



Australian Government
Department of Defence

RFT O1O7 - Information Communications Technology Provider Arrangement (ICTPA)

Part 1: Conditions of Tender

RELEASE VERSION



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PART 1 – CONDITIONS OF TENDER

TENDER DETAILS SCHEDULE

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| RFT Number: | RFT 0107 |
| RFT Name: | Request for Tender to establish an Information Communication and Technology Provider Arrangement (ICTPA). |
| Division 2 of CPRs: | The additional rules detailed in Division 2 of the CPRs do apply to this procurement. |
| Contact Officer: | Name: Petrina Evans |
| (clause 2.3) | Email: ICTPA.RFT@defence.gov.au |
| Industry briefing: | An industry briefing will be conducted at R1 Ground Floor Theatrette, Russell Offices, Russell Drive, Russell ACT commencing at 3:00PM (local time in the Australian Capital Territory (ACT) on Tuesday 7 February 2017 . |
| (clause 2.5) | Representatives of prospective tenderers at the briefing will be limited to two personnel. Nominations to attend the briefing are to be forwarded in writing to the Contact Officer by 5:00PM (local time in the ACT) on Friday 3 February 2017 . |
| Closing Time: | 2:00PM local time in the ACT on Tuesday 28 February 2017 . |
| (clause 2.6.3) | |
| Format: | Microsoft Word (2010 compatible), Microsoft Excel (2010 compatible), PDF or another format which has been agreed in writing by the Contact Officer. |
| (clause 2.6.4) | |
| Tender Validity Period: | 12 months after the Closing Time. |
| (clause 2.7) | |
| Minimum Content and Format Requirements: | 1. The tender (including all attachments, annexes and supporting documentation) is to be written in English. |
| (clause 3.1) | 2. All measurements in a tender are to be expressed in Australian legal units of measurement unless otherwise specified. |
| | 3. Tenders are to include a PDF copy of the Tenderer's Deed of Undertaking in substantially the form at Attachment B duly signed by the tenderer. |
| | 4. If a tenderer is tendering for the: |
| | a. Systems Integration Service Tower or the Application Services Service Tower, the tenderer must submit a fully completed Rate Card for all SFIA Categories substantially in the form of Annex F1 and Annex F2 (if applicable); or |
| | b. ICT Services Service Tower only, the tenderer must submit a fully completed Rate Card for each SFIA Category for which it is tendering, substantially in the form of Annex F1 and Annex F2 (if applicable). |
| Conditions for Participation: | 1. If a tenderer is tendering for: |
| | a. the Application Services Service Tower; or |

(clause 3.2)

b. the Systems Integration Service Tower,
it must also submit a tender for the ICT Services Service Tower.

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1 GENERAL CONDITIONS

1.1 Overview and background

- 1.1.1 The role of the Department of Defence (**Defence**) is to protect and advance Australia's strategic interests through the provision of appropriately prepared and equipped armed forces. ICT services are crucial for the communication and co-operation necessary for the effective planning, preparation and execution of training and strategies at a national level.
- 1.1.2 Defence currently utilises a number of panel arrangements, which are either internal Defence panels or Whole of Government panels, to source goods and services from the market in support of its ICT environment.
- 1.1.3 In late 2015, a sourcing strategy was developed and in accordance with the sourcing strategy's recommendations Defence intends to progressively replace its existing ICT panel framework.
- 1.1.4 The initial step in implementing the sourcing strategy's recommendations is to establish an information and communications technology provider arrangement (**Arrangement**) to replace the expiring Application Managed Services Partnership Agreement (AMSPA) and other internal ICT sourcing constructs, where appropriate.
- 1.1.5 The aim of the Arrangement is to enable Defence to become a smarter and more sophisticated buyer of ICT services through the implementation of an adaptive sourcing framework that allows Defence to procure affordable, high quality and flexible services that provide Value for Money (VfM) by engaging the market through a new ICT sourcing ecosystem. In conducting this RFT, the Commonwealth is seeking an outcome that will:
- provide the Commonwealth with value for money;
 - lead the integrated design, cost effective, delivery and sustained operation of Defence's ICT environment;
 - optimise value of the Defence ICT investment;
 - ensure closer stakeholder engagement and alignment;
 - provide agreed, priority solutions; and
 - strengthen Defence's ICT capability.

1.2 Glossary

- 1.2.1 In this RFT, capitalised terms have the meaning set out in Attachment B - Glossary of the Deed. If a capitalised term is not defined in Attachment B - Glossary of the Deed, it has the meaning as set out below:

| Term | Definition |
|--------------------|---|
| ACCC | Australian Competition and Consumer Commission. |
| Agency | a 'corporate Commonwealth entity', a 'non-corporate Commonwealth entity' or a 'Commonwealth company' as defined in the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth). |
| Annex | an annex to an Attachment. |
| Arrangement | the information and communications technology provider arrangement to be established as a result of this RFT. |
| Attachment | an attachment to these Conditions of Tender. |
| AusTender | the Commonwealth government's business opportunities website, AusTender, located at http://www.tenders.gov.au . |

| Term | Definition |
|--|--|
| Authorised Investigator | the Commonwealth Auditor General, the Australian Information Commissioner, the Privacy Commissioner or the Commonwealth Ombudsman (or a delegate of those offices), for the purpose of performing any of their functions or powers. |
| Closing Time | has the meaning given in the Tender Details Schedule. |
| Conditions for Participation | the conditions, if any, outlined in the Tender Details Schedule, which a tender must meet in order to participate in the RFT process. Failure to meet such conditions will exclude a tender from further consideration. |
| Conditions of Tender or COT | the terms and conditions which are specified in Part 1 - Conditions of Tender of this RFT. |
| Contact Officer | the official identified in the Tender Details Schedule. |
| Deed | the draft deed of standing offer for the provision of ICT services under the ICT Provider Arrangement, in the form set out in Part 2 of the RFT. |
| Defence | the Department of Defence and/or the Australian Defence Force. |
| Defence Personnel | an employee of the Department of Defence or a member of the Australian Defence Force (whether of the Permanent Forces or Reserves as defined in the <i>Defence Act 1903</i> (Cth)) and the equivalents from other organisations on exchange to Defence. |
| Defence Service Provider | a person, other than Defence Personnel, involved in Defence work or engaged by the Department of Defence or the Australian Defence Force. |
| Enquiry Cut-Off Time | the time specified in clause 1.5.1 of the Conditions of Tender as being the final date for tenderers to submit enquiries. |
| Evaluation Criteria | the criteria which a tenderer will be evaluated against as set out in clause 4.5 of the Conditions of Tender. |
| ICTPA Collaboration Deed | the deed substantially in the form of Schedule 2 to the Deed. |
| Illegal Workers | a person who: <ul style="list-style-type: none"> a. has unlawfully entered and remains in Australia; b. has lawfully entered Australia, but remains in Australia after his or her visa has expired; or c. is working in breach of his or her visa conditions. |
| Minimum Content and Format Requirements | the minimum content and format requirements described in the Tender Details Schedule. |
| Rate Card | the rate card to be completed by tenderers based on the Skills Framework for the Information Age (SFIA) V6.0, substantially in the form of Annex F1 and Annex F2. |

