



**Australian Government**  
**Department of Health**

Department of Health  
National Cancer Screening Register  
RFT Health/124/1415

Request for Tender

PART 1  
RFT – Process Conditions

August 2015

The Commonwealth of Australia, acting through and represented by the Department of Health (**Health**) invites interested parties to submit Tenders in accordance with this Request For Tender (**RFT**) documentation to provide the goods and services needed to meet the Outcomes described in **Part 2 – Statement of Requirements**.

**Contact officer:** Kate Hayne    **Email:** [NCSRProject@health.gov.au](mailto:NCSRProject@health.gov.au)

**Closing Time:** 2:00PM (EST), 8 October 2015

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**This RFT consists of:**

- (a) Part 1: Process Conditions
  - (i) Attachment A - RFT Question Form
  - (ii) Attachment B - Evaluation Process and Evaluation Criteria
- (b) Part 2: Statement of Requirements
  - (iii) Schedule 1 – Overview and Outcomes
  - (iv) Schedule 2 – Solution and Service Requirements
    - A. Attachment A – Operator Service Requirements
    - B. Attachment B – Register ICT Service Requirements
    - C. Attachment C – Functional Requirements
    - D. Attachment D – Non-Functional Requirements
    - E. Attachment E – High Level Design
  - (v) Schedule 3 – Management and Governance
  - (vi) Schedule 4 – Pricing Framework
    - A. Attachment A – Resource Unit Definition Tables
    - B. Attachment B – Pricing Tables
  - (vii) Schedule 5 – Service Level Framework
  - (viii) Schedule 6 – Implementation and Transition Requirements
  - (ix) Schedule 7 – Disengagement Requirements
  - (x) Schedule 8 – Draft Services Agreement
- (c) Part 3: Response Form (and attachments)
- (d) Part 4: Glossary

## Table of Contents for Part 1

<b>SECTION 1 - INTRODUCTION AND HEALTH'S AIMS</b> .....	<b>6</b>
1 Outcomes-based approach.....	6
2 Strategic relationship .....	7
3 Scope of the requirement.....	8
4 Background and Business Context .....	10
<b>SECTION 2 - INFORMATION ABOUT THIS RFT</b> .....	<b>13</b>
5 Definitions and interpretation.....	13
6 Intended timeframe for the RFT Process .....	13
7 Enquiries about this RFT .....	13
8 Industry Briefing .....	15
9 Provision of further materials by Health through a Data Room.....	16
10 Issue by Health of addenda and notices .....	16
11 Participation of other Agencies in this RFT Process .....	17
12 Commonwealth coordinated procurement .....	18
<b>SECTION 3 - INFORMATION ABOUT LODGING A TENDER IN RESPONSE TO THIS RFT</b> .....	<b>19</b>
13 Tenderer to use AusTender .....	19
14 Tender Closing Time .....	19
15 Tender file formats, naming conventions and sizes .....	20
16 Signed or initialled material, including statutory declarations .....	22
17 AusTender security .....	22
<b>SECTION 4 - INFORMATION ABOUT THE CONTENT OF TENDERS</b> .....	<b>24</b>
18 Format for Tenders .....	24
19 Conditions for Participation.....	24
20 Unintentional Errors of Form.....	24
21 No Part Tenders .....	25
22 No Consortia or Joint Tenders .....	25
23 Alternative Approaches.....	25
24 Tender Validity Period .....	26
<b>SECTION 5 - INFORMATION ABOUT PROCESSES AFTER LODGEMENT OF TENDERS</b> .....	<b>27</b>

25	Corrections by a Tenderer after lodgement .....	27
26	Requests by Health for clarification, correction or further information.....	27
27	Presentations, interviews and site visits.....	28
28	The Evaluation Criteria and Evaluation Process .....	28
29	Acceptance of Tenderer's offer .....	29
30	Outcome of the RFT Process.....	30
31	Debriefing .....	30
32	Change in Tenderer .....	30
<b>SECTION 6 - OTHER PROVISIONS APPLYING TO THIS RFT PROCESS .....</b>		<b>32</b>
33	Intellectual Property Rights in Tender documents.....	32
34	Confidentiality .....	33
35	Conflict of interest .....	35
36	Complaints.....	36
37	Compliance with Commonwealth Policies .....	36
38	Public Statements .....	45
39	Ethical Dealing .....	45
40	Assistance Provided in Preparation of this RFT .....	46
41	Acknowledgement and Disclaimer.....	46
42	Health's rights .....	48
43	Applicable Law .....	50
<b>ATTACHMENT A - RFT QUESTION FORM .....</b>		<b>51</b>
<b>ATTACHMENT B - CONFIDENTIALITY DEED POLL .....</b>		<b>52</b>
44	Purpose.....	52
45	Operative Part.....	52
<b>SCHEDULE 1.....</b>		<b>63</b>
<b>SCHEDULE 2 - DATA PACK PROTOCOL.....</b>		<b>65</b>
1	Introduction .....	65
2	Transaction Website.....	65
3	Terms of Use .....	67
4	Amendment .....	67

