SPECIFICATION FOR
MUNICIPAL BUILDING SURVEYOR SERVICES

CONTRACT NO: 200809

CLOSING TIME: 3:00PM Thursday 2 October, 2008
1.1 Introduction and Nature of Contract

Glenelg Shire Council (“Council”) is seeking submissions from qualified and experienced Building Surveyors to undertake Council’s Municipal Building Surveyor (“MBS”) responsibilities. The provision of the service will have support from Council’s Building Inspector, Cadet Building Surveyor and administration staff. The service is required to provide MBS services within the Municipal Offices, Portland 2 days per week (Monday, Tuesday), primarily to assess building applications, issue or refuse building permits, issue certificates of final inspection and issue or refuse occupancy permits, together with other non-permit MBS functions.

The term of the Contract is for 2 years, within the commencement date to be negotiated with the Contractor, but preferably not later than 1 December 2008.

1.2 Activity Levels

The following table presents a comparative indication of activity levels for Building permits within the municipality over the past three years.

<table>
<thead>
<tr>
<th>Building Permits</th>
<th>2005/06</th>
<th>2006/07</th>
<th>2007/08</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Issued by MBS</td>
<td>200</td>
<td>54</td>
<td>131</td>
</tr>
<tr>
<td>Issued by Private</td>
<td>170</td>
<td>46</td>
<td>213</td>
</tr>
<tr>
<td>Building Surveyors</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Permits Issued</td>
<td>370</td>
<td></td>
<td>344</td>
</tr>
</tbody>
</table>

1.3 Resources Allocated

The Glenelg Shire Council allocates the following full-time resources to the delivery of Building Services:

- Building Inspector (Unlimited)
- Cadet Building Surveyor
- Administrative Support Officer

General management of the Building Services unit is via the Group Manager - Assets & Infrastructure.

The envisaged operational structure of the Building Services Unit within the contract period is shown below:-
<table>
<thead>
<tr>
<th>Municipal Council Roles (via MBS)</th>
<th>MBS Contractor (2 days/wk)</th>
<th>Current Officer (f/t)</th>
<th>Existing Cadet BS (f/t) vi)</th>
<th>Existing Admin Support Officer (f/t)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Issuing building permits i)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) “Limited” iii) - height/area definition</td>
<td>✔</td>
<td>✔</td>
<td>*</td>
<td>**</td>
</tr>
<tr>
<td>(Under delegation)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b) “Unlimited”</td>
<td>✔</td>
<td>*</td>
<td>*</td>
<td>**</td>
</tr>
<tr>
<td>2. Non-permit functions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) “Limited” - height/area definition</td>
<td>✔</td>
<td>✔</td>
<td>*</td>
<td>**</td>
</tr>
<tr>
<td>(Under delegation)</td>
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</tr>
<tr>
<td>b) “Unlimited”</td>
<td>✔</td>
<td>*</td>
<td>*</td>
<td>**</td>
</tr>
</tbody>
</table>

i) f/t Full-time Council Officer
   * Assists MBS
   ** Assists MBS, BI

ii) Approximately 60% - 70% of combined MBS/BI time currently on building permit functions.

iii) “Limited” scope of building work likely to include high majority of domestic work and small/medium, commercial / industrial / other work in the municipality. Eg: 10 No. 2 storey townhouses of average floor area 180m²; or a single level industrial building of 30m x 60m.

iv) It is expected that a qualified/experienced BI (unlimited) will be eligible to apply for BS (limited) registration under Part II of the Act from early 2009.

v) In addition to inspections, duties to also involve assessment of certain permit applications for comments/recommendation to the MBS.

vi) Subject to gaining Diploma of Building Surveying by late 2009, it is likely that this position holder may gain BI (limited) registration by early 2010.
1.4 Service Description

Council seeks the services of an MBS to be available in Council’s Municipal Offices in Portland. Additional time may be required based on the hourly rate nominated in the tender, for example, to cover leave arrangements of Council’s Building Inspector.

1.5 Submission of Tenders

Tenders must be submitted in a sealed envelope endorsed Municipal Building Surveyor Services Contract No. 200809 and be addressed to

Chief Executive Officer
Glenelg Shire Council
Municipal Offices
Cliff Street (P.O. Box 152)
PORTLAND VIC 3305

Tenders must be lodged before 3.00pm Thursday 2 October 2008. Tenders received after this time will not be considered for evaluation.