| Term | Definition |
|--|--|
| Related Body Corporate | has the meaning as given by section 9 of the <i>Corporations Act 2001</i> (Cth). |
| Request for Tender or RFT | this Request for Tender RFT 0107 conducted by the Commonwealth to determine the initial Arrangement providers. |
| Scope of Services | a description of the potential Services that may be procured by the Commonwealth under the ICT Provider Arrangement set out in Part 3, as relevant to each Service Tower. |
| Services | the services described in the Scope of Services. |
| Service Tower | each of the following: <ul style="list-style-type: none"> a. Systems Integration Services; b. Application Services (comprising both applications development and applications support and maintenance); and c. ICT Services, as described in the Scope of Services. |
| SFIA | the Skills Framework for the Information Age (version 6) as described at www.sfia-online.org/en/sfia-6 . |
| SFIA Category | a category of ICT services described as such in the SFIA (but excluding 'Relationship and engagement'). |
| Statement of Non-Compliance | the statement of non-compliance to be completed by tenderers substantially in the form set out in Annex A3. |
| Tender Data Requirements List or TDRL | Attachment A to the Conditions of Tender. |
| Tender Details Schedule | the schedule titled as such on the first page of the Conditions of Tender. |
| Tender Validity Period | the period specified in the Tender Details Schedule. |
| Tenderer's Deed of Undertaking | the undertaking in the form set out in Attachment B (Tenderer's Deed of Undertaking) to the Conditions of Tender. |
| Working Day | in relation to the doing of an action in a place, means any day in that place other than: <ul style="list-style-type: none"> a. a Saturday, Sunday or public holiday; and b. any day within the two-week period beginning on the first Saturday that falls before Christmas Day (or from Christmas Day when it falls on a Saturday). |

1.3 Interpretation

1.3.1 In this RFT, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of this RFT;
- b. the singular includes the plural and vice-versa;

- c. a reference to one gender includes the other;
- d. a reference to a person includes a body politic, body corporate or a partnership;
- e. if the last day of any period prescribed for the doing of an action falls on a day, which is not a Working Day, the action is to be done no later than the end of the next Working Day;
- f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- g. a reference to a clause includes a reference to a subclause of that clause;
- h. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication or document, in effect on the date of release of this RFT or alternatively, a reference version of the document if agreed in writing between the parties;
- i. the word 'includes' in any form is not a word of limitation;
- j. a reference to a party includes that party's administration, successors, and permitted assigns, or its officers, employees, agents or advisers; and
- k. unless the contrary intention appears, capitalised words, abbreviation and acronyms have the meaning given to them in clause 1.2 of the Conditions of Tender.

1.4 RFT structure

1.4.1 This RFT is structured as follows:

- a. **Part 1: Conditions of Tender:** this part of the RFT documentation sets out the:
 - (i) rules for the conduct of this RFT process and the requirements for tenders submitted in response to this RFT;
 - (ii) evaluation process and the Evaluation Criteria against which the Commonwealth will evaluate the information included in a tender; and
 - (iii) the Attachments to the Conditions of Tender, including the Tender Data Requirements List and tender response forms, which sets out the information that tenderers are required to include in their tenders in response to this RFT;
- b. **Part 2: Draft Deed of Standing Offer (Deed):** this part sets out the standard terms and conditions which will apply to all successful tenderers who enter into an agreement with Defence on behalf of the Commonwealth and the Service Tower Terms applicable to each Service Tower (as relevant to each successful tenderer); and
- c. **Part 3: Scope of Services:** this part sets out a detailed description of all Services in scope of this RFT.

1.5 Indicative timetable for RFT process

- 1.5.1 The Commonwealth intends to conduct the RFT process in accordance with the following indicative timeline. This timetable is subject to change, at the sole discretion of the Commonwealth, without notice.

| Milestone | Indicative date |
|----------------------|-----------------------------|
| Release of RFT | 30 January 2017 |
| Industry briefing | See Tender Details Schedule |
| Enquiry cut-off time | See clause 2.3.2 |
| Closing Time | See Tender Details Schedule |
| Evaluation | March 2017 - July 2017 |

| Milestone | Indicative date |
|--|-----------------|
| Preparation of Deeds for preferred tenderers | August 2017 |
| Execution of Deeds | August 2017 |

1.6 Overview of required Services

- 1.6.1 Subject to clause 1.6.2, tenderers are invited to submit a tender for any of the following Service Towers:
- Systems Integration:** the development and deployment of systems, including services relating to the connection and aggregation of disparate subsystems, functionalities or software applications to form one coordinated and functional system used to facilitate the execution of information processing required during the execution of one or more of Defence's business processes. Systems integration primarily varies from applications development in terms of scale, end-to-end scope and complexity;
 - Application Services:** includes the development, maintenance, support and service management of applications; and
 - ICT Services:** includes the provision of services for all the SFIA Categories. These services involve the engagement of specialist and niche providers as well as contractors or a group of contractors in a non-permanent position to deliver discrete ICT services to satisfy specific business or technical needs.
- 1.6.2 If a tenderer is tendering for the Application Services Service Tower or the Systems Integration Service Tower, it must also submit a tender for the ICT Services Service Tower. This is a Condition for Participation and a failure to comply with this requirement will result in exclusion of the tender from further consideration.

Note to tenderers: Tenderers should note that the Commonwealth does not intend to use the Arrangement to engage labour hire/recruitment organisations, unless such organisations can demonstrate compliance with all of the required commercial models described in Schedule 6 to the Deed (Pricing) (i.e. performance of the services via an input, output or outcome based arrangement). The Commonwealth may procure labour hire/recruitment services from other existing procurement vehicles that are available to the Commonwealth.

1.7 Contractual arrangements

- 1.7.1 The Commonwealth intends to engage successful tenderers under a deed of standing offer, with individual contracts for particular Services under the Deed to be placed by the Commonwealth.
- 1.7.2 The Commonwealth intends to apply a standard Deed which is consistent for all successful tenderers. The Commonwealth expects that the only differences will be the details of the successful tenderers, the Services offered and any commercial terms relevant to the operation of the specific Service Tower.
- 1.7.3 The Commonwealth does not intend to enter into negotiations in relation to the terms of the Deed with successful tenderers. Tenderers should be aware of this when specifying their compliance or otherwise with the terms of the Deed. The Commonwealth may exclude from further consideration any tender which exhibits significant non-compliance with the Deed.
- 1.7.4 The Arrangement will be established for an initial term of 5 years. The Commonwealth may extend the initial term for two further terms, comprising one term of 3 years and one term of 2 years.
- 1.7.5 Tenderers should note that selection as a successful tenderer or execution of a Deed does not mean that the Commonwealth is obliged to, or has agreed to, procure any, or any number, of Services under the Arrangement.

1.8 Interpretation of Request For Tender

- 1.8.1 This RFT is an invitation to treat and, to the extent permitted by law, no binding contract (including process contract) or other understanding (including any form of contractual, quasi-contractual or restitutionary rights, or rights based upon similar legal or equitable grounds)

will exist between the Commonwealth and a tenderer unless and until a contract is signed by the Commonwealth and successful tenderer.

1.8.2 Clause 1.8.1 does not apply to:

- a. the Tenderer's Deed of Undertaking executed by a tenderer;
- b. a confidentiality deed executed by a tenderer; or
- c. any other deed or contractual arrangement entered into by the tenderer, as required by the Commonwealth from time to time.

1.8.3 The Commonwealth will not be responsible for any costs or expenses incurred by any tenderer in preparation or lodgement of a tender or taking part in the RFT process.

