities for the target group
- ◆ monitoring and performance management provisions
- ◆ relevant funding or costing information
- ◆ information on local conditions (as required)

The specification must be drafted with a focus on the needs of the intended service users, and must define the standards required for successful delivery of the services.

The Department has developed standard descriptions for some services. A library of these standard descriptions is maintained by the Contract Management Unit.

## **2. Assessment criteria**

Assessment criteria are the parameters which enable the bids from prospective providers to be evaluated against the specification requirements. They reflect the abilities of prospective providers to effectively deliver the service(s).

Assessment Criteria are included in the information package to assist prospective providers in offering information relevant to their bids. They must be unambiguous and measurable, and they must be clearly linked to the specifications for the service.

The Department has developed standard Assessment Criteria, which relate to standard service requirements. These include:

- ◆ demonstrated capacity to provide the specified services
- ◆ demonstrated ability to meet the required service standards
- ◆ demonstrated willingness and ability to identify and meet the particular needs of individual service users
- ◆ demonstrated knowledge of, and ability to interact with, local community agency networks
- ◆ a demonstrated record of financial viability and sound management practices, including the ability to operate within a project budget
- ◆ cost effectiveness and value for money (including the benefits of any innovations offered)

**No more than these Assessment Criteria should be adopted for any project. If too many criteria are used, comparison of the bids becomes a complex and time-consuming task. Prospective providers find it difficult to understand and meet the Department's expectations for their submissions.**

Prospective service providers are requested to provide specific information relating to these Assessment Criteria. The information requested is tailored to suit each situation, and takes into account the value of the services required. It is reviewed by the Contract Management Unit before it is incorporated into the call documents.

### **3. Application forms**

Proforma application forms are included in the Information Package, for completion and return by prospective providers.

The forms should specifically request all the information required to assess the submissions. The template documents include samples, which are to be used as a basis for developing project-specific forms. The forms must:

- ◆ request relevant information on the status of the applicant organisation
- ◆ require prospective providers to state what services they will provide
- ◆ include prompts directing prospective providers to address the assessment criteria
- ◆ incorporate provision for prospective providers to confirm that they will meet performance requirements
- ◆ prompt prospective providers with outstanding adverse reports to demonstrate how they are addressing the issues raised
- ◆ offer the opportunity for further information to be offered in support of the bid

### **4. Guidelines for preparing bids**

Guidelines to assist prospective providers in understanding how best to address the requirements of the selection process are included in the Information Package. These must be tailored to the particular project.

They will include an explanation of what is required to address each assessment criterion, eg. descriptions of the type of information required. They may also include a checklist for prospective providers, to ensure that they have provided all the information necessary to satisfy the Department's requirements for an eligible bid.

### **5. Performance requirements**

The template document includes provisions requiring providers to comply with standard performance requirements. If additional specific performance requirements are to be met in delivering the service, these must be incorporated into the Information Package.

### **6. Monitoring provisions**

If special monitoring activities, different from the standards included in the template document, are required for a particular project, then these must be included in the Information Package.