Tenders delivered by hand shall be placed in the Tender Box in the reception area of the Municipal Offices. It shall be the tenderer’s responsibility to ensure posted tenders arrive at Council by the due time.

Faxed or e-mailed tenders will NOT be accepted.

In no case shall any tenderer have any claim for expenses in the preparation of his/her tender.

1.6 Selection Criteria

The selection criteria to be used in the evaluation of the tenders are outlined below in order of importance. The criteria will be used to assess tenders in order to select the tender which will be most advantageous for Glenelg Shire Council, its residents and ratepayers.

Evaluation will include the assessment of:

- Registration as a Building Surveyor (Unlimited) with the Building Practitioners Board.
- A sound knowledge of the building industry, practices and products.
- Effective staff and management skills
- Good customer and community relations skills.
- Computer literacy relevant to normal MBS professional services activities.
The tenderer should concisely address all selection criteria in their tender submission.

1.7 Non-Conforming Tenders

Any tenderer failing to comply with the provisions, contrary to the tender documents, will be considered non-conforming and may be rejected at the discretion of the Council.

Non-conforming tenders may be considered, but only if accompanied by a conforming tender.

1.8 Canvassing

Canvassing of Councillors or staff of Council is not permitted and the tender of any tenderer who seeks to canvass a Councillor or staff of Council will not be considered.

Enquiries relating to clarification of the tender documents are appropriate and acceptable.

1.9 Award of Contract

Council may decide to award a contract or decide not to award a contract. A contract shall not be deemed to be awarded unless, and until, notice in writing of such award is handed or posted to the successful tenderer.

1.10 Code of Tendering

The tender process shall be conducted in accordance with the Victorian Local Government Code of Tendering, a copy of which is attached to this specification.

1.11 Council Contact

Council contact for the Tender is Mr Lindsay Merritt, Acting Group Manager – Assets & Infrastructure who can be contacted on (03) 5522 2215.
PART 2 - GENERAL CONDITIONS

1. DEFINITIONS

In this agreement, unless the context otherwise requires:

1.1 "Agreement" means:
   - The invitation to tender
   - General conditions
   - Specifications
   - Tender schedules

1.2 "Contractor" means the company/entity which provides MBS services via a natural person nominated under the Contract Agreement.

1.3 "Contract Services" means the professional services to be provided by the Contractor under the agreement.

1.4 "The Site" means the areas / premises where the Contract Services are to be delivered.

1.5 "Employees" means employees of the Council.

1.6 "OHS" means Occupational Health and Safety

2. GENERAL INTERPRETATION

In this agreement, unless the context otherwise requires:

2.1 Words denoting the singular number shall include the plural and vice versa.

2.2 Words denoting any gender shall include all genders.

2.3 Words denoting natural persons shall include corporations and vice versa.

2.4 Headings and underlines are for convenience only and do not affect interpretation.

2.5 Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings.

2.6 Reference to any party to this agreement shall include the party's successors and permitted assigns.

2.7 Reference to this agreement shall include amendments, novations, supplementations, variations or replacements to this agreement from time to time.

2.8 References to any legislation or to any provisions of any legislation shall include any modification or re-enactment of that legislation and any legislative provisions substituted for, and all regulations and statutory instruments issued under such legislation or provision.
2.9 A reference to any document includes a reference to that document as amended, rectified or replaced from time to time and to any document so amending, rectifying, or replacing the document.

2.10 References to dollars and "$" shall be taken as referring to amounts in Australian dollars.

2.11 As the case may be, a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation jointly and severally.

2.12 Unless expressly stated to the contrary where the Contractor is required to obtain consent for any matter or thing, the consent required shall be the consent of the Council, and shall be obtained prior to the act matter or thing for which consent is required and shall be in writing.

3 APPLICABLE LAW

The agreement shall be governed by and construed in accordance with the laws for the time being in force in the State of Victoria.

4 DISCREPANCIES OR AMBIGUITIES

The documents comprising the agreement shall be read as complementary documents and anything required by or contained in one but not another shall be equally binding as if required by or contained in all of them. If there is any inconsistency, the Specification takes priority over all other documents comprising the agreement. Any ambiguity, discrepancy or inconsistency shall be explained by the Council upon reference thereof in writing to it by the Contractor or on discovery thereof by the Council which shall thereupon direct the Contractor as to the interpretation to be followed. No such direction shall be construed as a variation to the Contract Services or be reason for adjustment of the agreement sum. If the Contractor finds any such ambiguity, discrepancy or inconsistency the Contractor shall immediately refer it in writing to the Council.