1.8.4 If there is any inconsistency between any part of this RFT, a descending order of precedence is to be accorded to:

- a. the COT (including the Tender Details Schedule);
 - b. Attachments to the Conditions of Tender and the Annexes to each Attachment;
 - c. the Deed in accordance with clause 2 of the Deed;
 - d. the Scope of Services; and
 - e. any other document provided by the Commonwealth to tenderers preceding or following the release of this RFT (other than formal changes made under this RFT),
- so that the provision in the higher ranked document, to the extent of the inconsistency, prevails.

1.9 Amendment of RFT

Note to tenderers: When an amendment to the RFT is issued by the Commonwealth it will be through AusTender. Refer to clause 2.6 for further information on AusTender.

1.9.1 The Commonwealth may amend this RFT upon giving tenderers timely written notice of an amendment. If the Commonwealth amends this RFT under this clause 1.9.1 after tenders have been submitted, it may seek amended tenders.

1.9.2 Tenders will have no claim against the Commonwealth or any Commonwealth Personnel for any failure to inform a tenderer of an amendment to the RFT, or any failure to seek amended tenders, or any other matter arising in connection with an amendment to the RFT.

1.9.3 The Commonwealth accepts no responsibility if a tenderer fails to become aware of any alteration, correction or notice in relation to this RFT which would have been apparent from a visit to the AusTender internet site, or fails to implement any written notice of amendment, or fails to consider any written notice provided by the Commonwealth under clause 1.9.1.

1.9.4 Any amendment made to this RFT in accordance with 1.9.1 will take precedence over any other version of the RFT or amendment if there is any inconsistency.

1.10 Termination, suspension or deferral of RFT

1.10.1 Without limiting its other rights under this RFT, at law or otherwise, the Commonwealth may suspend, defer or terminate this RFT process where the Commonwealth determines that:

- a. it is in the public interest to do so;
 - b. no tenderer represents value for money;
 - c. no tenderer meets the Conditions of Participation specified in the Tender Details Schedule if any; or
 - d. no tenderer is fully capable of undertaking the Deed,
- and the Commonwealth will notify tenderers to this effect.

1.11 Other Commonwealth Rights

- 1.11.1 Without limiting its other rights under this RFT, at law or otherwise, the Commonwealth may at any stage of the RFT process, do all or any of the following:
- a. permit any person to participate as a tenderer in the RFT process prior to the Closing Time;
 - b. accept a tender without prior notice to any other tenderer;
 - c. require additional information from any tenderer;
 - d. seek amended tenders or call for new tenders;
 - e. change the structure, timing, approach, contents or requirements of the RFT process (including the evaluation process) and notify the tenderers under clause 1.9;
 - f. conduct a subsequent procurement process and, subject to the Commonwealth's Intellectual Property and non-disclosure obligations, utilise information gained in this RFT process for that purpose;
 - g. alter or defer any activity in the RFT process including clarification discussions or negotiations being conducted at any time with any tenderer by written notice;
 - h. negotiate with one or more tenderers;
 - i. conduct interviews with any of the tenderers;
 - j. shortlist tenderers;
 - k. reconsider any tenderers that were at any stage of the RFT process not shortlisted;
 - l. engage in discussions with any tenderer during the process, with the objective of clarifying and further refining a tender;
 - m. require additional information from any tenderer or provide additional information or clarification in respect of the requested documentation;
 - n. enter or not enter into negotiations with any tenderer (including to ensure the Deed for that tenderer incorporates all details of that tenderer's tender) and discontinue those negotiations at any time for any reason;
 - o. consider and accept or reject any tender that is nonconforming or non-compliant;
 - p. use any relevant information obtained by the Commonwealth in relation to a tender (provided in the tender itself, otherwise through this RFT or by independent enquiry) in the evaluation of tenders;
 - q. seek and/or contact any referee, whether or not nominated by the tenderer;
 - r. exclude a tenderer from further participation in the RFT process:
 - (i) if an Insolvency Event occurs in relation to the tenderer or any of its Related Bodies Corporate;
 - (ii) if the tender is incomplete or clearly non-competitive; or
 - (iii) a representation or warranty given by the tenderer in its tender is false or misleading;
 - s. increase the number of providers on the Arrangement (including by undertaking a subsequent approach to market);
 - t. increase the number of Service Towers or Service Tower Categories available through the Arrangement (including by undertaking a subsequent approach to market);
 - u. publish the names of tenderers (whether successful or unsuccessful); and
 - v. terminate this RFT process and engage with any tenderer separately or take any other actions available to the Commonwealth.

- 1.11.2 Any time or date in this RFT is for the convenience of the Commonwealth. The establishment of a time or date in this RFT does not create an obligation on the part of the Commonwealth to take any action or exercise any right established in the RFT or otherwise.

1.12 Australian Government requirements

Note to tenderers: Electronic copies of relevant Defence documents are available on the internet. Any other documents required can be provided by the Contact Officer. An electronic version of the DPPM can be accessed via the 'Procurement in Defence' webpage on the 'Doing Business with Defence' internet site at:

<http://www.defence.gov.au/dmo/DoingBusiness/ProcurementDefence/>.

- 1.12.1 Tenderers should familiarise themselves with the following Commonwealth policies:
- Conflicts of interest; Gifts, hospitality and sponsorship; Notification of post separation employment; Management and reporting of unacceptable behaviour; and Incident reporting and management policies as detailed in the DPPM, DI(G) PERS 25-6, DI(G) PERS 25-7, DI(G) PERS 25-4, DI(G) PERS 35-3, DI(G) ADMIN 45-2 and DI(G) ADMIN 67-2, and *Defence and the Private Sector – An Ethical Relationship*;
 - Work Health and Safety, Hazardous Substances, Defence Environmental, Ozone Depleting Substances and Synthetic Greenhouse Gases, Public Interest Disclosure and Workplace Gender Equality policies as detailed in the DPPM;
 - Defence and industry policy as detailed in the *Defence and Industry Policy Statement* and Australian Industry Capability policy as detailed in the DPPM;
 - Indigenous Procurement Policy as detailed in the DPPM (see also clause 1.15);
 - Defence Security Manual;
 - Defence stocktaking policy as detailed in DI(G) LOG 4-3-014;
 - Fraud control policy as detailed in DI(G) FIN 12-1;
 - Information and Communications Technology Manual (ICTMAN)*; and
 - Defence Work Health and Safety Manual, Volume 2, Part 5, Chapter 1.*

1.13 Workplace Gender Equality

Note to tenderers: The Workplace Gender Equality Procurement Principles prevent the Commonwealth from entering into contracts with suppliers who are non-compliant under the Workplace Gender Equality Act 2012 (Cth) (WGE Act). In performing any resultant Contract, the tenderer is to comply with its obligations under the WGE Act. Information about the coverage of the Workplace Gender Equality Procurement Principles is available from the Workplace Gender Equality Agency at: <https://www.wgea.gov.au/about-wgea/workplace-gender-equality-procurement-principles>.

- 1.13.1 In accordance with the Workplace Gender Equality Procurement Principles, the Commonwealth will not enter into any resultant Contract with a tenderer who is non-compliant under the *Workplace Gender Equality Act 2012 (Cth)*.
- 1.13.2 Tenderers should refer to the requirements in relation to workplace gender equality in the Tenderer's Deed of Undertaking.

