

**REQUEST FOR TENDER**

REQUEST FOR TENDER IN RELATION TO FIRE PROTECTION SERVICES  
CONSULTANCY

COMMONWEALTH OF AUSTRALIA AS REPRESENTED BY THE HIGH  
COURT OF AUSTRALIA  
ABN 69 445 188 986

September 2014

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## REQUEST FOR TENDER

### REQUEST FOR TENDER IN RELATION TO FIRE PROTECTION SERVICES CONSULTANCY

#### 1. Introduction

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##### 1.1. Approach to market

1.1.1. The High Court invites Tenders for the provision of consultancy services in accordance with this Request for Tender (RFT).

##### 1.2. Key terms

1.2.1. The following table sets out the details of some key terms used in this RFT:

<b>The High Court</b>	High Court of Australia ABN 69 445 188 986
<b>Closing Time</b>	2:00pm Canberra time on 8 October 2014
<b>Contact Officer</b>	Joe Pelle tenders@hcourt.gov.au
<b>Draft Contract</b>	the document set out in Schedule 2
<b>Offer Period</b>	60 days after the Closing Time
<b>Services</b>	the services set out in the Draft Contract
<b>Tender</b>	any Tender submitted in response to this RFT
<b>Tender Box</b>	High Court of Australia Tender Box Ground level (Security Centre) Parkes Place Parkes, ACT
<b>Tender Response Forms</b>	the Tender Response Forms set out in Schedule 1
<b>Tenderer</b>	any entity which submits a Tender or, where the context requires, is proposing to submit a Tender

##### 1.3. Form of contract

1.3.1. The High Court proposes to enter into a contract with the successful Tenderer substantially in the form of the Draft Contract.

1.3.2. If the successful Tenderer is a "small business", as defined in Finance Circular 2012/02 *Procurement On-Time 30 Day Payment Policy for Small Business* the contract with the successful Tenderer will include clauses to give effect to the policy set out in that Circular.

- 1.3.3. The successful Tenderer will be given the opportunity to identify itself as a small business prior to the High Court entering into a contract with the successful Tenderer.

#### **1.4. Governing law**

- 1.4.1. This RFT is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory. The courts of that Territory have non-exclusive jurisdiction to decide any matter related to this RFT.

### **2. Site Inspection**

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#### **2.1. Site inspection**

- 2.1.1. The High Court will be conducting a site inspection concerning the Services requested in this RFT. Details of the site inspection are:

9:30am Tuesday 23 September 2014

- 2.1.2. Attendance at the site inspection is optional. Tenderers should provide written notice to the Contact Officer no later than 3pm Monday 22 September 2014 setting out the names and contact details for all persons who will be attending the site inspection. Attendees who have not notified the Contact Officer by this time may be refused entry to the site inspection.

### **3. Lodging Tenders**

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#### **3.1. Location of Tender Box and Tender Closing Time**

- 3.1.1. Tenders must be lodged at the Tender Box on or before the Closing Time.
- 3.1.2. The High Court may extend the Closing Time and will issue an addendum notifying any decision to extend.
- 3.1.3. Tenders must be lodged by hand (by the tenderer or the Tenderer's private agent). Tenders submitted by mail, email or facsimile will not be accepted.
- 3.1.4. Tenderers lodging Tenders by courier do so at their own risk, and no responsibility will be accepted for Tenders delivered to an incorrect location or after the Closing Time.

#### **3.2. Documents to be lodged**

- 3.2.1. Three hard copies of the Tender (including any supplementary material) should be lodged. One should be marked 'Original' and the other two marked 'Copy'. If no copy is marked 'Original', the High Court may choose a copy that will be the Original. If there is a discrepancy between any copy and the Original, the Original Tender takes precedence.
- 3.2.2. Tenders should be lodged in a sealed envelope clearly marked with the Tender Details.

### **3.3. Late lodgement policy**

- 3.3.1. Any Tender (including a Tender already received by the High Court at a point other than the nominated Tender Box) will be deemed to be late if it is not lodged in accordance with paragraph 3.1.1.
- 3.3.2. Subject to paragraph 3.3.3, the High Court will not admit a late Tender to evaluation.
- 3.3.3. The High Court will admit to evaluation any Tender that was received late solely due to mishandling by the High Court. For the avoidance of doubt, 'mishandling by the High Court' does not include mishandling by a courier or service provider engaged by the Tenderer to deliver the Tender. It is the responsibility of each Tenderer to ensure that their Tender is dispatched and lodged in accordance with paragraph 3.1.1.

## **4. Additional information and variations to the RFT documentation**

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### **4.1. Requests for Additional Information**

- 4.1.1. Requests for further information in relation to this RFT must be directed in writing to the Contact Officer by the Deadline for Submission of Tenderers' Questions.
- 4.1.2. Subject to paragraph 7.5, the only point of contact for all matters relating to this RFT and the RFT process is the Contact Officer.
- 4.1.3. The High Court will determine what, if any, response should be given to a Tenderer question. The High Court may circulate Tenderer questions and the High Court's response to those questions to all other Tenderers without disclosing the source of the questions or revealing any confidential information of a Tenderer. Tenderers should identify in their question what, if any, information in the question the Tenderers consider is confidential. Inappropriate identification of information as confidential will be considered by the High Court when determining what, if any, response will be given.
- 4.1.4. If a Tenderer believes it has found a discrepancy, error, ambiguity, inconsistency or omission in this RFT or any other information given or made available by the High Court, the Tenderer should promptly notify the Contact Officer setting out the error in sufficient detail so that the High Court may take the corrective action, if any, it considers appropriate.

