

REQUEST FOR TENDERS

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

CONSULTANCY FOR THE DESIGN AND DOCUMENTATION OF A REPLACEMENT HEATING VENTILATION AND AIRCONDITIONING SYSTEM AT THE HIGH COURT OF AUSTRALIA BUILDING

12 October 2013

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1. Invitation

- 1.1. The Commonwealth of Australia represented by the High Court of Australia (High Court) invites interested parties (tenderers) to submit tenders to provide Consultancy services (Services) described in the draft contract (Draft Contract) released with this request for tenders (RFT) subject to the terms and conditions set out, or referred to, in this RFT.
- 1.2. Service Providers should offer the most cost-efficient option for providing the Services in accordance with the standards required by the High Court.
- 1.3. The High Court will not consider a part tender for the Services.

2. Background

- 2.1 The High Court is seeking to improve the indoor environment and reduce energy usage in the High Court Building in Canberra. To help achieve this aim the High Court is seeking to replace its existing Heating Ventilation and Air Conditioning (HVAC) system with a new system which will address the current and future needs of the Court.
- 2.2 The High Court of Australia building is arranged on eleven floor levels and rises some 41 metres above ground at the tallest section. The building has approximately 18,515 square metres of internal floor area over 11 floors and houses three main courtrooms, Justices' chambers with associated library and staff facilities, administrative offices and public areas including a restaurant/cafe. A major feature of the building is the Public Hall, which is an internal atrium rising over 24 metres high, extending from the ground floor up to level 8 of the building. The external facade includes over 4000 m² of glazing, principally on the north and south faces of the building.
- 2.3 The building was opened in 1980 and much of the HVAC system and the control strategy date from this time. The Court has recently reviewed its HVAC plant and equipment and identified the following major issues:
 - Pressurisation issues creating potential infiltration, thermal discomfort and poor plant efficiency
 - Thermal comfort and thermal control problems due to poor air conditioning zoning
 - Little or no heat recovery of relief or exhaust air
 - No economy cycle on air handling systems
 - Poor energy efficiency due to poor air conditioning zoning and control
 - Unsophisticated building management and control system (BMCS) giving little or no potential for energy or alarm management
 - Air handling units are past their economical and serviceable life
 - No historic retro-commissioning has been undertaken with the existing system
- 2.4 A summary of the existing HVAC system, including a condition audit of the major plant, is at Attachment F. Since the report was undertaken, the boilers and domestic hot water system have been upgraded. New condensing boilers and a separate domestic hot water unit have been installed and these will be integrated into the new HVAC system.
- 2.5 The review highlighted the limitations of the existing BMCS and this is being replaced as a separate project. Design of the new BCMS is underway and is due for completion at the end of October with the installation of a new system to be

completed by May 2014. Full details of the design of the new BMCS will be supplied to the successful tenderer.

- 2.6 The High Court is seeking a consultant to assist it to determine the requirements for a new HVAC system and associated infrastructure, develop a staging plan to allow the system to be upgraded with minimal impact on the operation of the Court and to design and document each stage of the work.

3. **Contract**

- 3.1. The High Court proposes to enter into an agreement substantially in the form of the Draft Contract with the successful tenderer.

4. **Tender Preparation**

4.1. **Declaration**

Tenderers should make the representations, acknowledgements and offer substantially in the form set out in the Declaration in Attachment A.

4.2. **Corporate Details**

Tenderers should provide their details by completing Attachment B. Where a tender is lodged by a consortium, a separate Attachment B should be lodged by the tenderer and by each consortium member.

4.3. **Price**

Tenderers should provide full details of their proposed price structure in Attachment C.

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.

Tenderers from the public sector should demonstrate in the pricing of their tenders that the requirements of competitive neutrality have been met, including:

- a. payment of relevant taxes and charges
- b. rates of return and
- c. cost of funds.

4.4. **Statement of Compliance**

Tenderers should complete the Statement of Compliance in Attachment D. Tenderers should use the responses defined below:

- **Complies:** means that the tenderer will comply in full and on time with the condition or obligation.
- **Does Not Comply:** means that the tenderer will not comply with that condition or obligation.
- **Partially Complies:** means that the tenderer will comply partially with that condition or obligation.
- **Not Applicable:** means that the paragraph or clause does not apply to the tenderer.