1.14 Employee entitlements policy

- 1.14.1 The Commonwealth will not enter into a Deed with a tenderer which has a judicial decision against it (including overseas jurisdictions but excluding decisions under appeal or instances where the period for appeal or payment/settlement has not expired) relating to unpaid employee entitlements where any resulting order has not been satisfied.
- 1.14.2 The tenderer is required to declare in the Tenderer's Deed of Undertaking that it and any party proposed by the tenderer to provide any of the Services has no such unsettled judgements. If the tenderer has a judicial decision against it (other than a decision under appeal) relating to unpaid employee entitlements where the tenderer has not satisfied the resulting order, the Commonwealth will not consider, or further consider, the tender.

- 1.14.3 If a proposed subcontractor has a judicial decision against it (other than a decision under appeal) relating to unpaid employee entitlements where the subcontractor has not satisfied the resulting order, the Commonwealth will not consider, or further consider, a tender as far as it relates to the subcontractor's information.

1.15 Indigenous Procurement Policy

- 1.15.1 Tenderers should note that the Indigenous Procurement Policy applies to this procurement. More information on the Indigenous Procurement Policy can be found at <https://www.dpmc.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>.
- 1.15.2 In particular, tenderers should note the purpose of the Indigenous Procurement Policy is to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy for further information).
- 1.15.3 In its tender, each tenderer is requested to detail how it will increase its:
- a. purchasing from Indigenous enterprises (being an organisation that is 50 per cent or more Indigenous owned that is operating a business); and
 - b. employment of Indigenous Australians,
- in the delivery of any resultant Deed.
- 1.15.4 Purchases from an Indigenous enterprise may be in the form of engagement of an Indigenous enterprise as a subcontractor, and / or use of Indigenous suppliers in the tenderer's supply chain.

1.16 Fraud

- 1.16.1 Tenderers attention is drawn to the Australian Government's position on fraud control, set out in the Australian Government Fraud Control Policy (available at: <https://www.ag.gov.au/CrimeandCorruption/FraudControl/Pages/default.aspx>).

1.17 Web Content Accessibility Guidelines

- 1.17.1 Having regard to the Web Accessibility National Transition Strategy (NTS), the Australian Government is committed to improved web accessibility.
- 1.17.2 The Web Accessibility NTS:
- a. promotes improved web services, including to websites, web content, and web applications used for the dissemination of information and/or the delivery of government services and the design, development, maintenance or upgrade of these;
 - b. details the key milestones, scope and implementation plans for transition of online information and services, for conformance with the Web Content Accessibility Guidelines (WCAG) version 2.0, developed by the World Wide Web Consortium (W3C); and
 - c. encourages a more accessible and usable web environment that will more fully engage with, and allow participation by, more people within our society.
- 1.17.3 For further information regarding the Web Accessibility NTS and the implementation of WCAG 2.0, and policies relating to accessibility, please see:
- a. the Web Accessibility National Transition Strategy (available at: <http://finance.gov.au/publications/wcag-2-implementation/>); and
 - b. the Digital Services Standard (available at <https://dta.gov.au/standard/>).
- 1.17.4 If applicable, the Services should comply with the Web Accessibility NTS, and all products, Services and outputs should conform to WCAG 2.0 (specifying Level A, AA or AAA), preferably through the use of Sufficient Techniques (as that term is defined in the WCAG 2.0 Quick Reference (www.w3.org/WAI/WCAG20/quickref/)).

1.18 Prohibition on Illegal Workers

- 1.18.1 It is Australian Government policy not to contract with organisations that engage Illegal Workers. The successful tenderer will be required, under the Deed, to not engage Illegal Workers to assist in providing the Services.

1.19 UN Dealing with Assets Regulations

- 1.19.1 The Commonwealth will not contract with a tenderer, or permit the engagement of a subcontractor, that is listed as a terrorist under Section 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* (Cth). If the tenderer is listed as a terrorist, the Commonwealth will not consider, or further consider, its tender.
- 1.19.2 If a proposed subcontractor is listed as a terrorist, the Commonwealth will not consider, or further consider, a tender as far as it relates to the subcontractor's information.

2 TENDER PREPARATION AND LODGEMENT

2.1 Tenderers to inform themselves

- 2.1.1 The Commonwealth makes no representations or warranties that the information in this RFT or any information communicated or provided to tenderers during the RFT process is, or will be, accurate, current or complete.
- 2.1.2 Tenderers are responsible for:
- a. examining the RFT, any documents referenced in or attached to this RFT and any other information made available by the Commonwealth to tenderers in connection with the RFT process;
 - b. obtaining and examining 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; and
 - c. satisfying themselves that their tender (including tendered prices) is accurate, complete and not misleading.
- 2.1.3 Tenderers are to prepare and lodge their tenders based on the acknowledgements and agreements at the Tenderer's Deed of Undertaking.

2.2 Tender preparation

- 2.2.1 Tenderers are to complete and provide the information requested in the Attachments and are to do so in the manner requested in the Attachments.
- 2.2.2 Supporting documentation may be provided to enhance the tender. Supporting documentation relevant to a particular Attachment is to be indicated in that Attachment. Supporting documentation which is not relevant to the delivery of the Services (for example marketing materials) should not be provided and will not be considered.

2.3 Contact Officer for RFT inquiries

- 2.3.1 Tenderers are to direct any questions regarding this RFT in writing to the Contact Officer.
- 2.3.2 Tenderers may submit questions to the Contact Officer up until 5:00pm (Canberra local time) on the day which is five Working Days prior to the Closing Time.
- 2.3.3 Any question submitted by a tenderer is submitted on the basis that the Commonwealth may circulate a tenderer's questions and Commonwealth answers to all other tenderers without disclosing the source of the questions or revealing Confidential Information or the substance of the proposed tender.

2.4 Defence security clearance requirements

- 2.4.1 On request by the Commonwealth, the tenderer are to comply with the Commonwealth security clearance and accreditation process as detailed in Part 2.4, 2.20 and 2.60 of the

DSM, including obtaining the level of security clearance and accreditations required by the Commonwealth.

2.4.2 For the purpose of this RFT, tenderers are not required to obtain security clearances, as the RFT documentation provided to tenderers is UNCLASSIFIED.

2.4.3 However, tenderers acknowledge that it is likely that any procurement process following this RFT will require providers to ensure their Personnel hold a security clearance up to NEGATIVE VETTING 1 (NV1) level or be capable of attaining NV1 level security clearances prior to Contract commencement.

2.5 Industry briefing

2.5.1 An industry briefing will be conducted in accordance with the details specified in the Tender Details Schedule.

2.5.2 Industry briefings are conducted for the purpose of providing background information only.

Tenderers should note the effect of clauses 1.9.1 and 2.1.3. Tenderers should not rely on a statement made at an industry briefing as amending or adding to this RFT, unless that amendment or addition is confirmed by the Commonwealth in writing.

2.6 Lodgement of tenders

Note to tenderers: The Closing Time will also be displayed in the relevant AusTender webpage together with a countdown clock that displays in real time the amount of time left until the Closing Time (for more information please see AusTender Terms of Use). For the purposes of determining whether a tender response has been lodged before the Closing Time, the countdown clock will be conclusive.

2.6.1 AusTender is the Australian Government's procurement information system. Access to and use of AusTender is subject to terms and conditions. In participating in this RFT, tenderers are to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender at <https://www.tenders.gov.au/?event=public.termsOfUse>.