### **4.2. Variation of the RFT**

- 4.2.1. The High Court may amend this RFT or the RFT process at any time. If the High Court does so prior to the Closing Time, the High Court will issue a formal addendum to the RFT.

### **4.3. Termination of the RFT**

- 4.3.1. The High Court may terminate the RFT process at any time if the High Court determines that none of the Tenders submitted represents value for money or that it is otherwise in the public interest to do so.

### **4.4. Errors & alterations**

- 4.4.1. Tenderers should ensure that any errors or alterations made to a Tender are clearly identified and, where appropriate, initialled. Any alteration or erasure made to a Tender that is not clearly identified may result in the Tender being excluded from consideration.
- 4.4.2. Tenders in which prices are not clearly and legibly stated may be excluded from consideration.
- 4.4.3. If the High Court considers that there are unintentional errors of form in a Tender, the High Court may request the Tenderer to correct or clarify the error, but will not permit any material alteration or addition to the Tender.

## **5. Information management**

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### **5.1. The High Court's confidential information**

- 5.1.1. Tenderers must not, and must ensure that their employees, agents or subcontractors do not, either directly or indirectly record, divulge or communicate to any person any confidential information concerning the affairs of the High Court, the Commonwealth or a third party acquired or obtained in the course of preparing a Tender, or any documents, data or information provided by the High Court and which the High Court indicates to Tenderers is confidential or which Tenderers know or ought reasonably to know is confidential.
- 5.1.2. The High Court may require that all written information (whether confidential or otherwise and without regard to the type of media on which such information was provided to Tenderers) provided to Tenderers (and all copies of such information made by Tenderers) be:
- a. returned to the High Court - in which case Tenderers will be required to promptly return all such information to the address identified by the High Court; or
  - b. destroyed by Tenderers - in which case Tenderers will be required to promptly destroy all such information and provide the High Court with written certification that the information has been destroyed.
- 5.1.3. The High Court may exclude from further consideration any Tender lodged by a Tenderer who has engaged in any behaviour contrary to paragraph 5.1.

### **5.2. Tenderer's confidential information**

- 5.2.1. Subject to paragraphs 5.2.2 and 5.2.3, the High Court will treat as confidential all Tenders submitted by Tenderers in connection with this RFT.

- 5.2.2. The High Court will not be taken to have breached any obligation to keep information provided by Tenderers confidential to the extent that the information:
- a. is disclosed by the High Court to its advisers, officers, employees or subcontractors solely in order to conduct the RFT process or to prepare and manage any resultant contract;
  - b. is disclosed to the High Court's internal management personnel, solely to enable effective management or auditing of the RFT process;
  - c. is disclosed by the High Court to the responsible Minister;
  - d. is disclosed by the High Court in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - e. is shared by the High Court within the High Court's organisation, or with another Commonwealth agency, where this serves the Commonwealth's legitimate interests;
  - f. is authorised or required by law to be disclosed; or
  - g. is in the public domain otherwise than due to a breach of the relevant obligations of confidentiality.

Tenderers should also refer to paragraphs 6.3.1.c to e.

- 5.2.3. The High Court will only keep information contained in, or obtained or generated in performing, any contract entered into with the successful Tenderer, including any information sourced from the successful Tenderer's Tender, confidential in accordance with the terms of the contract. Tenderers should include in Attachment 8: Statement of Compliance with Draft Contract in Schedule 1 any request for such information to be treated as confidential following the award of contract to it. Further information on the Commonwealth's confidentiality policy is available at <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/principles.html>.

### **5.3. Use of Tender documents**

- 5.3.1. All Tenders become the property of the High Court upon submission.
- 5.3.2. Notwithstanding paragraph 5.3.1 and without prejudice to anything agreed in any subsequent contract, ownership of intellectual property in the information contained in a Tender remains unchanged.
- 5.3.3. However, the High Court may use any material contained in a Tender, or otherwise provided by the Tenderer, for the purposes of the RFT process and the preparation and management of any resultant contract.