In addition, tenderers should indicate any element of their tender or any part of the Draft Contract which they regard as confidential and provide reasons for requiring confidentiality. Further information regarding confidentiality in this context can be sought from the Department of Finance's Procurement Guidance publication "Confidentiality of Contractors' Commercial Information" available from http://www.finance.gov.au/procurement/confidentiality_contractors_info.html. In considering whether to agree to keep information confidential under any resultant contract, the High Court will have regard to the matters covered by *Guidance on Confidentiality in Procurement*, Financial Management Guidance No. 3, July 2007.

Where a tenderer indicates that it is partially compliant with a provision, the extent of the non compliance should be fully detailed. In addition, a full explanation of the reasons for all non compliance, partial compliance and non applicability should be provided. Tenderers should provide a separate list of provisions in respect of which there is any non compliance.

Where a tenderer indicates that a provision is not applicable to the tenderer, the tenderer should explain the reasons why it is not applicable. A statement that an issue "needs to be negotiated" or other statement that does not fully state the specific requirement or position of the tenderer will be treated by the High Court as meaning "Does Not Comply".

If a tenderer does not include a statement of non compliance, partial compliance or non applicability relating to any provision, the High Court will assume that the tenderer "Complies" with that matter. If a tenderer does not indicate an element of their tender or a part of the Draft Contract which they regard as confidential and provide reasons for requiring confidentiality, the High Court will assume that the tenderer has no confidentiality requirements.

Tenders should be clear and precise and should reference, where appropriate, the provisions in their tender and the Draft Contract to which each item relates.

Tenderers should not seek to resile from:

- a. provisions with which they have stated they comply or
- b. any statement or representation made in their tender.

The High Court is under no obligation to negotiate in relation to any provision of the Draft Contract or any confidentiality requirement if a tenderer's statement of compliance concerning the clause, annexure, schedule or attachment contains (or is assumed under this paragraph 4.4 to contain) a response of "Compliant" or contains (or is assumed under this paragraph 4.4 to contain) no confidentiality requirements.

4.5. Evaluation Criteria Response Schedules

Tenderers should provide their responses to each of the evaluation criteria set out in paragraphs 14.3 a to e by completing the Evaluation Criteria Response Schedules set out in Attachment E.

The information required by Attachment E will form the basis of the High Court's evaluation of tenders under this RFT.

Tenderers should avoid cross references in their tenders which refer to information which can be located at internet sites or refer to internet links.

4.6. Language

The tender, including all attachments and supporting material, must be written in English.

4.7. Units of Measurement

Measurements should be expressed in Australian legal units of measure.

5. Tendering Entities

5.1. The High Court will only consider tenders submitted by single legal entities which are in existence or unincorporated joint ventures which have been established at the Tender Closing Time specified in paragraph 6.1.

5.2. The High Court may reject a tender if it is submitted on the basis that two or more organisations will be jointly and severally liable.

6. Tender Lodgement

6.1. Tenders must be lodged on or before 2:00pm Canberra time (Tender Closing Time) in the Australian Capital Territory on Wednesday 6 November 2013. The Tender Closing Time may be extended by written notice from the High Court. Any extension notice will be given the same distribution as the original RFT.

6.2. Tenders must be delivered to:

High Court of Australia
Tender Box
Ground level (Practitioner's Entrance)
Parkes Place
Parkes, ACT 2600

6.3. Tenders may be delivered by hand (by the tenderer or the tenderer's private agent) or sent through the mail.

6.4. The High Court is under no obligation to provide tenderers with confirmation of delivery of tenders.

6.5. Tenders submitted via email or facsimile will not be accepted.

6.6. An original plus two copies of each tender should be submitted. The original should be marked "Original" and the copies marked "Copy". If no copy is marked "Original" the High Court may choose a copy and mark it as the "Original". Where there is any inconsistency between an original and any copy the original will prevail.

6.7. Tender documents should be enclosed in a sealed envelope or other sealed container endorsed with the Contact Officer's name, the RFT title and the Tender Closing Time.

7. Non Compliant Lodgement

7.1. Late Tenders

Any tender (including a tender already received by the High Court at a point other than the nominated Tender Box) which is lodged in the nominated Tender Box after the Tender Closing Time is late.