Minor items not expressly mentioned in the agreement documents but which are necessary for the proper execution and completion of the Contract Services shall be supplied and executed by the Contractor without adjustment to unit prices under the Contract.

5 VARIATIONS

5.1 During the period of the Contract, Council reserves the right to add or delete services from the Contract. The modified Schedule of Services will then become the Contract Schedule of Services. The value of the addition or deduction to the Contract as a result of a variation to the Contract shall be ascertained by one of the following methods:

- based on unit prices tendered
- based on a variation quotation submitted by the Contractor.
The method chosen to value a particular variation shall be at the sole discretion of Council.

5.2 The Contractor shall not vary the Contract Services except in accordance with a direction in writing from the Council.

5.3 If, in the opinion of the Contractor, any proposed variation is likely to prevent him/her from or prejudice him/her in fulfilling any of his/her obligations (including the provision of guarantees and warranties) under the Contract, he/she shall notify the Council in writing forthwith and the Council shall determine within a reasonable time of it being practicable to do so whether or not the variation shall be carried out. If the Council determines that the variation shall be carried out it shall direct the Contractor in writing to do so and the Contractor shall be relieved of such obligations, to the extent stated in the Council's direction.

6 CONTRACTOR TO INFORM HIMSELF HERSELF

The Contractor shall be deemed to have:

- Examined the agreement, and all information made available to the Contractor by the Council for the purpose of tendering;
- Made independent inquiries and examined all information which is relevant to the risks, contingencies and other circumstances which could affect the Contractor's offer and which is obtainable by the making of reasonable enquiries;
- Informed himself/herself as far as practicable of the availability of labour necessary for the execution of the Contract Services.

In no circumstance whatsoever does the Council take responsibility for nor make any representation with respect to the accuracy or adequacy of any information or data provided to the Contractor, whether contained in the agreement or otherwise; nor shall the Council be liable, whether in contract or tort for negligent misrepresentation or misinformation or otherwise; nor does the Council assume any duty of care to the Contractor with respect to information pertaining to the Contract Services, or the failure to provide such information.

7 ASSIGNMENT AND SUB-CONTRACTING

7.1 The Contractor shall not assign, mortgage, charge or encumber the agreement without the prior written consent of the Council.

7.2 The Contractor shall not sub-contract any portion of the services under the agreement without prior written consent of the Council, but such consent shall not be unreasonably withheld.

7.3 Notwithstanding any consent to sub-contract, the Contractor shall not thereby be relieved of responsibility for the acts, defaults and neglects of any person to whom the services under the agreement or any part thereof have been sub-contracted.
8 RESPONSIBILITY FOR WORK UNDER THE CONTRACT

From the date of award of the Contract until the termination of this agreement the Contractor shall be responsible for the care of all Contract Services under this agreement including:

- All materials and plant which are the property of the Contractor or his/her servants or agents which are used or intended to be used for the purpose of carrying out work under the Contract;

- All materials and plant entrusted to the Contractor or his servants or agents by the Council for the purpose of carrying out work under the Contract.

9 CONTRACTOR’S REPRESENTATIVE

9.1 At all times whilst actually engaged in Contract Services, the Contractor shall have a properly qualified competent representative in charge who shall be authorised and able to take and carry out such instructions as the Council may give regarding the Contract Services.

9.2 The Contractor shall advise the Council where the representative in charge resides, and all home and mobile phone numbers of the representative in charge. The Contractor must advise the Council in writing of any change of representative or his/her residence and phone numbers.

10 GOODS AND SERVICES TAX

All Contractors with Council must be registered with an Australian Business Number (ABN) and comply with all GST legislation. All prices quoted to Council should be inclusive of GST, if applicable, and the amount of GST to be paid should be disclosed.

11 INSURANCE AND INDEMNITY

11.1 Public Liability Insurance

The Contractor shall, at all times during the Agreement Term, be the holder of a current Public Liability Policy of Insurance ("the Public Liability Policy") in respect of the activities specified in Part 3 of this Specification in the name of the Contractor providing coverage for an amount of at least $10 million. The Public Liability Policy shall be effected with an insurer approved by the Council.