## **6. Policy and law**

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### **6.1. Ethical dealing**

- 6.1.1. The Commonwealth's policy is to promote the ethical use of Commonwealth resources and to engage in ethical behaviour throughout its procurement processes. The Commonwealth requires the same standards from those with whom it deals.
- 6.1.2. Tenders must be compiled without improper assistance of current or former officers, employees, contractors or agents of the High Court and without the use of information improperly obtained or in breach of an obligation of confidentiality (including any obligation referred to in paragraph 5.1).
- 6.1.3. Tenderers must not:
- a. engage in misleading or deceptive conduct in relation to their Tenders or the RFT process;
  - b. engage in any collusive Tendering, anti-competitive conduct, or any other unlawful or unethical conduct with any other Tenderer, or any other person in connection with the preparation of their Tender or the RFT process;
  - c. attempt to solicit information from or influence improperly any current or former officer, employee, contractor or agent of the High Court, or violate any applicable laws or Commonwealth policies regarding the offering of inducements in connection with the RFT process;
  - d. engage in, or procure or encourage others to engage in, activity that would result in a breach the Lobbying Code of Conduct and APSC Circular 2008/4 Requirements relating to the Lobbying Code of Conduct and post separation contact with Government; or
  - e. otherwise act in an unethical or improper manner or contrary to any law.
- 6.1.4. The High Court may exclude from consideration any Tender lodged by a Tenderer that has engaged in any behaviour contrary to paragraph 6. In addition, the High Court may refer the matter to relevant Commonwealth, State or Territory authorities. This right is in addition to any other remedies the High Court may have under law or in any contract with a successful Tenderer.

### **6.2. Conflicts of interest**

- 6.2.1. Tenderers should represent and declare in Attachment 2: Tenderer's Deed in Schedule 1 whether, at the time of lodging their Tender, a conflict of interest concerning itself or a related entity exists, or might arise during the term of the contract or in relation to the Tender.
- 6.2.2. A conflict of interest means any matter, circumstance, interest, or activity affecting the Tenderer (including the officers, employees, agents and subcontractors of the Tenderer) which may or may appear to impair the ability of the Tenderer to perform the contract diligently and independently.

- 6.2.3. A conflict of interest may exist if:
- a. Tenderers or any of their personnel have a relationship (whether professional, commercial or personal) with the High Court's personnel involved in the evaluation of Tenders; or
  - b. Tenderers have a relationship with, and obligations to, an organisation which would affect the performance of the contract or would bring disrepute to or embarrass the High Court.
- 6.2.4. If at any time prior to entering into the contract, an actual or potential conflict of interest concerning itself or a related entity arises or may arise for any Tenderer, that Tenderer should immediately notify the Contact Officer.
- 6.2.5. If a conflict of interest arises, the High Court may:
- a. exclude the Tender from further consideration;
  - b. enter into discussions to seek to resolve the conflict of interest; or
  - c. take any other action it considers appropriate.

### **6.3. Application of law and Commonwealth policy**

- 6.3.1. Tenderers are considered to have familiarised themselves with all relevant Commonwealth legislation and policies relating to the RFT process and the provision of the Services including:
- a. the small and medium enterprises (SME) policy under which the Government is committed to Commonwealth agencies sourcing at least 10% of the value of their purchases from SMEs;
  - b. Division 137.1 of the *Criminal Code* which makes it an offence to knowingly provide false or misleading information to a Commonwealth entity;
  - c. the *Freedom of Information Act 1982* (Cth) which requires Australian Government departments and agencies to provide access to certain documents in their possession;
  - d. the *Auditor-General Act 1997* (Cth) which allows the Auditor-General to conduct a review or examination, at any time, of any aspect of the operations of Australian Government agencies;
  - e. the *Ombudsman Act 1976* (Cth) which authorises the Ombudsman to investigate the administrative actions of Australian Government departments and agencies and to investigate the actions of certain Australian Government contractors;
  - f. the *Privacy Act 1988* (Cth) which aims to ensure that contractors and their subcontractors do not engage in an act or practice that would breach any Australian Privacy Principle under the Privacy Act if done by the Commonwealth. The Privacy Act also imposes obligations directly on contractors and subcontractors;

- g. the *Work Health and Safety Act 2011* (Cth) which requires a person conducting a business or undertaking to ensure the health and safety of all workers; and
- h. the *Public Interest Disclosure Act 2013* (Cth) (PID Act) which aims to promote the integrity and accountability of the Commonwealth public sector.

6.3.2. The High Court will not enter into a contract with Tenderers:

- a. that have been named in Parliament as not complying with the *Workplace Gender Equality Act 2012* (Cth);
- b. who are subject to a judicial decision against them relating to employee entitlements, not including decisions under appeal, and have not paid the claim; or
- c. who are listed as a designated entity by the Minister for Foreign Affairs by notice in the Gazette under s 15 of the *Charter of the United Nations Act 1945* (Cth) or who intend to engage subcontractors who are listed as a designated entity by the Minister for Foreign Affairs by notice in the Gazette under s 15 of the *Charter of the United Nations Act 1945* (Cth). A consolidated list of such persons, entities and associated assets is maintained by the Department of Foreign Affairs and Trade under the *Charter of the United Nations (Dealing with Assets) Regulations 2008* and can be found at [http://www.dfat.gov.au/icat/UNSC\\_financial\\_sanctions.html](http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html).

**Note:** For a fact sheet on Commonwealth legislation that may apply to Australian Government contractors see <http://www.ags.gov.au/publications/fact-sheets/index.html>

#### 6.4. Workplace Gender Equality

6.4.1. Commonwealth policy prevents the High Court from entering into contracts with potential suppliers who are non-compliant under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act). In performing any contract, the successful Tenderer will be required to:

- a. comply with its obligations, if any, under the WGE Act; and
- b. if the term of the contract exceeds 18 months, provide a current letter of compliance within 18 months from the commencement date of the contract and following this, annually to the High Court.