7.2. Exclusion

The High Court will only admit to evaluation late tenders that have been received late solely due to mishandling by the High Court.

Tenderers should note that mishandling by the High Court does not include mishandling by a courier or mail service provider engaged by tenderers to deliver their tenders. The onus is on tenderers to ensure that any tenders that are sent through the mail are posted:

- a. within sufficient time to reach the Tender Box by the Tender Closing Time and
- b. by an appropriate means to ensure the tenderer can track the progress of the tender and confirm its delivery.

8. Point of Contact

- 8.1. Subject to paragraph 30, the contact officer named below (Contact Officer) is the only point of contact for all matters pertaining to this RFT and the tender evaluation. The Contact Officer is:

John Ryan
Property Projects Manager
High Court of Australia
Parkes Place
Parkes ACT 2600
tenders@hcourt.gov.au
- 8.2. Tenderers should direct all communications in writing through the Contact Officer.
- 8.3. The High Court may send responses either to the tenderer who lodged any enquiry or to all tenderers on a non attributable basis.
- 8.4. Any notice given by a tenderer to the High Court will be effective upon receipt only if in writing and delivered to the Contact Officer at the address specified in paragraph 8.1.
- 8.5. The High Court may deliver any written notification to a tenderer by leaving it or causing it to be left at the address of that tenderer, or by sending it to the email address of that tenderer as specified in their tender or as otherwise subsequently nominated in writing by the tenderer to the Contact Officer.

9. Errors, Alterations and Erasures

- 9.1. Tenders in which prices are not clearly and legibly stated may be excluded from consideration.
- 9.2. Any alteration or erasure made to a tender should be initialled by the tenderer or the tender may be excluded from consideration.
- 9.3. Should the tenderer become aware of any discrepancy, error or omission in the tender document submitted and wish to lodge a correction or additional information, that material should be in writing and lodged in the same manner as the tender and prior to the Tender Closing Time. If correcting information is delivered after the Tender Closing Time, the High Court will consider the information on the same basis as if it were a late tender (see further paragraph 7.2).

10. Unintentional Errors of Form

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.

11. Minimum Content and Format Requirements

Subject to paragraph 10, the High Court will exclude a tender from further consideration if the High Court considers that the tender does not comply with the following conditions:

- a. paragraph 1.3 and
- b. paragraph 4.6.

12. Conditions for Participation

The High Court will exclude a tender from further consideration if the High Court considers that the tenderer does not comply with the conditions set out in paragraph 5.1.

13. Exclusion of Tenders and Tenderers

Subject to paragraphs 11 and 12 the High Court may at any time during the evaluation process reject any:

- a. tenders which are incomplete or clearly non competitive and
- b. tenders or tenderers which breach or fail to comply with any provision of this RFT

but the High Court may still consider such tenders and seek clarification under paragraph 28.

14. Evaluation

14.1. Tenders which have not been excluded from consideration by the High Court will be evaluated by the High Court to identify the option that represents best value for money in accordance with the process and evaluation criteria described in paragraph 14.3. Value for money is a comprehensive assessment that takes into account both cost represented by the assessment of price and value represented by technical assessment in the context of the risk profile presented by each tender, including any request by a tenderer to limit its liability under the Draft Contract.

14.2. Tenders will be assessed on the basis of value for money consistent with the High Court's purchasing policies. Best value for money is the core principle governing the High Court's procurement and is enhanced by three supporting principles:

- a. encouraging competition
- b. efficient, effective and ethical use of resources and
- c. accountability and transparency.

14.3. Value for money will be determined through application of the following evaluation criteria:

- a. Task Appreciation
- b. Demonstrated experience of specified personnel
- c. Past performance

- d. Proposed Consultancy Programme
 - e. Client Focus
 - f. price and
 - g. statement of compliance.
- 14.4. The evaluation criteria are not necessarily listed in any order of importance and may or may not be weighted. In addition, the High Court may use material tendered in response to one evaluation criterion in the evaluation of other evaluation criteria.
- 14.5. If additional evaluation criteria are intended to be applied for the purposes of evaluation, the High Court will notify tenderers who will be given an opportunity to respond.
- 14.6. The High Court may make independent enquiries about any of the matters that may be relevant to the evaluation of any tender.
- 14.7. 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 a tenderer.
- 14.8. The High Court may seek presentations from, or interview, tenderers as part of its evaluation process.