The Public Liability Policy shall cover such risk and be subject only to such conditions and exclusions as are approved by the Council and shall extend to cover the Council in respect to claims for personal injury or property damage arising out of the negligence of the Contractor.
11.2 Professional Indemnity Insurance

The Contractor shall, at all times during the agreement term, be the holder of a current Professional Indemnity Policy of Insurance ("the Professional Indemnity Policy") in respect of the activities specified in Part 3 of the Specification in the name of the Contractor providing coverage for an amount of at least $10 million. The Professional Indemnity Policy shall be effected with an insurer approved by the Council.

The Professional Indemnity Policy shall cover such risks and be subject only to such conditions and exclusions as are approved by the Council.

11.3 Council's Indemnity

The Contractor agrees to indemnity and to keep indemnified the Council, its servants and agents and each of them from and against all actions, costs, claims, charges, expenses, penalties, demands and damages whatsoever which may be brought or made or claimed against them, or any of them, in connection with the Contractor's performance or purported performance of its obligations under this Contract and be directly related to the negligent acts, errors or omission of the Contractor.

The Contractor's liability to indemnify the Council shall be reduced proportionally to the extent that any act or omission of the Council, contributed to the loss or liability.

11.4 Hold Harmless

The Contractor agrees to hold harmless the Council, its servants and agents, and each of them in connection with all claims resulting from damages, loss, death or injury whatsoever which may otherwise be brought or made or claimed by the Contractors against the Council, except to the extent that the Council is negligent.

11.5 Workers Compensation

The Contractor shall ensure that a workers compensation policy is effected complying with all the provisions of the Accident Compensation Act 1985 in respect of any employees of the Contractor.

Evidence of coverage will be required prior to the Contractor commencing works under this Contract.

11.6 Failure to Insure

If the Contractor fails to comply with its obligations under Clauses 12.1 to 12.5 inclusive, Council may immediately terminate this Contract.
12 WORK PRACTICES AND SAFETY

The Contractor shall carry out the whole of the services in a thoroughly safe manner and, in particular, shall:

(a) Conform and procure that sub-contractors and others conform to the requirements of all relevant Acts of Parliament, Regulations, By-Laws or orders relating to the safety of persons on or about the site.

(b) Ensure that all tools and equipment used by the Contractor or any other persons in connection with the works are of adequate strength and safe for use.

(c) Immediately discontinue or procure the discontinuance by others of any practice or remove any equipment which becomes or is likely to become unsafe.

(d) Ensure the removal from the works of any employees or representatives of those of any sub-contractors or other party whose conduct tends to create any damage to themselves.

The Contractor shall be responsible for the cost of repair or replacement of any damage to any existing Council assets during the course of services delivery, other than fair wear and tear.

13 OCCUPATIONAL HEALTH AND SAFETY REQUIREMENTS

13.1 General

Council is obliged to provide and maintain, so far as is practicable, a working environment for its employees and members of the public, that is safe and without risk to health. As a condition of this Contract, Council requires that any contractor or subcontractors that may be engaged to perform a service on its behalf will, at all times, identify and exercise all necessary precautions for the health and safety of all persons including Council employees and the members of the public who may be affected by the service.

The Contractor will inform himself/herself of all occupational health and safety policies, procedures or measures implemented or adopted by the Council and/or other occupiers of any premises at or within which the Contractor will perform works under this Contract. The Contractor will comply with all such policies, procedures or measures, and in the event of any inconsistency, will comply with such procedures or measures as they produce the highest level of health and safety.

The Contractor will forthwith comply with any and all directions by the Council relating to occupational health and safety.

13.2 Legislative Compliance

The Contractor must comply with and ensure that its employees, subcontractors and agents comply with the Acts, regulations, local laws, codes of practice, Australian Standards and Council OHS policy and procedures which are in any way applicable to the Contract or the performance of the Contract Services.
13.3 Contractor OHS Management Systems

The OHS management system of the Contractor must, as a minimum requirement, demonstrate compliance with all duties of an employer specified in the Occupational Health and Safety Act 1985.

13.4 Incident Notification

If the Contractor is required by the Occupational Health and Safety (Incident Notification) Regulations 1997, or by any other regulations to give any notice of an accident occurring during the performance by the Contractor of works under the Contract, the Contractor shall at the same time, or as soon thereafter as possible in the circumstances, give a copy of the notice to the Council.

The Contractor must notify the Council as soon as he/she becomes aware of any accident, injury, property or environmental damage which occurs during the carrying out of the Contract Services. All lost time incidents shall be immediately notified to Council. The Contractor must, within 48 hours of any such incident, provide a report giving complete details of the incident, including results of investigations into its cause, and any recommendations or strategies for prevention in the future.