6.4.2. Tenderers should note that, if they are the successful Tenderer, during the term of the contract they become non-compliant with the WGE Act, they must notify the High Court. For further information about coverage of the WGE Act, contact WGEA on (02) 9432 7000.

6.4.3. Tenderers must indicate in the Tenderer's Deed (see Attachment 2: Tenderer's Deed in Schedule 1), whether or not they are a 'relevant employer' under the WGE Act and, if applicable, provide a current letter of compliance as part of

their Tender submission, or if selected as the preferred or successful Tenderer, upon request from the High Court and prior to entering into any contract.

## **7. Matters concerning Tender response**

### **7.1. Tender response requirements**

7.1.1. Tenderers should address each of the evaluation criteria specified in the table below by completing the Tender Response Forms contained in Schedule 1. Tenderers may include additional information in their Tenders, however the Tenderer's response to each of the Tender Response Forms will form the basis of the evaluation. Each Tender Response Form should commence on a new page.

<b>Item</b>	<b>Evaluation Criterion</b>	<b>Required Information</b>	<b>Tenderer Checklist</b>
1	Service delivery and task appreciation	Tenderers should provide details of how they would provide the Services and their appreciation of the task by completing Attachment 3: Service delivery in Schedule 1.	
2	Tenderer's demonstrated experience	Tenderers should provide details of their experience by completing Attachment 4: Demonstrated Experience in Schedule 1.	
3	Tenderer's management capability and key personnel	Tenderers should provide details about their management capability and key personnel by completing Attachment 5: Management Capability and Key Personnel in Schedule 1.	
4	Client focus	Tenderers should provide details about their client focus by completing Attachment 6: Client Focus in Schedule 1.	
5	Pricing information (see also paragraph 8.1 of this RFT)	Tenderers should complete the price schedule at Attachment 7: Price Schedule in Schedule 1	

Item	Evaluation Criterion	Required Information	Tenderer Checklist
6	Tenderer's compliance with the Draft Contract	Tenderers should indicate their compliance with the Draft Contract by completing Attachment 8: Statement of Compliance with Draft Contract in Schedule 1.	

7.1.2. Tenderers should provide their details by completing the form at Attachment 1: Tenderer's Details in Schedule 1.

7.1.3. Tenderers must complete and execute the Attachment 2: Tenderer's Deed in Schedule 1.

## 7.2. Tenderers to inform themselves

7.2.1. Information in this RFT concerning current or past requirements, volumes, location, environment or other relevant matters has been prepared from information available to the High Court and may not have been independently verified. Such information may be based on projections from information on available historical information which may not be accurate and may assume trends or events or other matters that may not be valid or eventuate as and when expected or at all. In addition, the High Court does not guarantee that this information will remain true at any future point in time.

7.2.2. The High Court has no liability to any Tenderer should any information or material provided with respect to this RFT or the Services be inaccurate or incomplete or if actual volumes, locations, environments or other relevant matters vary from the High Court's current expectations.

7.2.3. Tenderers are considered to have:

- a. examined this RFT, including any variations or addenda to the RFT, any documents referenced in this RFT and any other information made available by the High Court to Tenderers for the purpose of Tendering;
- b. examined all further information which is obtainable by the making of reasonable inquiries relevant to the risks, contingencies, and other circumstances having an effect on their Tenders;
- c. satisfied themselves as to the correctness and sufficiency of their Tenders including Tendered prices;
- d. made their own independent assessments of actual workload requirements under any resultant contract and all prices will be presumed by the High Court to have been based upon Tenderers' own independent assessments; and

- e. satisfied themselves as to the terms and conditions of the Draft Contract and their ability to comply with the Draft Contract, subject to their responses to Attachment 8: Statement of Compliance with Draft Contract in Schedule 1.

7.2.4. In preparing their Tenders, Tenderers must not rely on:

- a. any representation, letter, document or arrangement, whether oral or in writing, or other conduct as adding to or amending this RFT other than amendments in accordance with paragraph 4.2.1; or
- b. any warranty or representation made by or on behalf of the Commonwealth, except as are expressly provided for in this RFT.

7.2.5. The Commonwealth will not be responsible for any costs or expenses incurred by Tenderers in complying with the requirements of this RFT.

### **7.3. Disclaimer**

7.3.1. This RFT is an invitation to treat and is not to be taken to be or relied upon as an offer capable of acceptance by any person or as creating any form of contractual (including a process contract), quasi contractual, restitutionary or promissory estoppel rights, or rights based on similar legal or equitable grounds, whether implied or otherwise.