15. Evaluation Process

15.1. Step 1 - Receipt and Registration

The High Court will register tenders following the Tender Closing Time. Tenders lodged otherwise than in accordance with this RFT will be registered separately.

15.2. Step 2 - Screening

Tenders will be screened to identify those which:

- a. have failed to comply with minimum content and form requirements (subject to paragraph 11)
- b. have failed to comply with conditions for participation (paragraph 12)
- c. contain unintentional errors of form or
- d. are otherwise non compliant with this RFT.

The High Court may at any stage during the evaluation process reach the view that tenders or tenderers fall within the categories listed in paragraphs a to d above.

15.3. Step 3 - Technical Evaluation

The High Court will conduct a technical evaluation of tenders through application of the evaluation criteria set out in paragraph 14.3 a - e above.

The High Court may also conduct reference checks.

Clarification of tenders may be sought from tenderers or a shortlist of tenderers and investigations may be undertaken of tenderers. Additional or new information

will not be sought unless it is by way of clarification of elements of the information already submitted with the tender.

The High Court may shortlist tenderers following Step 3 for progression to Step 4.

15.4. Step 4 - Price

An assessment of price will be undertaken. Prices not expressed in Australian dollars will be converted into Australian dollars for the purposes of evaluation as at the Tender Closing Time.

The High Court may shortlist tenderers following Step 4 for progression to Step 5.

15.5. Step 5 - Value for Money and Risk

Value for money is a comprehensive assessment that takes into account both cost represented by the assessment of price and value represented by the technical assessment and an assessment of risk in the context of the risk profile presented by the tender, including any request by a tenderer to limit or cap its liability under the Draft Contract.

The High Court will determine best value for money by a consideration of the technical worth assessment, the price and the High Court's assessment of:

- a. evaluation criterion 14.3.g(statement of compliance)
- b. compliance generally with this RFT and
- c. any other risks identified in the evaluation process.

16. RFT and Representations

- 16.1. This RFT is and will remain the property of the High Court. This RFT may only be used by any person other than the High Court for the purpose of preparing a tender and matters directly relating to any subsequent agreement in respect of the Services.
- 16.2. No representation made by or on behalf of the High Court or the Commonwealth in relation to the RFT will be binding on the High Court or the Commonwealth unless that representation is in writing and is incorporated into formal agreement with the High Court.
- 16.3. Tenderers will have no claim against the High Court, or any officer, employee or adviser of the High Court with respect to the exercise of, or failure to exercise, any right under this RFT.

17. Site Inspection and Briefing

- 17.1. An industry briefing will be held on 10.00 am on Thursday 23 October in the High Court building at Parkes Place, Parkes. The briefing will include a tour of the major plant rooms in the building, and tenderers will be provided with an opportunity to ask questions. The High Court is under no obligation to answer any questions and may provide responses to questions at its discretion either during the briefing or subsequently. Responses to questions will be provided within seven days to all tenderers.
- 17.2. Tenderers should indicate if they intend to attend the briefing by providing written details of the name, company and position of each person attending to the Contact Officer by close of business on 21 October 2013.

- 17.3. Tenderers will not be permitted to record the industry briefing. Limited photography will be allowed in some parts of the facility.
- 17.4. Attendance at the industry briefing is not mandatory.
- 17.5. Industry briefings are conducted for the purpose of providing background information only. Tenderers should not rely on any statement made at an industry briefing as amending or adding to this RFT unless that amendment or addition is confirmed by the High Court in writing.