13.5 Non Compliance

If, during the performance of works under the Contract, the Council informs the Contractor that it is the opinion of the Council that the Contractor is:

- Not delivering services in compliance with the Contractor’s appropriate health and safety management procedures and/or relevant legislation or health and safety procedures;
- Delivering services in such a way as to endanger the health and safety of the contractors or employees or the Council or its contractors and subcontractors, employees, general public, plant, equipment or materials;
- The Contractor shall promptly remedy that breach of health and safety management procedures.

Council may direct the Contractor to suspend services until such time as the Contractor satisfies Council that the services will be resumed in conformity with applicable health and safety provisions.

During periods of suspension referred to above, Council shall not be required to make any payment whatsoever to the Contractor.

If the Contractor fails to rectify any breach of health and safety for which the services have been suspended, or if the Contractor’s performance has involved recurring breaches of health and safety, the Council may, at its option, terminate the services forthwith, without further obligation to the Contractor. In this event, the Council’s liability shall be limited to payment for the work performed and costs incurred by the Contractor up to the time of the termination or an earlier suspension of works.
14 CONFIDENTIALITY

The Contractor acknowledges that, during the course of the agreement with the Council, he/she may become acquainted with or have access to confidential information, and agrees to maintain the confidences of the confidential information and to prevent its unauthorised disclosure or use by any other person(s), firm(s) or company. The Contractor agrees not to use any confidential information for any purpose other than for the benefit of the Council during or after his/her contractual engagement with the Council.

15 INTELLECTUAL PROPERTY

The Contractor shall not present or allow to present the Council's marks, emblem or any other symbol by which the Council is identified as its own, or use or allow to use the Council's name without Council's prior written consent.

16 INFORMATION PRIVACY

16.1 In this Clause

Information Privacy Principles means the information privacy principles under the Information Privacy Act 2000 (Vic) (as amended).

Personal Information means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

16.2 The Contractor agrees in respect of Personal Information held in connection with this agreement:

(a) To be bound by Information Privacy Principles with respect to any act done, or practice engaged in, by the Contractor including, without limitation, to use Personal Information only for the purpose of fulfilling the Contractor's obligations under this Agreement and not to disclose Personal Information without written authority except for the purpose of fulfilling the Contractor's obligations under this Agreement;

(b) To immediately notify the Council where the Contractor becomes aware of a breach of Clause 16.2(a) by the Contractor or any of the Contractor's agents;

(c) To indemnify Council in respect of any liability, loss or expense incurred arising out of or in connection with a breach of Clause 16.2(a) by the Contractor or any of the Contractor's agents or employees; and

(d) That Council may audit either directly or through our auditors your information practices of the Contractor and the Contractor must provide all reasonable assistance to the party conducting such an audit.
16.3 This Clause 16 shall continue to have effect after the termination or expiration of this Agreement.

17 TERMINATION OF CONTRACT

17.1 Default by the Contractor

If the Contractor defaults in the performance or observance of any obligation it has under this Contract, the Council’s delegated senior officer may, without limiting any other rights that the Council may have, give notice to the Contractor to show cause why the powers contained in this clause should not be exercised.

Such notice must:
- Not be unreasonably given;
- State that it is a notice under this clause; and
- Specify the default, on the part of the Contractor upon which it is based.

If within seven (7) days after receipt of the notice, the Contractor fails to show, to the satisfaction of the Council’s delegated senior officer, that the default will be rectified and that this Contract will be satisfactorily completed in accordance with its terms, the Council, without prejudice to any other rights that it may have under this Contract or at common law against the Contractor, may;
- Suspend payment under this Contract; or
- Terminate this Contract.

17.2 Contractor’s right to terminate

If the Council has failed to pay to the Contractor within fourteen (14) days, any amount which becomes due within the period provided for (other than an amount being the subject of a dispute or difference under this Contract) the Contractor may by notice to the Council either suspend the services or terminate this Contract.

17.3 Payments on termination

If this Contract is terminated under sub-Clauses 17.1 or 17.2 or otherwise, the Council is liable to make payments to the Contractor only in respect of any portion of the services which have been properly performed and not paid for at the date of termination, as determined by the supervisor.