<b>Annexure A - Authorised Persons.....</b>	<b>68</b>
<b>Annexure B - Transaction Website Terms and Conditions .....</b>	<b>70</b>
<b>ATTACHMENT C - EVALUATION PROCESS AND EVALUATION CRITERIA.....</b>	<b>73</b>
<b>1 Registration of Tenders.....</b>	<b>73</b>
<b>2 Stage 1 – Compliance Assessment .....</b>	<b>73</b>
<b>3 Stage 2 - Evaluation Against the Evaluation Criteria .....</b>	<b>73</b>
<b>4 Value for Money .....</b>	<b>76</b>
<b>5 Stage 3 - Contract Negotiation and Finalisation.....</b>	<b>76</b>
<b>6 Alternative Approaches.....</b>	<b>77</b>
<b>7 Exclusion of Tenders.....</b>	<b>77</b>
<b>8 Parallel Stages.....</b>	<b>77</b>
<b>9 Evaluation Criteria .....</b>	<b>78</b>

## **Table of Figures**

<b>Figure 1: Population Based Screening Framework – Screening Pathway.....</b>	<b>12</b>
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## SECTION 1 - INTRODUCTION AND HEALTH'S AIMS

### 1 Outcomes-based approach

- 1.1.1 The Australian Government, Department of Health (**Health**), in cooperation with its State and Territory based counterparts, is seeking to enter an outcomes based arrangement with an appropriately skilled, qualified and capable Service Provider to enable and facilitate the delivery of the National Bowel Cancer Screening Program (**NBCSP**) and the National Cervical Screening Program (**NCSP**). While it is the preference of Health to enter the arrangements with a single Service Provider, Health reserves all rights at its sole and absolute discretion to decouple the Services Agreement into parts and may contract with more than one Service Provider.
- 1.1.2 The Service Provider will be responsible for:
- (a) the provision of Implementation and Transition Services of an ICT capability/platform to deliver the **National Cancer Screening Register (the Register)**;
  - (b) ICT Services to maintain and support the Register (**Register ICT Services**) in order to meet specific Outcomes; and
  - (c) the operational and support services for the Register required to enable and facilitate the Australian Government administered and State and Territory based cancer screening programs (the **Operator Services**), in order to meet specific Outcomes.
- 1.1.3 Collectively, the provision of the Register, Register ICT Services and the Operator Services as a fully managed service are referred throughout this RFT as the **Services**.
- 1.1.4 Further details about the particular Services and Outcomes being sought by Health are set out in Part 2, Schedule 1 of this RFT.
- 1.1.5 The outcomes-based approach being sought by Health will:
- (a) offer flexibility to the Service Provider to determine the manner in which it will deliver the Services in order to meet the Outcomes;
  - (b) provide the ability to measure the Service Provider's achievement of the Outcomes, with the commercial model directly linked to the delivery of the Outcomes (rather than a model where pricing is based around the cost of inputs); and
  - (c) identify and manage risks in a way that does not create unreasonable premium pricing.
- 1.1.6 Health intends to enter into an outcomes-based contract, in the form of the draft Services Agreement in Part 2, Schedule 8 of this RFT. The Services Agreement, when completed in accordance with this RFT and the successful Tender, will describe the overarching results that must be continually achieved by the successful Service Provider through the provision of the Services necessary to meet the Outcomes during the term of the Services Agreement.