7.3.2. The Commonwealth is not liable to any Tenderer on the basis of any contract or other understanding (including any form of contractual, quasi contractual, restitutionary or promissory estoppel rights, implied obligations or rights based on similar legal or equitable grounds) whatsoever, or in negligence, as a consequence of any matter relating or incidental to this RFT, the procurement of any or all of the Services or a Tenderer's participation in this RFT process, including instances where:

- a. a Tenderer is not invited to participate in any subsequent process as part of or following completion of this RFT process;
- b. the High Court varies the RFT process;
- c. the High Court elects to enter into a contract for all or any of the Services with any party, whether or not that party was a Tenderer in this RFT process;
- d. the High Court decides to terminate the RFT process or not to contract for all or any of the Services; or
- e. the High Court exercises or fails to exercise any of its other rights under or in relation to this RFT.

### **7.4. Offers and acceptance of offer**

7.4.1. Lodging a Tender will constitute an offer by the Tenderer to provide the Services on the terms and conditions set out in the Draft Contract, subject to

any exceptions notes in its response to Attachment 8: Statement of Compliance with Draft Contract in Schedule 1 for a period of not less than the Offer Period.

- 7.4.2. A Tender will not be taken to have been accepted until a formal contract has been executed by the Tenderer and the Commonwealth. Notice by the High Court to any Tenderer that it is, or is not, a preferred or successful Tenderer will not constitute an acceptance or rejection of any Tender.

## **7.5. Complaints**

- 7.5.1. Any complaints arising out of the RFT process should be directed to the Complaints Officer:

Chief Finance Officer  
mbaird@hcourt.gov.au

## **8. General matters**

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### **8.1. Prices and units**

- 8.1.1. The Tender must be written in English.
- 8.1.2. All measurements must be expressed in Australian legal units of measurement.
- 8.1.3. Tendered prices should be inclusive of:
- a. GST (as defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*);
  - b. all costs of complying with this RFT; and
  - c. all costs associated with doing all things necessary for the due and proper completion of the proposed contract.
- 8.1.4. Tenderers from the public sector should note that Competitive Neutrality requires that Government businesses should not enjoy net competitive advantages over their private sector competitors by virtue of public sector ownership.
- 8.1.5. Tenderers from the public sector should demonstrate in their pricing that Competitive Neutrality requirements have been met, including:
- a. payment of relevant taxes and charges;
  - b. rates of return; and
  - c. cost of funds.
- 8.1.6. Australian Government policy requires Australian Government agencies to effect payment to its suppliers via electronic funds transfer direct to suppliers' bank accounts, unless exceptional circumstances exist where a supplier has limited access to banking facilities in remote areas.

## **8.2. Joint or Part Tenders**

- 8.2.1. The High Court will not consider joint Tenders.
- 8.2.2. Subject to paragraph 8.3, the High Court will not consider Tenders for only part of the Services.
- 8.2.3. The High Court will not consider a Tender from a Tenderer that does not exist as a legal entity at the Closing Time.

## **8.3. Alternative Tenders**

- 8.3.1. The High Court will not consider tenders that do not fully conform with the Services ('Alternative Tenders').

## **9. Evaluation of Tenders**

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### **9.1. Evaluation process**

- 9.1.1. Following the Closing Time, Tenders will be evaluated to identify the Tender that represents best value for money on the basis of the evaluation criteria set out in paragraph 7.1.1. Value for money is a comprehensive assessment involving a comparative analysis of the relevant financial and non-financial costs and benefits of the Tender.
- 9.1.2. The High Court may at any time exclude a Tender from consideration if the High Court considers that the Tender is incomplete or clearly not competitive. However, the High Court may consider such Tenders and seek clarification in accordance with paragraph 9.5.
- 9.1.3. Subject to paragraphs 9.2 to 9.5, Tenders will be evaluated against the evaluation criteria specified in the table contained at paragraph 7.1.1. The High Court may take into account information provided by a Tenderer in response to one criterion in its evaluation of another criterion.
- 9.1.4. The evaluation criteria are not specified in any order of importance. If any additional criteria are intended to be applied in evaluating Tenders, the High Court will notify Tenderers who will be given an opportunity to respond.
- 9.1.5. The High Court is not bound to accept the lowest priced (or any) Tender.

### **9.2. Security, probity and other checks**

- 9.2.1. The High Court may perform such security, probity and financial investigations and procedures as the High Court may determine are necessary in relation to Tenderers, their employees, officers, partners, associates, subcontractors or related entities and their officers, employees and subcontractors.
- 9.2.2. Tenderers should promptly provide the High Court with such information or documentation that the High Court requires in order to undertake such investigations. The High Court may exclude a Tender from further consideration if the Tenderer does not promptly provide all reasonable

assistance to the High Court in this regard, or based on the outcomes of the investigations or procedures.

9.2.3. The Tender evaluation process may involve:

- a. visits to some or all Tenderers' sites; or
- b. discussions with, and/or visits to, customers or subcontractors of some or all Tenderers, whether or not the customers are provided as referees by the relevant Tenderer.

The High Court may also make independent enquiries about any matters that may be relevant to the evaluation of a Tender.

### **9.3. Minimum Content and Format Requirements**

9.3.1. Subject to paragraph 4.4.3, the High Court will exclude a Tender from further consideration if the High Court considers that the Tender does not comply with any one or more of the following requirements:

- a. the Tender is written in English (see paragraph 8.1.1);
- b. measurements are expressed in Australian legal units of measurement (see paragraph 8.1.2);
- c. the Tender is not a joint Tender (see paragraph 8.2.1); or
- d. the Tender includes a completed and signed Tenderer's Deed in the form provided (see Attachment 2: Tenderer's Deed in Schedule 1).