2.6.2 All queries and requests for AusTender technical or operational support are to be directed to: AusTender Help Desk

Telephone: 1300 651 698

International: +61 2 6215 1558

Email: tenders@finance.gov.au

The AusTender Helpdesk is available between 9am and 5pm Australian Capital Territory (ACT) local time, Monday to Friday (excluding ACT and national public holidays).

2.6.3 Tenders are to be lodged electronically via AusTender (<https://www.tenders.gov.au/>) before the Closing Time in accordance with the tender lodgement procedures set out in this RFT and on AusTender.

2.6.4 Tenders are to be lodged in the format specified in the Tender Details Schedule. All file names should:

- a. incorporate the tenderer company's name; and
- b. reflect the parts of the response they represent, where the response comprises multiple files.

2.6.5 Tender files should not exceed a combined file size of 500 megabytes per upload.

2.7 Tender Validity Period

2.7.1 The Commonwealth requires that tenders submitted in response to this RFT remain open for acceptance during the Tender Validity Period.

2.7.2 The Commonwealth may request an extension of the Tender Validity Period.

2.8 Alterations, erasures and illegibility

- 2.8.1 Any alterations or erasures made to a tender by a tenderer are to be initialled by that tenderer. Tenders containing alterations or erasures that are not initialled or pricing or other information that is not stated clearly and legibly may be excluded from consideration.

2.9 Unintentional errors of form

- 2.9.1 If the Commonwealth considers that there are unintentional errors of form in a tender, the Commonwealth may request the tenderer to correct or clarify the error but will not permit any material alteration or addition to the tender.

2.10 Confidentiality

- 2.10.1 The Commonwealth may require a tenderer to execute a deed of confidentiality before being provided with some or all of the information included in the RFT. Whether or not such a deed is required, and without limiting a tenderer's obligations under the deed, tenderers are to:
- a. treat the RFT and any information provided to tenderers by or on behalf of the Commonwealth in connection with the RFT process as confidential; and
 - b. not disclose or use that information except as strictly required for the purpose of developing a tender in accordance with the RFT.

2.11 Tenderer's confidential information

- 2.11.1 In accordance with paragraph 7.21 of the Commonwealth Procurement Rules, the Commonwealth will treat tenders as confidential before and after the award of any resultant Deed.
- 2.11.2 Subject to clause 2.11.3 and Annex C3, the Commonwealth will treat as confidential any information that a tenderer identifies in its tender as information that the tenderer wishes to be protected as confidential information.
- 2.11.3 The Commonwealth will not be taken to have breached any obligation to keep confidential information provided by tenderers to the extent that the information:
- a. is disclosed by the Commonwealth to its advisers, officers, employees or contractors, or to an officer, employee, contractor or adviser of an Agency, in order to:
 - (i) facilitate use of the Services;
 - (ii) conduct, review, audit or address a challenge to this RFT process; or
 - (iii) prepare, manage and review the performance and implementation of the Deed or any resultant Contract;
 - b. is disclosed by the Commonwealth to the Minister for Defence, Cabinet or a Responsible Minister for an Agency;
 - c. is disclosed by an Agency to Defence, another Agency, or the Responsible Minister for an Agency;
 - d. is disclosed by the Commonwealth or an Agency in response to a request made by a House or a Committee of the Parliament of the Commonwealth of Australia or a Parliament of a State or Territory;
 - e. is disclosed by the Commonwealth or an Agency in response to a request made by an Authorised Investigator (or a State or Territory equivalent), or by a person authorised by an Authorised Investigator;
 - f. is shared by Defence within Defence's organisation, or with another Agency if this serves the Australian Government's legitimate interests;
 - g. is shared by an Agency within that Agency, if this serves the legitimate interests of that Agency;
 - h. is authorised or required by law to be disclosed;

- i. is in the public domain otherwise than due to a breach of the relevant obligations of confidentiality; or
 - j. is disclosed by the Commonwealth or an Agency to an appropriate regulatory authority because of suspected collusive or anti-competitive behaviour.
- 2.11.4 If the Commonwealth enters into a Deed, the Commonwealth will only keep information contained in a successful tenderer's tender, or contained in, obtained or generated in performing, any Deed or contract entered into with the successful tenderer(s) confidential in accordance with the terms of the Deed and any resultant Contract.
- 2.11.5 If a tenderer wishes for information to be protected as confidential information both during this RFT process and following the entering into of a Deed, the tenderer should clearly identify in their tender the information and the reasons why the tenderer considers that the information should be protected as confidential information.
- 2.11.6 In considering whether to agree to keep information confidential under any Deed or resultant Contract, the Commonwealth will only consider treating information as confidential if the information passes the Department of Finance's 'Confidentiality Test' (see paragraph 9 at <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/practice.html#test>).

2.12 Probity assurance

Note to tenderers: Tenderers should note that the Tenderer's Deed of Undertaking sets out a number of acknowledgements and undertakings to be given by tenderers, including in relation to probity, conflict of interest and bribery.

- 2.12.1 The Commonwealth may exclude a tender from further consideration if in the opinion of the Commonwealth, the tenderer fails to comply with clause 4 of the Tenderer's Deed of Undertaking. The Commonwealth may exclude a tender from further consideration if the tenderer, any of its Related Bodies Corporate or any officer of any of them has been convicted of bribery of Commonwealth, State, Territory or foreign government officials at any time during the last seven years.

2.13 Collusive tendering

- 2.13.1 Tenderers and their officers, employees, agents and advisers are not to engage in any collusive tendering, anti-competitive conduct, or any other similar conduct in relation to:
 - a. the preparation or lodgement of tenders;
 - b. the evaluation and clarification of tenders; and
 - c. the conduct and content of negotiations, including final contract negotiations,
 in respect of this RFT or RFT process or any other RFT process being conducted by the Commonwealth in respect of its defence capability requirements.
- 2.13.2 For the purposes of clause 2.13.1, collusive tendering, anti-competitive conduct, or any other similar conduct may include the disclosure, exchange and clarification of information (in any form) whether or not such information is confidential to the Commonwealth or any other tenderer or any other person or entity.
- 2.13.3 In addition to any other remedies available under any law or any contract, the Commonwealth may immediately reject any tender lodged by a tenderer that, in the Commonwealth's reasonable opinion, has engaged in any collusive tendering, anti-competitive conduct, or any other similar conduct with any other tenderer or any other person in relation to the preparation or lodgement of tenders whether in respect of this RFT or RFT process or any other RFT process being conducted by the Commonwealth in respect of its defence capability requirements.

2.14 Unlawful inducements

- 2.14.1 Tenderers and Related Bodies Corporate, and their officers, employees, agents and advisers are to, at all times during the RFT process, comply with any applicable laws (including foreign anti-corruption legislation) or Commonwealth policies regarding the offering of unlawful inducements in connection with the preparation of their tender. The Commonwealth may exclude a tender from further consideration if in the opinion of the Commonwealth, a tenderer or Related Body Corporate, or their officers, employees, agents or advisers fails to comply with this clause 2.14.1.

2.15 Improper assistance

- 2.15.1 Tenders that, in the opinion of the Commonwealth, have been compiled:
- a. with the improper assistance of current or former Defence Personnel or Defence Service Providers;
 - b. with the utilisation of information unlawfully obtained from the Commonwealth;
 - c. in breach of an obligation of confidentiality to the Commonwealth; or
 - d. contrary to the Conditions of Tender in this RFT,
- may be excluded from further consideration.