18. Tender Documents

- 18.1. All tender documents (including paper and electronic copies) will become the property of the High Court on submission.
- 18.2. Without prejudice to any other right of the High Court under this RFT or at law, the High Court may disclose or allow the disclosure of any information contained in or relating to any tender (at any time) for any of the following purposes:
- a. evaluating or clarifying the tender
 - b. evaluating any subsequent offer
 - c. negotiating an agreement
 - d. managing an agreement following its execution
 - e. referring any material suggesting collusion by tenderers to the Australian Competition and Consumer Commission (ACCC) and the use by the ACCC of that material to conduct any review it deems necessary or
 - f. anything else related to the above purposes, including audit requirements, compliance with Government reporting requirements and responding to any challenge to the RFT process or audit.
- 18.3. The High Court may disclose or allow at any time the disclosure of any information contained in or relating to any tender:
- a. to its advisers or employees solely in order to evaluate or otherwise assess the tender
 - b. to its internal management personnel for purposes related to the RFT process
 - c. to the High Court's responsible Minister
 - d. in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia
 - e. within the High Court's organisation, or with another agency, where this serves the legitimate interests of the Commonwealth
 - f. where the information is authorised or required by law to be disclosed or
 - g. where the information is in the public domain otherwise than by the High Court's disclosure.
- 18.4. Tenderers should also refer to paragraphs 23.1.b to 23.1.e.
- 18.5. Once a contract is entered into with the successful tenderer, the successful tenderer's tender will not necessarily be treated as confidential. Tenderers should clearly identify in their tender the information that they consider should be

protected as confidential information should a contract be entered into with them. The High Court will only consider a request for confidentiality where:

- a. the information to be protected is identified in specific rather than global terms
- b. the information is by its nature confidential and
- c. disclosure would cause detriment to the parties concerned.

18.6. The High Court will only keep information contained in, or obtained or generated in performing, any contract entered into with the successful tenderer confidential in accordance with the terms of the contract. Tenderers should include in the statement of compliance in Attachment D any request for such information to be treated as confidential following the award of contract to the successful tenderer. In considering whether to agree to keep information confidential under any resultant contract, the High Court will have regard to the matters covered by *Guidance on Confidentiality in Procurement*, Financial Management Guidance No. 3, July 2007.

18.7. Notwithstanding this paragraph 18, ownership of the intellectual property in each tender will remain unchanged.

18.8. Subject to paragraphs 18.2 and 18.3, the High Court will treat as confidential all tenders submitted by tenderers in connection with this RFT.

19. Statements

19.1. Tenderers should not:

- a. furnish any information
- b. make any statement or
- c. issue any document or other written or printed material

concerning the acceptance of any tender in response to this RFT, for publication in any media without the prior written approval of the High Court.

19.2. The High Court may exclude a tender from further consideration if the tenderer contravenes this requirement.

20. Security, Probity and Financial Checks

20.1. The High Court may perform such security, probity and financial investigations and procedures as the High Court may determine are necessary in relation to any tenderer, its employees, officers, partners, associates, subcontractors or related entities including consortium members and their officers, employees and subcontractors.

20.2. A tender may be rejected by the High Court if the tenderer does not provide, at its cost, all reasonable assistance to the High Court in this regard.

21. Tender Validity Period

Tenderers must hold their tenders open for acceptance by the High Court for a period of at least three months after the Tender Closing Time.

22. Conflict of Interest

22.1. Where a tenderer identifies that a conflict of interest exists or might arise in the provision of the Services, the tenderer must identify that actual or potential conflict

of interest in its Declaration (see Attachment A). A conflict of interest may exist, for example, if:

- a. the tenderer or any of its personnel have a relationship (whether professional, commercial or personal) with a party who is able to influence the RFT process (such as High Court staff) or
- b. the tenderer has a relationship with an organisation which would affect the performance of the contract or would bring disrepute to or embarrass the High Court.

22.2. If at any time prior to entering into a formal agreement with the High Court, an actual or potential conflict of interest arises or may arise for any tenderer, that tenderer should immediately notify the High Court in writing.

22.3. If a conflict of interest is identified the High Court may:

- a. exclude the tender from further consideration
- b. enter into discussions to seek to resolve such conflict of interest or
- c. take any other action it considers appropriate.

23. Tenderer Conduct

23.1. Application of law and Commonwealth policy

Tenderers must familiarise themselves with all relevant Commonwealth legislation and policies relating to the RFT process and the provision of the Services including:

- a. Division 137.1 of the *Criminal Code* which makes it an offence to knowingly provide false or misleading information to a Commonwealth entity
- b. the *Freedom of Information Act 1982* (Cth) which gives members of the public rights of access to certain documents of the Commonwealth
- c. 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
- d. 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 and
- e. 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 the Information Privacy Principles if done by the Commonwealth. The Privacy Act also imposes obligations directly on contractors and subcontractors to comply with the National Privacy Principles.