- 1.1.7 The Services Agreement will give the Service Provider maximum flexibility to determine how to best perform or provide the necessary Services in order to meet the Outcomes, using the Service Provider's experience, resources and expertise. This represents a significant change from a traditional outsourcing model, which has involved a high level of prescription about the tasks to be performed, and the manner in which those tasks are to be undertaken. Tenderers should note that in certain circumstances, the Services Agreement will describe particular Key Requirements which must be met by the Service Provider in meeting the Outcomes, however, such Key Requirements are not intended to limit the Service Provider's obligations under the Services Agreement. The Service Provider will be required to achieve the Outcomes in a manner that is consistent with those Key Requirements.
- 1.1.8 Health is seeking to benefit from the successful Tenderer's, if any, expertise and experience in delivering the Services which will allow the Tenderer to meet the Outcomes. Health is open to all approaches to deliver the Services and has a strong preference for solutions that do not involve Health owning any ICT infrastructure assets (including Software) where this is commercially sensible.
- 1.1.9 Whatever solution and approach is proposed by Tenderers, a key aim for Health is to establish the provision of 'end to end' service management for the Services, which will require the Service Provider to work with Health, Health's State and Territory counterparts, other external service providers to Health (**Other Service Providers**), and other key stakeholders in order to successfully deliver the Services. Further details about the requirements are set out in the Schedules in Part 2 of this RFT.
- 1.1.10 Due to the outcomes-based nature of this procurement, some of the performance measures necessary to determine whether the successful Tenderer, if any, has met an Outcome will require both quantitative and qualitative assessments by Health. Further details of this are set out in Part 2 of this RFT. Part 2 of this RFT sets out the processes that will be used by Health to undertake any qualitative assessment of the successful Tenderer's performance against the Outcomes. It has been structured to demonstrate to Tenderers how Health will apply the qualitative elements of the performance framework in a reasonable manner.

## 2 Strategic relationship

- 2.1.1 A key objective of this RFT process is to establish a strategic partnership with the successful Tenderer, if any, in national cancer screening planning and management activities. Health wishes that relationship to have the following features:
- (a) the Service Provider acts as a trusted adviser to Health and its State and Territory counterparts on, and provides leadership and advice in relation to, the Services;
  - (b) the Service Provider anticipates and identifies risks and offers solutions and advice which are practical, and where relevant, meet industry best practice;
  - (c) the Service Provider utilises modern and innovative technologies and best practices to the Register ICT Services;

- (d) the Service Provider has a comprehensive understanding of Health's business and portfolio outcomes, requirements, challenges and priorities;
- (e) the Service Provider considers achievement of maximum Health and key stakeholder satisfaction to be essential;
- (f) the Service Provider proactively participates in National Cancer Screening Register or Program governance arrangements; and
- (g) the Service Provider actively engages with Health and its key stakeholders in implementing its strategy including by contributing ideas for continually improving the Services.

2.1.2 Health wishes to measure the extent to which such a relationship is achieved (such as continuous improvement benefits), rather than focussing solely on objective financial outcomes. There are Outcomes that will measure the Service Provider's demonstrated improvement in the value of the Services and the strategic relationship with Health and its key stakeholders. Further details are set out in Part 2 of this RFT.

2.1.3 This RFT represents a significant opportunity for the successful Tenderer, if any, to contribute to national, state and territory health initiatives and decision-making.

### **3 Scope of the requirement**

#### **3.1 Overview**

3.1.1 Through this RFT, Health is seeking to engage a single Service Provider to provide:

- (a) the Register and Register ICT Services for all in-scope national cancer screening programs;
- (b) the Operator Services for the National Bowel Cancer Screening Program;
- (c) at the discretion of each State and Territory government, the Operator Services for the National Cervical Screening Program; and
- (d) capability and capacity to support other national population-based cancer screening initiatives as required from time to time.

3.1.2 Health intends that a new outcomes-focussed contractual arrangement with a single successful Tenderer, if any, will commence on execution of the Services Agreement (anticipated to be around February 2016). The Services Agreement provides for an initial Term of four (4) years, with options for Health to extend the initial Term by a further period or periods of up to six (6) years (providing a possible total Term of up to 10 (ten) years).

3.1.3 The scope of this RFT provides an opportunity to deliver Outcomes initially for:

- (a) the National Bowel Cancer Screening Program (NBCSP) (including completing the phased introduction of a biennial bowel cancer screening interval); and



- (b) the National Cervical Screening Program (**NCSP**) (including the implementation of the Cervical Screening Renewal Program);

with the potential for expansion for future population based cancer screening programs as considered from time to time by Health.

- 3.1.4 The scope of this RFT involves seeking Tenders for the provision of all goods and services that are necessary for the successful Tenderer, if any, to meet the Outcomes in relation to the Services as set out in Part 2, Schedule 2 and its Attachments of this RFT.
- 3.1.5 Health wishes to emphasise that the successful Tenderer, if any, will be responsible for providing all things necessary, and must do all things necessary to deliver the Services to meet the Outcomes. In preparing this RFT, Health has gone to some effort to ensure that the description of the Services includes all of the required goods and services while not prescribing how the Services are to be provided or all of their characteristics. Health expects the relationship with the Service Provider not to require ongoing clarification about the scope of the Services through the Term of the Services Agreement.