2.16 Use of former Defence Personnel or Defence Service Providers in tender preparation and process

- 2.16.1 Without limiting the operation of clause 2.15, a tenderer is not, without prior written approval from the Commonwealth, to permit any Defence Personnel or Defence Service Provider to contribute to, or participate in, any process or activity relating to the preparation of the tenderer's tender or the RFT process, if:
- a. the person was involved at any time in the planning of the procurement to which this RFT relates, the preparation of this RFT, or the management of the RFT process; or
 - b. the person was at any time during the 12 months immediately preceding the date of issue of this RFT involved in a Defence procurement process or activity relevant or related to this RFT.
- 2.16.2 If the tenderer fails to comply with this clause 2.16, the tender may be excluded from further consideration.

2.17 Conflict of interest

- 2.17.1 A tenderer is not to, and is to ensure that its officers, employees, agents and advisers do not, place themselves in a position that may or does give rise to an actual, potential or perceived conflict of interest between the interests of the Commonwealth and the tenderer's interests during the RFT process.
- 2.17.2 If during the RFT process a conflict of interest arises, or appears likely to arise, the tenderer is to notify the Commonwealth immediately in writing and to take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the conflict. If the tenderer fails to notify the Commonwealth or is unable or unwilling to resolve or deal with the conflict as required, the tender may be excluded from further consideration.

2.18 Unconditional tenders

- 2.18.1 Each tenderer is to make an unconditional offer and, to the extent reasonably possible, obtain any necessary government or other approvals, consents or authorisations to enable it to enter into a contract on an unconditional basis. Before any tender is accepted, and as part of a deed of offer or otherwise, the tenderer may be required to confirm that its tender is unconditional and that it is able to enter into a contract on an unconditional basis.

2.19 Use of tender documents

- 2.19.1 All tender documents submitted in response to this RFT become the property of the Commonwealth and the Commonwealth may use, retain and copy the information contained in those documents for the purposes of;

- a. evaluation and selection of any tender;
 - b. preparation and negotiation of any resultant Contract with respect to the RFT; and
 - c. verifying the currency, consistency and adequacy of information provided under any other RFT process conducted by the Commonwealth.
- 2.19.2 The Commonwealth may disclose tender documents to a third party for the purposes of assisting the Commonwealth in the conduct of the RFT process and for the purposes contained in clause 2.19.1. The Commonwealth may obtain appropriate confidentiality undertakings from the third party prior to disclosure.
- 2.19.3 Nothing in this clause 2.19 changes or affects the ownership of IP in the information contained in the tender documents.

2.20 Part tenders

- 2.20.1 The Commonwealth will only consider:
 - a. in respect of the Systems Integration Service Tower or the Application Services Service Tower, a tender for the entire Service Tower; and
 - b. in respect of the ICT Services Service Tower, a tender for an entire SFIA Category.
- 2.20.2 A tender for part of the Systems Integration Service Tower or the Application Services Service Tower or for part of a SFIA Category (as the case may be) will be excluded from evaluation.

2.21 Consortium tenders

- 2.21.1 Without limiting the Commonwealth's rights, the Commonwealth intends to enter into a Deed with a single legal entity that will be the party responsible for the performance of the Deed and any resultant Contracts. If tenderers submit a consortium tender for the Services, the consortium tender is to:
 - a. include in the tender the information sought in the RFT for each member of the consortium;
 - b. describe in detail in the tender the relationship between each member of the consortium and the structure proposed for management of the consortium including nominating a single point of contact for all communications in relation to this RFT;
 - c. provide in the tender that one member of the consortium is fully liable for the performance of all members of the consortium; and
 - d. include such other information that the Commonwealth requires to undertake a risk assessment of the proposed consortium tender such as insurances and structure.
- 2.21.2 The Commonwealth will not consider a joint tender other than a tender submitted in accordance with clause 2.21. A reference to tenderer in this RFT is a reference to each member of the consortium.

2.22 Alternative proposals

- 2.22.1 The Commonwealth will not consider an alternative proposal.

2.23 Substitution of tenderer

- 2.23.1 If during the period following the submission of the tender and prior to execution of any resultant Contract with the successful tenderer, there occurs:
 - a. an Insolvency Event in respect of the tenderer; or
 - b. any other event that has the effect of substantially altering the composition or control of the tenderer or the business of the tenderer,

the Commonwealth may allow, on such terms as the Commonwealth considers appropriate, the substitution of that tenderer with another legal entity upon receipt of a joint written request from or on behalf of the tenderer and the other legal entity.

- 2.23.2 If no request for substitution is made, or the Commonwealth chooses not to allow the substitution under clause 2.23.1, the Commonwealth may decide not to consider the tender any further or, in considering it, may take into account the impact of the event on the information provided in the tender.
- 2.23.3 If the Commonwealth allows the substitution under clause 2.23.1, the Commonwealth will evaluate the tender in its original form prior to the event, except that the impact of the event on the information provided in the tender may be taken into account.

3 TENDER REQUIREMENTS

3.1 Minimum Content and Format Requirements

- 3.1.1 Subject to clause 2.9, the Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tender does not comply with any of the Minimum Content and Format Requirements specified in the Tender Details Schedule.

3.2 Conditions for Participation

- 3.2.1 The Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tenderer does not comply with the Conditions for Participation specified in the Tender Details Schedule.

3.3 References

Note to tenderers: Tenderers should note that the written referee reports will be an important consideration in the Commonwealth's assessment of Evaluation Criterion 2.1. Tenderers should ensure that their written referee reports are substantially in the form provided at Annex E2, and that all fields are completed in sufficient detail to enable evaluation.

- 3.3.1 Tenderers should provide as part of their tenders two written referee reports substantially in the form provided at Annex E2. Tenderers are encouraged to provide referee reports relevant to the Service Towers for which the tenderer is tendering. A total of two referee reports should be provided per tender (not per Service Tower).
- 3.3.2 The Commonwealth may contact the referee about any aspect of the tenderer's performance of services relevant to this RFT and the Evaluation Criteria. The Commonwealth may also contact any other persons to whom the tenderer has provided services.
- 3.3.3 Tenderers may provide referee reports prepared by an officer or employee of Defence, except when that officer or employee is involved in the evaluation of tenders in response to this RFT. To avoid this circumstance arising, tenderers should clarify that the person is not involved in the evaluation of tenders prior to requesting the provision of a referee report.
- 3.3.4 The Commonwealth may also make independent enquiries about any matters that may be relevant to the evaluation of a tender.

3.4 Financial viability and financial checks

- 3.4.1 Tenderers should provide the information set out in Annex C1, to allow the Commonwealth to assess the financial viability of the tenderer. The Commonwealth may conduct, or engage a third party to conduct, a financial viability assessment of the tenderer.
- 3.4.2 If, in the Commonwealth's opinion, a tenderer has not provided sufficient information in accordance with this RFT to allow the Commonwealth to determine whether the tendered price constitutes value for money, the Commonwealth may conduct a cost investigation of tendered prices.
- 3.4.3 The cost investigation under clause 3.4.2 and financial viability assessment under clause 3.4.1 may be conducted at any time prior to selection of any tenderer(s) or prior to signature of any resultant Deed. On request by the Commonwealth, the tenderer must facilitate any

cost investigation under clause 3.4.2 or financial viability assessment conducted under clause 3.4.1.