Where tenderers are currently named as not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth), the High Court may exclude their tenders from further consideration.

The High Court will not enter into a contract with suppliers which have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and have not paid the claim. Tenderers should provide confirmation of this issue in the Declaration in Attachment A.

23.2. False and Misleading Claims

The attention of tenderers is drawn to Division 137 of the Criminal Code and tenderers are advised that giving false or misleading information is an offence.

Tenderers must not make false or misleading statements in their tenders.

23.3. Collusive Bidding

Tenderers, consortium members and their respective officers, employees, agents and advisers must not engage in any collusive bidding (other than bidding by consortia to the extent permitted by this RFT), anti competitive conduct or any other similar unlawful conduct with any other tenderer or any other person in relation to the preparation or lodgement of their tender.

The High Court may also involve the ACCC to provide assistance to the High Court in relation to any competition issues concerning a tenderer or related to a tender.

23.4. Unlawful Inducements

Tenderers and their officers, employees, agents or advisers must not have violated and must not violate any applicable laws or High Court policies regarding the offering of inducements in connection with the preparation of their tender.

23.5. Improper Assistance

Tenderers must not use the improper assistance of any High Court employee or use information obtained unlawfully or in breach of an obligation of confidentiality to the High Court in preparing their tenders.

23.6. Lobbying Code of Conduct

Tenderers must not engage in, or procure or encourage others to engage in, any 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.

24. Future Matters

24.1. All information (Information) in or regarding this RFT (including all information provided in the industry briefing) 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. In addition, the High Court does not guarantee that any Information will remain true at any future point in time.

24.2. Tenderers should note that Information in this RFT concerning requirements including expected volumes, location, environment or other relevant matters may be based on projections from 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.

24.3. The High Court will have no liability to any tenderer should any Information be inaccurate or incomplete or if actual volumes, locations, environments or other relevant matters vary from the High Court's current expectations.

- 24.4. Tenderers should make their own independent assessments of actual workload requirements under any resultant agreement and all prices will be presumed by the High Court to have been based upon tenderers' own independent assessments.

25. Return of Information

The High Court may require that, at any stage, all written or electronically stored information (whether confidential or otherwise and without regard to the type of media on which such information was provided to any tenderer) provided to tenderers (and all copies of this information made by tenderers) must be:

- a. returned to the High Court - in which case the tenderer must promptly return all such information to the address identified by the High Court or
- b. destroyed by the tenderer - in which case the tenderer must promptly destroy all such information and provide the High Court with written certification that the information has been destroyed.

26. No Contract or Undertaking

Nothing in this RFT will be construed to create any binding contract (express or implied) between the High Court and any tenderer until a formal written agreement, if any, is entered into by the parties. Any conduct or statement whether prior to or subsequent to the issue of this RFT is not, and this RFT is not, and will not be deemed to be:

- a. an offer to contract or
- b. a binding undertaking of any kind by the High Court (including, without limitation, an undertaking that could give rise to any promissory estoppel, quantum meruit or on any other contractual, quasi contractual or restitutionary grounds or any rights with a similar legal or equitable basis whatsoever).

27. No High Court Liability

- 27.1. Participation in any stage of this RFT process, or in relation to any matter concerning this RFT will be at each tenderer's sole risk, cost and expense. The High Court will not be responsible in any circumstance for any costs or expenses incurred by any tenderer in preparing or lodging a tender or in taking part in the RFT process or taking any action related to the RFT process.
- 27.2. Neither the High Court nor its officers, employees or advisers will be liable to any tenderer or any other person on the basis of any promissory estoppel, quantum meruit or on any other contractual, quasi contractual or restitutionary grounds or any rights with a similar legal or equitable basis whatsoever or in negligence as a consequence of any matter or thing relating or incidental to a tenderer's participation in this RFT process, including instances where:
- a. a tenderer is not engaged to undertake the provision of the Services
 - b. the High Court decides not to outsource all or any of the Services
 - c. the High Court exercises or fails to exercise any of its other rights under or in relation to this RFT or
 - d. the High Court makes information available or provides information to a tenderer relating to its assets, procedures, plans, tenders, existing

arrangements for provision of the Services or any possible future arrangements.