If this Contract is terminated under sub-Clause 22.1, or otherwise, the Contractor must, within fourteen (14) days pay to the Council the amount of the loss and expenses incurred by the Council by reason of or arising from the termination as determined by the Council’s delegated senior officer.
18 **INSOLVENCY OF CONTRACTOR**

If the Contractor:

- Being a person, becomes bankrupt or is served with a petition in bankruptcy, is served with a bankruptcy notice, makes an assignment for the benefit of their creditors, becomes bound as a debtor in any scheme of arrangement, executes as a debtor any deed of assignment or deed of arrangement, or has a mortgagee or other creditor take possession of their assets; or

- Being a partnership, is dissolved, any of the partners become bankrupt or are served with a petition in bankruptcy, are served with a bankruptcy notice, makes an assignment for the benefit of their creditors, become bound by any scheme of arrangement, executes as a debtor any deed of assignment or deed of arrangement, or has a mortgagee or other creditor take possession of any of their assets; or

- Being a company or other body corporate, takes or has taken or instituted against it any action or proceeding, whether voluntary or compulsory, having as its object the winding up of the company or other body corporate, an administrator is appointed or steps are taken for the appointment of an administrator under the Corporations Law, enters into a composition or other arrangement with its creditors other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, has a mortgagee or other creditor take possession of any of its assets or has a receiver or manager appointed or steps are taken for the appointment of a receiver or manager or in the case of an incorporated association takes or institutes, or has taken or instituted against it, any action or proceeding having as object the cancellation of the incorporation of the incorporated association; then

the Council may terminate the Contract immediately and Clause 17.3 will to the extent that it is applicable operate as if the termination had been made by the Council under Clause 17.1.

19 **DISPUTE RESOLUTION**

In the event of any dispute of difference arising between the Council and the Contractor, either during the period of this Contract or after the determination, abandonment or breach of this Contract, as to any matter or this connected with this Contract or arising under this Contract, then the Council or the Contractor may give to the other party notice of the dispute or difference. Such notice:

- Shall not be unreasonably given;
- Shall signify that it is a notice under this clause; and
- Shall give sufficient details of the dispute or difference as to enable the party receiving the notice to ascertain the nature of the dispute or the difference alleged.
Within seven (7) days of receipt of notice by either party, a representative of each party shall meet to discuss ways of resolving the dispute or difference. The representatives may resolve the disputes or differences themselves or refer the dispute or difference to any form of alternative dispute resolution procedure on which they agree. The representatives shall be authorised by the parties to resolve the dispute or difference on their behalf should this prove practicable.

If agreement can not be reached, either party may, not less than seven (7) days after the notice of dispute was given, give notice referring the dispute or difference to arbitration in accordance with and subject to The Institute of Arbitrators Australia Expedited Commercial Arbitration Rules.

If it were reasonably possible, services under the Contract shall continue during arbitration or legal proceedings, and no payment due or payable by the Council that is not in dispute shall be withheld on account of the arbitration or legal proceedings, unless so authorised by the Contractor or by this Contract.

20 NOTICES

A notice required or permitted to be given by one party to another under this Contract must be in writing addressed to the party to receive it and:

- Handed to that party’s representative;
- Delivered to that party’s address;
- Sent by pre paid mail to that party’s address; or
- Transmitted by facsimile to that party’s facsimile number.

A notice given to a party must be treated as having been duly given and received if:

- Handed to the party’s representative immediately;
- Delivered to a party’s address on the day of delivery;
- Sent by pre paid mail, on the third day after posting, or
- Transmitted by facsimile to a party’s facsimile number and a correct and complete transmission report is received on the day of transmission.
Council wishes to procure Municipal Building Surveyor Services to be available in Council’s Municipal Offices in Portland 2 days per week (Monday, Tuesday). Additional time may be required based on the hourly rate nominated in the tender to cover, for example, leave arrangements of Council’s Building Inspector.

The key service delivery requirements are as follows:

- Assessing applications for building permits — Section 17 (Building Act 1993)
- Issuing or refusing building permits — Section 19
- Issuing directions in respect of such building work — Section 37
- Issuing certificates of final inspection as appropriate — Section 38

The service will also involve undertaking Council’s other non-permit responsibilities under the Building Act 1993 to be directly delivered by the MBS on a prioritised/planned or as required basis.