- 3.4.4 The tenderer must, for the purpose of this clause 3.4 and on request by the Commonwealth:
- a. allow access for the Commonwealth to tenderer and Related Body Corporate officers, employees, agents and advisers relevant to the matters referred to in this clause 3.4; and
 - b. provide detailed information in response to any requests from the Commonwealth in connection with the matters referred to in this clause 3.4, including information which will allow a breakdown of the tenderer's prices and costs.

3.5 Security, Probity and Other Checks

- 3.5.1 The Commonwealth reserves the right to perform such security, probity and/or financial checks and procedures as the Commonwealth, in its absolute discretion, may determine are necessary in relation to each tenderer, its partners, associates or related entities including any subcontractors and their officers or employees. Each tenderer agrees to provide, at its cost, all reasonable assistance to the Commonwealth as may be required.
- 3.5.2 Tenderers must promptly provide the Commonwealth with such information or documentation as the Commonwealth requires in order to undertake such checks and procedures. The Commonwealth may exclude a tender from further consideration if the tenderer does not promptly provide all reasonable assistance to the Commonwealth in this regard, or as a result of information obtained from the outcomes of the checks or procedures.
- 3.5.3 Without limiting clause 3.5.1, the Commonwealth may conduct national police checks, and/or checks with regulatory agencies (including the Australian Securities and Investment Commission, the ACCC and State and Territory authorities) on the tenderer and its proposed personnel and on proposed subcontractors and Related Bodies Corporate and each of their personnel, if the Commonwealth considers that the results may affect any aspect of the assessment of the tender against the Evaluation Criteria.

3.6 Negotiation

- 3.6.1 As stated in clause 1.7, the Commonwealth does not intend to enter into negotiations in relation to the terms of the Deed with successful tenderers.
- 3.6.2 The Commonwealth may engage in discussions with a tenderer which may involve the tenderer being asked to:
- a. clarify, improve or consolidate any of the technical, commercial, legal, financial and operational aspects of its tender; or
 - b. enter into an agreement with the Commonwealth relating to the terms of the detailed engagement with that tenderer.
- 3.6.3 The Commonwealth may deal with any tenderer as it sees fit without the need to correspond with the other tenderers during the negotiation period.
- 3.6.4 All communication between the Commonwealth and the tenderer(s) (if any) during the negotiations must be kept confidential by the tenderer(s).

3.7 Preferred Tenderer Status

- 3.7.1 The Commonwealth may select a tenderer as a preferred tenderer, but such selection:
- a. does not affect or limit the Commonwealth's rights or the tenderer's obligations under the RFT; and

- b. is not a representation that a Deed will be entered into between the Commonwealth and that tenderer,

and the Commonwealth may recommence or commence negotiations under the RFT with any other tenderer whether or not a tenderer has been selected as a preferred tenderer.

3.8 Debriefing of Tenderers

- 3.8.1 Tenderers will be notified whether they have been successful or unsuccessful and may request a tender debriefing. Tenderers requesting a debriefing should contact the Contact Officer. Any request for a debriefing should be received within 30 calendar days of notification.
- 3.8.2 Tenderers will be debriefed against the Evaluation Criteria. A tenderer will not be provided with information concerning other tenderers, except for publicly available information. No detailed comparisons with other tenderers will be made.

4 EVALUATION PROCESS AND EVALUATION CRITERIA

4.1 Overview of evaluation and process

- 4.1.1 Tenders will be evaluated on the basis of best value for money consistent with Commonwealth procurement policies, utilising the Evaluation Criteria.
- 4.1.2 The Commonwealth may:
 - a. obtain additional information (whether that information is obtained through the RFT process or by any other means) relevant to the tenderer's tender;
 - b. use material tendered in response to one Evaluation Criterion in the evaluation of other Evaluation Criteria;
 - c. seek clarification or additional information from, and enter into discussions with, any or all of the tenderers in relation to their tender;
 - d. shortlist one or more tenderers; or
 - e. enter into discussions or negotiations with any tenderer.
- 4.1.3 In assessing tenders, the Commonwealth may take into account any supporting documentation provided under clause 2.2.2 and 3.5.2.

4.2 Evaluation process

- 4.2.1 Following the Closing Time, the Commonwealth will download the tenders received through AusTender. The tenders will then be evaluated in the manner described in this clause 4.
- 4.2.2 The Commonwealth intends to undertake evaluation in a three (3) stage process which includes:
 - a. Stage 1 - initial screening of tenders;
 - b. Stage 2 - detailed evaluation; and
 - c. Stage 3 - value for money assessment.
- 4.2.3 This clause 4 does not contain complete details of all enquiries that may be undertaken by the Commonwealth for the purpose of evaluating the tenders.
- 4.2.4 The Commonwealth may, at any stage after the Closing Time, determine a short-list of tenders.

Stage 1 - Initial screening of tenders

- 4.2.5 The Commonwealth will screen all tenders to identify any that:
 - a. do not comply with a Minimum Content and Format Requirement;
 - b. do not comply with a Condition for Participation; and

- c. are otherwise incomplete or non-compliant with the RFT.
- 4.2.6 The Commonwealth will consider whether any tenders identified in this stage may contain unintentional errors of form, and whether any clarification, correction or additional information should be requested from the tenderer(s).
- 4.2.7 The Commonwealth will exclude any tender from further consideration which has not complied with each of the Minimum Content and Format Requirements and Conditions for Participation (taking into account any permitted clarification, correction or additional information provided by the tenderer).
- 4.2.8 The Commonwealth may also exclude a tender from further consideration if:
 - a. an Insolvency Event occurs in relation to the tenderer or any of its Related Bodies Corporate;
 - b. the tender is incomplete or deficient (e.g. it fails to address technical details, or demonstrate a reasonable understanding of the Services or fails to provide relevant, complete and accurate information);
 - c. the tender is so clearly non-competitive that it is likely to be evaluated as not representing a value for money outcome for the Commonwealth; or
 - d. a representation or warranty given by the tenderer in its tender is, or is found to be, false or misleading.
- 4.2.9 The Commonwealth may, however, decide to consider these tenders and seek further clarification from the tenderer if it believes that this is appropriate.
- 4.2.10 Screening is an ongoing process and the Commonwealth may decide during any other stage of the evaluation process that a tender should be excluded from further consideration in accordance with clauses 4.2.5 to 4.2.10 (inclusive).