### **9.4. Conditions for participation**

9.4.1. The High Court will exclude a Tender from further consideration if at any time before a contract is executed the High Court considers that the Tenderer does not meet the following condition for participation:

- a. the Tenderer exists as a legal entity at the Closing Time (see paragraph 8.2.3).

### **9.5. Clarification, short-listing and negotiations**

9.5.1. The High Court may:

- a. use any relevant information obtained in relation to a Tender (provided in the Tender itself, otherwise through this RFT or by independent inquiry) in the evaluation of Tenders;
- b. seek clarification or additional information from any Tenderer for the purposes of Tender evaluation;
- c. shortlist one or more Tenderers and seek further information from them;
- d. enter into negotiations or discussions with one or more Tenderers; or
- e. discontinue negotiations or discussions with a Tenderer, whether or not the Tenderer has been notified that it is the preferred Tenderer.

- 9.5.2. Tenderers should nominate in their Tender a person for the purpose of responding to any clarification requests which may arise during Tender evaluation or receiving other notices during the RFT process. Tenderers should include the name, address and contact details of that person in the form at Attachment 1: Tenderer's Details in Schedule 1. The person nominated by the Tenderer must be authorised to represent and bind the Tenderer in relation to this RFT.

## **10. Other Matters**

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### **10.1. Public Statements**

- 10.1.1. Except with the prior written approval of the High Court, Tenderers must not make a statement, issue any document or material or provide any other information for publication in any media, concerning Tender evaluation, the acceptance of any Tender, commencement of negotiations, creation of a shortlist, or notification that a Tenderer is the preferred Tenderer.
- 10.1.2. The High Court may exclude a Tender from further consideration if the Tenderer does not comply with this requirement.

### **10.2. Additional Rights of the High Court**

- 10.2.1. Without limiting other rights contained in this RFT, the High Court may do any or all of the following at any time:
- a. seek amended Tenders or call for new Tenders;
  - b. forward any clarification about this RFT to all known Tenderers on a non attributable basis and without disclosing any confidential information of a Tenderer;
  - c. allow or not allow another legal entity to take over a Tender in substitution for the original Tenderer, including where an event occurs that has the effect of substantially altering the composition or control of the Tenderer or the business of the Tenderer; and
  - d. negotiate with one or more persons who have not submitted Tenders or enter into a contract or other binding relationship for similar services to the Services outside the RFT process.
- 10.2.2. Disclosure to Tenderers of any information concerning this RFT process is at the complete discretion of the High Court unless expressly provided otherwise in this RFT.

### **10.3. Debriefing**

- 10.3.1. Tenderers may request an oral Tender debriefing following the award of a contract. Tenderers requiring a debriefing should contact the Contact Officer.
- 10.3.2. Tenderers will be debriefed against the evaluation criteria set out in this RFT. A Tenderer will not be provided with information concerning other Tenders, except for publicly available information such as the name of the successful Tenderer

and the total price of the winning Tender. No comparisons with other Tenders will be made.

## **SCHEDULE 1 TENDER RESPONSE FORMS**

Tenderers should ensure that their Tenders include, as a minimum, each of the Tender Response Forms attached to this Schedule 1.

Attachment 1	Tenderer's Details
Attachment 2	Tenderer's Deed
Attachment 3	Service Delivery and Task Appreciation
Attachment 4	Demonstrated Experience
Attachment 5	Management Capability and Key Personnel
Attachment 6	Client Focus
Attachment 7	Price Schedule
Attachment 8	Statement of Compliance with Draft Contract

## Attachment 1: Tenderer's Details

Tenderers should provide full responses in completing the following information to enable the High Court to clearly identify the entity responding to the RFT.

Full name of Tenderer:
Trading or business name:
Tenderer's Contact who is authorised to represent and legally bind the Tenderer (including name, address and other contact details):
<b>If a company</b>
The registered office:
The principal place of business:
The date and place of incorporation and the Australian Company Number:
Individual shareholders holding 20 per cent or more of any issued share capital:
Any related companies within the meaning of section 50 of the Corporations Act 2001 (Cth):
<b>If a trustee</b>
Provide details of the relevant trust including a copy of the relevant trust deed

(including any variations to that deed):
<b>If a partnership</b>
Provide details of the relevant partnership including a copy of the relevant partnership agreement:
<b>Subcontractors</b>
Please include a full explanation of any part of the Services which the Tenderer intends to subcontract to another entity, including the entity to which it intends to subcontract, the services the subcontractor would perform, any existing or past relationship between the subcontractor and any particular expertise or experience of the subcontractor.

## **Attachment 2: Tenderer's Deed**

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Tenderers must complete the Tenderer's Deed and include it in their Tender response (refer to paragraph 9.3 of this RFT). Amendments may only be made where necessary to complete the Deed.

### **DEED POLL**

Date: ^insert date^

By: ^insert full legal name of Tenderer^ (Tenderer)

### **Context**

Request for Tender in relation to ^details^ (RFT).