Council will provide the following support:

- Office space accommodation at the Municipal Offices
- Computer, telephone and information systems access
- Administrative support
- Use of a Council vehicle for all site visits or other travel directly associated with the delivery of the services of the Contract.
- Corporate management oversight and direction.
TENDER
To The Mayor and Councillors of the
GLENELG SHIRE COUNCIL

I /We the undersigned do hereby tender and offer to execute and perform the services named, described and alluded to in the preceding Specification for:

Contract No. 200809 Municipal Building Surveyor Services

and under and in conformity to the General Conditions stipulated for the scheduled units and prices listed hereunder:

Tenderer’s Name ...........................................................................................................................
ABN Number ..................................................................................................................................
Address...........................................................................................................................................
Telephone Contact ...............................................................................................................................
Email address....................................................................................................................................
Signature ...........................................................................................................................................
Date ...................................................................................................................................................
Witness to the Above...........................................................................................................................
Signature of Witness............................................................................................................................

### Schedule of Units and Prices referred to above

<table>
<thead>
<tr>
<th>Unit</th>
<th>Full Particulars</th>
<th>Price (Rate) $</th>
<th>GST</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 days</td>
<td>2 days Contract Services delivery (based at the Municipal Offices at Portland on 2 days per week (Monday, Tuesday) and inclusive of all Contractor arrangements/expenses for travel to/ from Portland and accommodation, if required.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 hour</td>
<td>Hourly rate (based at the Contractor’s office) – subject to specifically authorised arrangement beforehand for additional services delivery.</td>
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</tr>
</tbody>
</table>

Note:
Each Price (Rate) to be fixed, but subject to cost adjustment after 12 months from the commencement date for delivery of Contract Services by application of the Consumer Price Index for Victoria over the 2008/09 financial year. No further indexation will apply during the second year of Contract Services.

### Directions for Tenderers

1. The tenderer’s submission (refer sub-Clause 1.6) should be attached behind this Tender Form.
2. Envelope should be endorsed – “Tender for Municipal Building Surveyor Services – Contract No. 200809”.
3. The Tender should be signed by Tenderer and signature witnessed.
4. The time for receipt of Tenders will be strictly adhered to.
Victorian Local Government
Code of Tendering

Application
This Code applies to tendering which the Council is obliged to conduct under the Local Government Act 1989 (the Act). The Code gives guidance particularly for tendering in which the Council receives a tender from its own staff. In the event of inconsistency between the Code and the Compulsory Competitive Tendering Procedures Manual, the Code will prevail.

Other Standards, codes and guidelines may be relevant to the council’s tendering. For example the Australian Standard Code of Tendering AS 4120-1994 applies generally, and the Victorian Government’s Code of Practice for the Building and Construction Industry applies to all council building and construction work that is managed or fully or partly funded by the Government.

Principles
To achieve its objective the Council will ensure that the tender process is fair to all parties, and to use its best endeavours to demonstrate that fairness to tenderers and potential tenderers. More specifically it will:

- clearly separate its role as a "purchase" from that as a "provider" of services;
- apply the same conditions of tendering to an in-house tender as it does to an external tenderer in each tendering process;
- produce tender documents that clearly specify the council’s expected outcomes to allow tenderers to bid for and price work accurately;
- package work put to tender in a manner in which encourages competition and the best outcome for residents and ratepayers;
- not participate in and actively discourage other parties from improper tendering practices such as collusion, misrepresentation, and disclosure of confidential information;
- require any conflict of interest to be disclosed immediately;
- have regard to the cost of tendering to tenderers, residents and ratepayers and seek to constrain that cost.

Specifications

Tendering Process

Specifications
The Council has a responsibility to its residents and ratepayers to ensure services are properly delivered. It will therefore develop specifications that clearly set out the council’s expectations. Most specifications will focus on outcomes and quality requirements, rather than particular ways of delivering a service. Some specifications may include both input and output requirements for a service. The tender documents will require tender proposals to indicate how the performance standards will be met, and how the tenderer would measure the satisfaction levels of service users. In developing specifications, the council will consider the requirements of service users and may seek the views of the providers of the existing service and others providing similar services, whether in the public or private sector. The Council will identify in the specifications any council assets to be made available to tenderers, whether in-house or external, and may set costs, terms and conditions for the use of the assets. No potential tenderer, in-house or external, will have access to the final specifications prior to their formal approval and public release by the council.

Public Notices

Public notice is required under the Act to start a tender process. The council will advertise in a newspaper circulating in its district and may advertise in another newspaper or publication. Where the work to be tendered is valued at $100,000 or more, the council will advertise in a daily newspaper which circulates throughout Victoria.