Stage 2 - Detailed evaluation

- 4.2.11 The Commonwealth will undertake a detailed evaluation of tenders that have not been excluded from further consideration under stage 1 against the Evaluation Criteria.
- 4.2.12 In evaluating each tender against the Evaluation Criteria, the Commonwealth will undertake a tiered approach to the assessment of each tender which includes an assessment of:
 - a. the tenderer's technical capability to provide the Services for each tendered Service Tower;
 - b. the tenderer's commercial capability and capacity for delivering the tendered Services;
 - c. any risks inherent in the tender, including the tenderer's Statement of Non-Compliance against the Deed (including the Attachments and Schedules to the Deed and the applicable Service Tower Terms); and
 - d. the tenderer's tendered rates. As part of the pricing evaluation, the Commonwealth may benchmark the tendered rates against the average industry rates, as aligned with the SFIA rates.
- 4.2.13 The Commonwealth may seek assistance from a financial or other advisor if required.
- 4.2.14 In addition to evaluating the tender information, the Commonwealth may consider any additional information that relates to the Evaluation Criteria, provided that the use of the information is in accordance with the RFT.
- 4.2.15 The extent of the tenderer's compliance with the terms of the Deed will be an important factor taken into account by the Commonwealth as part of its evaluation of a tender (noting the Commonwealth's intention not to conduct any negotiations with tenderers). Tenderers should be aware of this when specifying their compliance or otherwise with the terms of the draft Deed. The Commonwealth may exclude from further consideration any tender which exhibits significant non-compliance with the Deed.
- 4.2.16 The Commonwealth may, at any stage of the evaluation process, ask all tenderers (or, if tenderers have been short-listed, the short-listed tenderers) to provide clarification on any pricing matters or to submit new or revised pricing based on an alternative methodology.

- 4.2.17 The Commonwealth will also conduct an analysis of the risks associated with each tender.
- 4.2.18 As part of stage 2 (detailed evaluation), or at any other time, the Commonwealth may undertake due diligence checks of tenders. Due diligence checks may include (as determined by the Commonwealth, in its sole discretion):
- a. referee checks and/or discussions with other persons about the tenderer and its ability to perform the Services for each tendered Service Tower;
 - b. credit checks and/or seeking financial information required for the purpose of establishing the financial viability of the tenderer; and
 - c. independent enquiries about any matter which may be relevant to the evaluation of the tender.
- 4.2.19 The Commonwealth may adjust the evaluation of tenders accordingly, based on the outcomes of any due diligence activities.

Stage 3 - Value for money assessment

- 4.2.20 This stage will require the Commonwealth to determine which tenders represent best overall value for money.
- 4.2.21 In assessing best value for money overall, the Commonwealth will have regard to the following (in respect of those tenderers short-listed following stage 2 (detailed evaluation)):
- a. ranking of tenders for each Evaluation Criterion;
 - b. strengths and weaknesses of each tender; and
 - c. overall assessed level of risk for each tender.
- 4.2.22 In forming a view as to which tenders represent best overall value for money, the Commonwealth may also consider:
- a. the composition of the Arrangement so that as a whole the Arrangement covers the full range of the Services required under the Arrangement;
 - b. the size of the Arrangement and therefore its viability and manageability; and
 - c. any other matter relevant to achieving the objectives of this RFT process specified in clause 1.1 of the Conditions of Tender.
- 4.2.23 Based on the detailed evaluation of each tender against the Evaluation Criteria, and the overall value for money assessment of each tender, the Commonwealth may then make a determination as to which of the tenderers it considers to be a preferred tenderer for a Service Tower (subject to clause 4.2.22).

4.3 Finalisation of the Deed

- 4.3.1 The Commonwealth may enter into discussions with preferred tenderer(s) to finalise the Deed(s). Tenderers are reminded that the Commonwealth does not intend to undertake any negotiations with tenderers in respect of the terms and conditions of the Deed (refer to clauses 1.7.2 and 1.7.3).
- 4.3.2 The Commonwealth may cease discussions with any tenderer, and/or commence or continue discussions with any other tenderer, if the Commonwealth considers it is unlikely to agree on an acceptable contractual arrangement with that tenderer.
- 4.3.3 The Commonwealth may, in its absolute discretion, execute Deeds with preferred tenderers and establish the Arrangement in sequential tranches as tenderers agree to terms of the Deed. The Commonwealth intends to finalise Deeds for those preferred tenderers that agree with the Deed as a priority.
- 4.3.4 Tenderers should note that the Commonwealth will not issue a Request for Quotation or enter into a Work Order with a Supplier until the Supplier has signed the ICTPA Collaboration Deed (refer to clause 6.3 of the Deed).

4.4 Reservation of rights

- 4.4.1 The Commonwealth may conduct some or all of the above stages at the same time, in a different order to that stated, or to change its evaluation process at any time if required in order to ensure that an appropriate value for money assessment is undertaken.
- 4.4.2 The Commonwealth may set aside or reject a tender at any time on the basis that it has become clear to the Commonwealth that the tenderer:
- has not provided adequate information;
 - is not clearly capable of providing the tendered Services, including if a tender is clearly non-competitive; or
 - demonstrated other reasons (including technical, strategic, commercial, financial, pricing and legal or risk related reasons) why the tenderer should not be selected for inclusion on the Arrangement.
- 4.4.3 However, the Commonwealth may still consider such tenders and seek clarification from the tenderer in accordance with clauses 4.2.6 and 4.2.16.
- 4.4.4 As part of the evaluation process, the Commonwealth may:
- require tenderers to give a presentation, attend an interview or host a site inspection (all costs of the tenderer in such activities are to be borne by the tenderer); or
 - normalise and adjust tender pricing to establish a common base for comparative assessment of tenders, and/or undertake any form of sensitivity analysis.

4.5 Evaluation Criteria

- 4.5.1 Tenders will be evaluated using the Evaluation Criteria provided in the table below. The Evaluation Criteria are not specified in any order of importance.

| No. | Evaluation Criteria | Sub-criteria | Primary TDRL reference |
|----------------------|--|--|---|
| 1. COMMERCIAL | | | |
| 1.1 | Commercial – Financial viability | The tenderer's financial and corporate viability, including the tenderer's corporate structure. | Annex A2 (Tenderer's Profile) Annex C1 (Financial Viability) |
| 1.2 | Commercial – Capacity to provide services | The tenderer's demonstrated ability to provide the tendered Services as required by the Commonwealth, including at onsite locations throughout Australia. | Annex D1 (Proposed Supplier Deed Manager) Annex D2 (Business Resource Planning) |
| 2. TECHNICAL | | | |
| 2.1 | Technical – Demonstrated capability and experience | The tenderer's demonstrated capability and experience (including past performance) in the provision of services of the same or similar type to the Services for which the tenderer is tendering. | Attachment B (Tenderer's Deed of Undertaking) Annex E1 (Past Performance) Annex E2 (Referees) Annex E3 (Facility and ICT Systems Security Accreditation) |

| No. | Evaluation Criteria | Sub-criteria | Primary TDRL reference |
|-----------------|---------------------|---|--|
| 3. RISK | | | |
| 3.1 | Risk | <p>The level of any risk associated with the tenderer's tender not taken into account in the assessment of the tender against the other Evaluation Criteria, including consideration of:</p> <ul style="list-style-type: none"> a. the extent of the tenderer's compliance with the Deed, including the applicable Service Tower Terms and Statements of Work; and b. the extent of the tenderer's willingness to comply with the ICTPA Collaboration Deed (as indicated through the tenderer's Statement of Non-Compliance). | <p>Annex A3 (Statement of Non-Compliance)</p> <p>Attachment B (Tenderer's Deed of Undertaking)</p> <p>Annex C2 (Insurance)</p> <p>Annex C3 (Confidential Information)</p> <p>Annex C4 (WHS Management Statement)</p> |
| 4. PRICE | | | |
| 4.1 | Price | The tenderer's rates for performing the tendered Services, including consideration of the competitiveness of those rates. | <p>Annex F1 (ICTPA On-Shore Rate Card)</p> <p>Annex F2 (ICTPA Off-Shore Rate Card) (if applicable)</p> |