### **Interpretation**

In this Deed, terms not otherwise defined have the meaning ascribed to them in the RFT.

### **Compliance with RFT**

The Tenderer represents that it has read and understood, and that its Tender is submitted in accordance with, the RFT.

The Tenderer undertakes that it will continue to participate in the RFT process in accordance with the RFT and on the basis of its Tender.

### **Offer**

The Tender constitutes an offer (Offer) to provide the Services on the terms and conditions set out in the Draft Contract, subject to any exceptions noted in its Statement of Compliance with the Draft Contract submitted as part of its Tender, and accordingly is capable of immediate acceptance by the Commonwealth so as to form a binding contract.

The Offer remains open for acceptance by the Commonwealth for the Offer Period. The Tenderer undertakes not to withdraw, vary or otherwise compromise the Offer during the Offer Period.

If directed by the High Court, the Tenderer will execute a contract in the form set out in Schedule 2, subject to any amendments noted in the Tenderer's Statement of Compliance with the Draft Contract, without entering into further negotiation.

To the extent that the Tender does not include complete information relating to matters required for the completion of the Draft Contract, the Commonwealth may complete the contract at its reasonable discretion, and the Tenderer shall execute the resultant contract.

## **Confidentiality**

The Tenderer will not, and will ensure that its employees, agents or subcontractors do not, either directly or indirectly record, divulge or communicate to any person any confidential information concerning the affairs of the High Court, the Commonwealth or a third party acquired or obtained in the course of preparing a Tender, or any documents, data or information provided by the High Court and which the High Court indicates to Tenderers is confidential or which Tenderers know or ought reasonably to know is confidential.

## **Ethical Dealing**

The Tenderer represents that its Tender has been compiled without the improper assistance of any current or former the High Court officer, employee, contractor or agent and without the use of information obtained unlawfully or in breach of an obligation of confidentiality to the High Court.

The Tenderer represents that it has not:

- a. engaged in misleading or deceptive conduct in relation to its Tender or the RFT process;
- b. engaged in any collusive Tendering, anti-competitive conduct, or any other unlawful or unethical conduct with any other Tenderer, or any other person in connection with the preparation of their Tender or the RFT process;
- c. attempted to solicit information from or influence improperly any current or former officer, employee, contractor or agent of the High Court, or violate any applicable laws or Commonwealth policies regarding the offering of inducements in connection with the RFT process; or
- d. otherwise acted in an unethical or improper manner or contrary to any law.

## **Conflict of Interest**

The Tenderer represents that, having made all reasonable enquiries the following represents its only known actual or potential conflicts of interest in respect of the RFT, its Tender or the provision of the Services:

- ^insert list or, where no conflict exists, write 'none'^

The Tenderer undertakes to advise the High Court in writing immediately upon becoming aware of any actual or potential conflicts of interest in respect of the RFT, its Tender or the provision of the Services.

## **Employee entitlements**

The Tenderer represents that, having made all reasonable enquiries, as at the date of this declaration, it is not subject to any judicial decisions relating to employee entitlements (not including decisions under appeal) which claims have not been paid.

## Workplace Gender Equality Requirements

The tenderer understands that it is obliged to indicate whether or not it is covered by the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act). The Tenderer is covered by the WGE Act if it is a 'relevant employer', defined as being a non-public sector employer (including higher education institutions, trade unions and not-for-profit organisations) of 100 or more employees in Australia. For information about the coverage of the WGE Act, contact the Workplace Gender Equality Agency on (02) 9432 7000.

**Note:** Tenderers must choose one of the following:

- a. The Tenderer confirms that it is a relevant employer. The Tenderer has attached a current letter of compliance as part of its Tender which indicates its compliance with the Workplace Gender Equality Act 2012.

OR

- b. The Tenderer confirms that it is a relevant employer. If selected as the preferred or successful Tenderer, the Tenderer will upon request from the the High Court provide a current letter of compliance prior to entering into any contract. The Tenderer acknowledges that failure to provide a current letter of compliance when requested will result in it losing its status as the preferred or successful Tenderer.
- c. The Tenderer confirms that is it not a relevant employer.

EXECUTED AS A DEED POLL for the benefit of the Commonwealth of Australia

Dated this <sup>^insert day^</sup> day of <sup>^insert month^</sup> 20<sup>1^</sup><sup>year^</sup>

SIGNED SEALED AND  
DELIVERED by <sup>^insert name  
of Tenderer^</sup> by its duly  
authorised representative:

<sup>^Name of signatory^</sup>

Signature

In the presence of:

<sup>^Name of witness^</sup>

Signature of witness

### **Attachment 3: Service delivery and task appreciation**

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Tenderers should demonstrate that they understand the High Court's needs and have the capacity to deliver the Services.

#### **General requirements**

Tenderers should demonstrate their appreciation of:

- a. the tasks required for the performance of the Services required under the Draft Contract;
- b. the risks associated with undertaking those tasks; and
- c. a draft works program.

Tenderers should provide detailed strategies how they will:

- a. the undertake tasks identified above including responding to urgent requests; and
- b. deal with each of the risks that the contractor has identified.