Expression of Interest

The council may use an “expression of interest” process before it invites tenders. If so, it will advertise publicly the purpose and nature of the contract or project and the date by which it will invite tenders. The aim of the expression of interest stage is not to elicit tenders, but rather to assess the capacity of the respondents to undertake the work or project, and to refine the specifications. The council will make the evaluation criteria for registration available to all respondents. The council may invite tenders from some, all or none of the registrants, by the advertised date. If the council does not invite tenders by that date it will write to all registrants advising when tenders are to be invited. Respondents who are not invited to tender will be advised in writing. The council will use this list of registrants to invite tenders for the advertised contract or project only.

Invitation to Tender

The Council will offer the same tender documents to all those who responded to an invitation to tender. A copy of this code will be attached to all tender documents.

The Council may impose a fee for tender documentation related to the cost of printing the
basis that payments are amortised over no less than 5 years, the council will consider such redundancy costs could be met from council reserves. Any remaining redundancy costs may be taken into account in tender evaluation, but only the first time a service is tendered. The council will consider whether staff could be redeployed within the council or employed by the external tenderer. The council will consider whether any redundancy costs could be met from council reserves. Any remaining redundancy costs may be taken into account in tender evaluation, but only the first time a service is tendered. The council will consider such redundancy costs on the basis that payments are amortised over no less than 5 years, even where the contract is for a shorter period.

If the council gives advice, written or verbal, to a respondent clarifying the meaning of the tender documentation, it will give the same information to all other respondents in writing. The council will keep a written record of any other verbal advice. The council will respect the confidentiality of a respondent who discloses information which has commercial or intellectual property value. The council will consider conducting a pre-tender briefing and may determine not to give additional information apart from that briefing.

Tenderers will generally be a minimum of 21 days from the date on which tenders were invited in which to submit tenders. The submission period is determined by the nature of the tender and the council will advise respondents in writing when it invites tenders if a longer or shorter submission period is to apply. Late tenders will not be accepted.

**In-house Tenders**

As part of Compulsory Competitive Tendering, many in-house providers are competing against the private sector for the first time. As an employer, the Council will assist its staff to become more competitive. At the same time, the council is aware that competition must be fair, and be seen to be fair, to all parties. Accordingly, the Council will treat an in-house tenderer on the same terms as an external tenderer. The council will ensure that there is a clear separation between the in-house tenderers and those who have the responsibility for evaluating the tenders. In house tenders will be prepared on the basis that all direct costs and indirect or overhead costs attributable to the tender are included.

In allocating overhead costs to in-house tenders, a council will only exclude those costs which it would never even if all its services were contracted out. Overhead costs are limited to:

- governance costs: conduct of elections; administrative support for councilors; council meetings; making and enforcing local laws; property valuations; making and levying rates and charges; other statutory duties not related to the tender;
- strategic management of service costs: long term planning and supervision of all services, including tendering and contract administration costs;
- core corporate costs: administrative support for the governance and strategic management of services functions.

**Tender evaluation**

The council will establish a tender evaluation panel, with more than one member, for each tendering process. As a matter of good practice, where there is an in-house tender, at least one member of the panel will be a person who is independent of council and who has the expertise relevant to the tender. The tender evaluation report will disclose the names of the panel members. No member of a panel will be involved in preparing the in-house tender, be responsible for direct supervision of the in-house tender if it is successful, or have any interest in an external tender.

The panel will evaluate tenders according to the tender evaluation criteria outlined in the tender documentation.

**Award of contract**

The council may negotiate with tenderers to determine the award of the contract but must have regard to the scope of the invitation to tender at all times. The council will not trade the price of one tenderer against that of another tenderer. The council will exhaust negotiations with one tenderer before beginning negotiations with another tenderer.

The decision to award a contract will be made by the council or its delegated officer. If there is an in-house tender, a report on the award of the contract will be presented to an ordinary meeting of council. The council will award the contract on the basis of the best quality and value for money for the community. The council will have regard to other factors impacting on the best quality and value for money outcome.

The council will notify unsuccessful tenderers...
promptly, in writing. It will advise them of the reasons for the award of the contract.

**Complaints Process**

The council will deal promptly with any complaints about its tendering process. Each complaint will be recorded in writing and the complainant *given* an opportunity to discuss his or her complaint with the Chief Executive Officer or a senior delegated officer.