28. High Court's Rights

- 28.1. Neither the lowest priced tender, nor any tender, will necessarily be accepted by the High Court. Acceptance of any tender will be subject to the execution of a formal agreement.
- 28.2. The High Court may at any stage of the RFT process, including during the evaluation process:
- a. vary the RFT and/or the Information (as defined in paragraph 24), including the timing and processes referred to in this RFT or in the Information
 - b. seek amended or call for new tenders
 - c. forward any clarification of the meaning of the content of this RFT and/or the Information to all known tenderers on a non attributable basis and without disclosing any confidential information of a tenderer
 - d. allow or not allow another legal entity to take over a tender in substitution for the original tenderer where an event occurs which has the effect of substantially altering the composition or control of the tenderer or the business of the tenderer
 - e. shortlist tenderers
 - f. obtain clarification or additional information from tenderers or anyone else (including a formal presentation in support of their tender and/or a demonstration of existing components of their proposed solution) and use this information for the evaluation of the tenders
 - g. provide additional information to tenderers
 - h. negotiate with one or more tenderers (including negotiating with all tenderers without shortlisting) in respect of all or part(s) of the Services or discontinue negotiations
 - i. if the High Court considers that no tender offers value for money in accordance with the RFT or otherwise that it is in the public interest to do so, terminate the RFT process, and:
 - i. not proceed with the procurement
 - ii. negotiate with one or more tenderers or non tenderers or
 - iii. enter into a contract or other binding relationship outside the RFT process
 - j. add to, alter, delete or exclude the Services to be supplied under the Draft Contract and/or
 - k. publish or disclose the names of tenderer(s) (whether successful or unsuccessful).
- 28.3. Where negotiations to limit a tenderer's liability occur after the nomination of a preferred tenderer, any additional direct or indirect costs borne by the High Court arising out of this limitation of liability may be reflected by the High Court in a commensurate adjustment to the terms of the Draft Contract.

- 28.4. Without limiting the High Court's other rights under this RFT or at law, tenderers should note that it is Commonwealth policy to develop coordinated procurement contracting arrangements for the acquisition of certain Services and services by Commonwealth departments and agencies.
- 28.5. Without limiting its other rights under this RFT or at law, if the High Court concludes that a preferred tenderer has retracted, or attempts to retract, information, representations, agreements or understandings under which material technical, commercial, financial, corporate, relationship management, legal, contractual or other issues were resolved or understood by the High Court to be resolved, in whole or in part, during negotiations, the High Court may disqualify or set aside the preferred tenderer's tender and/or exercise any other right given by this RFT.
- 28.6. The High Court will not be liable or in any way responsible for any losses, costs, expenses, claims or damage resulting from the exercise of any of the High Court's rights under this RFT whether or not the High Court has informed a tenderer of its exercise of the rights.
- 28.7. The establishment of a time or date in this RFT does not create an obligation on the part of the High Court to take any action or create any right in any tenderer that any action be taken on the date established.

29. Debriefing of Tenderers

- 29.1. All tenderers will be offered the opportunity for a verbal debriefing. Details for arranging the debriefing will be given to tenderers in writing at the conclusion of the RFT process.
- 29.2. Tenderers will be debriefed against any evaluation criteria contained in this RFT. Tenderers will not be provided with information concerning other tenders, except for publicly available information and except in so far as comparative statements can be made without breaching confidentiality.

30. Complaints

- 30.1. If a tenderer has a complaint concerning this RFT or the High Court's management of any aspect of the RFT process, the tenderer should notify the High Court complaints officer in writing of the existence of that complaint. The written notice should also provide details of the complaint.
- 30.2. On receipt of a notification of a complaint under this clause the High Court complaints officer will, within 10 days, notify the tenderer of the identity of the relevant High Court complaints officer for this RFT and of the next steps for the tenderer to take in order to pursue the complaint. The High Court complaints officer will be an officer of the High Court who is and has been independent of the RFT process.

31. Applicable Law

- 31.1. The law applying in the Australian Capital Territory applies to this RFT and to the RFT process. The High Courts of the Australian Capital Territory have non-exclusive jurisdiction to decide any matter related to this RFT.
- 31.2. Each tenderer should ensure that it has complied with all relevant laws and with Australian Government policy in preparing and lodging its tender and taking part in the RFT process.