The draft work program should provide an estimate including assumptions for each stage of the required Services.

## **Attachment 4: Demonstrated Experience**

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### **General requirements**

Tenderers should provide full details of their relevant previous experience in performing similar contracts. As a minimum, tenderers should provide the information requested below.

### **Specific requirements**

Tenderers should nominate at least two reference sites.

Tenderers should provide the following information in respect of each their nominated reference sites:

- a. an explanation of the relevance of those reference sites to the Services required under the Draft Contract;
- b. a description of the services delivered by them at those reference sites; and
- c. the following details of at least one contact person:
  - i. name;
  - ii. title; and
  - iii. telephone number.

## Attachment 5: Management Capability and Key Personnel

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### General requirements

Tenderers should provide details about their management capability. Tenderers should also provide information regarding any key personnel who would perform the Services, including the skills, experience and qualifications of those personnel.

At a minimum, tenderers should provide the information requested below.

### Specific requirements

Tenderers should provide full details of:

- a. their proposed internal management structures; and
- b. all proposed backup personnel to cover for unforeseen absences of proposed personnel (including all subcontractor personnel).

Tenderers should supply detailed curricula vitae providing the following information for each of their proposed personnel and backup personnel (including subcontractor personnel):

- a. proposed role;
- b. previous experience;
- c. qualifications;
- d. years with the organisation;
- e. proposed percentage involvement in undertaking the Services required under the Draft Contract; and
- f. capacity and current workloads.

Tenderers should provide details of names of any Sub-contractors and/or consultants to be engaged in the provision of the works and nature of work to be performed.

Name	Nature of works

## **Attachment 6: Client Focus**

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### **General requirements**

Tenderers should provide full details of how they propose to develop and maintain the required business relationship with the High Court and an understanding of the High Court's requirements.

At a minimum, tenderers should provide the information requested below.

### **Specific requirements**

Tenderers should demonstrate their understanding of the culture and special requirements of the High Court.

Tenderers should provide full details of their proposed processes for the following:

- a. engagement with the High Court as a client;
- b. communications with the High Court;
- c. dispute resolution and escalation;
- d. management of contract variations; and
- e. whether staff may be located at the High Court.

## Attachment 7: Price Schedule

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### General requirements

The Tenderer agrees to carry out the Services as described in the Draft Contract for the total sum set out hereunder:

Stage 1 – Condition and Compliance Audit	
Stage 2 – Fire Door, Sprinkler Heads and EWIS Speaker Location	
Stage 3 – Maintenance Level Review	
Stage 4 – Report Preparation and Presentation	
Stage 5 – Detailed Documentation	
Stage 6 – Construction and Commissioning	
Total	

Where a tenderer is not able to provide a fixed amount for any line item, an estimate of time required and hourly rates should be separately provided.

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## Attachment 8: Statement of Compliance with Draft Contract

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Tenderers submit their Tenders on the basis that they comply with all requirements of the RFT. In the case of the Draft Contract, Tenderers' compliance is subject to any exceptions noted in their response to this Schedule.

Tenderers should indicate compliance with each provision of the Draft Contract including all schedules and attachments, taking into account any amendments to those provisions that may have been issued by the High Court during the RFT process. Tenderers should note that the extent of non-compliance will be a factor in the evaluation process. The compliance statement will form the basis for any contract negotiations that may occur with a Tenderer.

In respect of the compliance statement, Tenderers should indicate their level of compliance with each provision using one of the terms "complies", "does not comply", "partially complies" and "not applicable". These terms have the following meanings:

<b>complies</b>	means that the Tenderer will comply without amendment
<b>does not comply</b>	means that the Tenderer will not comply without amendment
<b>partially complies</b>	means that the Tenderer will comply partially and that some amendment is required
<b>not applicable</b>	means that the provision does not apply to the Tenderer or is to be completed (e.g. the schedule item dealing with fees).

The Tenderer will be taken to be and assessed as compliant with any provision, schedule or attachment which it does not list in the compliance statement. Tenderers may group provisions where the response is the same for each of those provisions. For example 'Paragraphs 3.1 to 3.15 – Does Not Comply', or 'Schedule 1 - Complies'.

Where a Tenderer does not comply or only partially complies with a provision, the extent of non-compliance should be stated in full in the compliance statement. In this case, the Tenderer should then provide:

- a. specific reasons for the partial or non-compliance; and
- b. specific language of any proposed amendments, including any deletions or additional provisions.

In accordance with paragraph 5.2.3, Tenders should also include in their compliance statement any request that information be treated as confidential following the award of a contract to it.

The following format should be used in completing the compliance statement:

**Compliance with Draft Contract**

Paragraph/schedule /attachment	Nature of compliance	Proposed wording of any amendment to the provision

**Request to keep Information Confidential**

(a) Information contained in contract:

Item	Period of Confidentiality	Reason why it is necessary to keep information confidential

(b) Information obtained or generated in performing contract:

Item	Period of Confidentiality	Reason why it is necessary to keep information confidential

**SCHEDULE 2 DRAFT CONTRACT**

The Draft Contract follows after this page.