## 3.2 Services

- 3.2.1 The Outcomes must be met in relation to the provision of the Services.
- 3.2.2 Health will require the successful Tenderer, if any, to meet the Outcomes in relation to all of the Services provided to users which includes Health employees (and Other Service Providers contracted to deliver services supporting the national cancer screening programs), employees of State and Territory governments, members of the medical and primary health care sector such as pathologists, general practitioners, medical experts, medical specialists, hospital staff and Australian citizens (**End Users**).
- 3.2.3 Tenderers are also referred to the mechanisms in the Services Agreement which may require the successful Tenderer, if any, to provide the Services to other Agencies, including through 'piggy-backing' arrangements and/or increasing the scope of End Users, and/or flexibility associated with 'machinery of government' changes.
- 3.2.4 Further elements in relation to all Services, including any Key Requirements, are set out in Part 2, Schedule 2 of this RFT.

## 3.3 Management and Governance

- 3.3.1 The successful Tenderer, if any, will also be required to meet the Outcomes in relation to the management of Services described in Part 2, Schedule 3 of this RFT and as described under the Services Agreement.
- 3.3.2 Health has two key objectives for the management and governance:
  - (a) to achieve seamless 'end to end' delivery and management of all Services with minimal interruptions so that End Users have an effective set of services; and

- (b) to establish and maintain a strategic relationship with the successful Tenderer, if any, that is based on proactive involvement and engagement for the purpose of achieving the Outcomes.

3.3.3 The successful Tenderer, if any, will be responsible for effectively identifying and addressing or escalating, where possible, any performance by Health, Health stakeholders or Other Service Providers which might inhibit the successful Tenderer from meeting the Outcomes. The Services Agreement provides that Health is required to actively assist the successful Tenderer in this process (including, where relevant, by assisting in the use of available contractual remedies against Other Service Providers if appropriate).

#### **3.4 Disengagement Services**

3.4.1 The successful Tenderer, if any, will also be required to meet the Outcomes in relation to the provision of Disengagement Services during the Disengagement Period, as described in Part 2, Schedule 7 of this RFT. During the Disengagement Period, the Outcomes must still be met in relation to all Services, in addition to the Disengagement Services.

3.4.2 Further elements in relation to the Disengagement Services, including any Key Requirements, are set out in Part 2, Schedule 7 of this RFT.

## **4 Background and Business Context**

### **4.1 Information about Health**

4.1.1 Health is geographically centred in the Australian Capital Territory (ACT) with some regional presence.

4.1.2 Health has a diverse set of responsibilities, but throughout there is a common purpose, which is reflected in Health's Vision statement "Better health and wellbeing for all Australians". Further information is available on Health's website at <http://www.health.gov.au>.

### **4.2 Population Based Screening Framework**

4.2.1 In 2008, the Screening Subcommittee of the Australian Population Health Development Principal Committee (APHDPC), of the Australian Health Ministers' Advisory Council (AHMAC) developed an Australian Population Based Screening Framework as described in Part 2, Schedule 1 of this RFT.

4.2.2 The purpose of the Australian Population Based Screening Framework is to inform decision makers on the key issues to be considered when assessing potential screening programs in Australia. The Framework has been divided into two (2) parts:

- (a) The criteria which should be used to assess whether screening should be offered or a screening program introduced for diseases or conditions; and
- (b) The key principles for the implementation and management of screening programs.

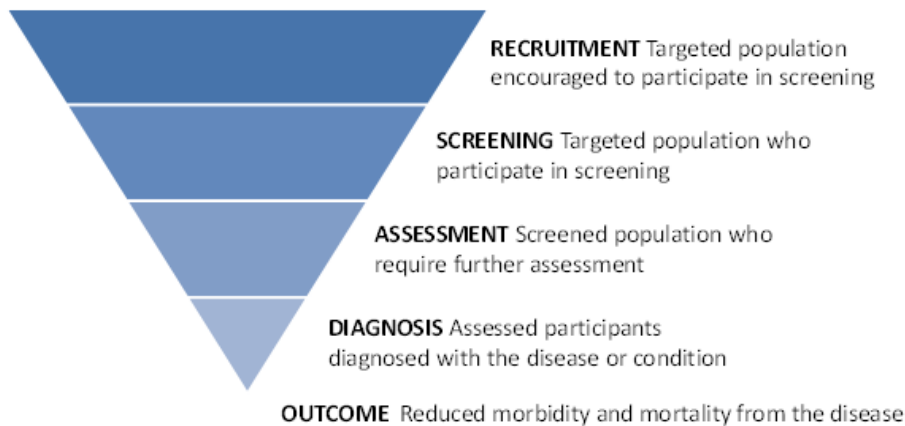
#### **4.2.3 Screening**

- (a) The World Health Organisation (**WHO**) defines screening as the presumptive identification of unrecognised disease or defects by means of tests, examinations or other procedures that can be applied rapidly. Screening is intended for all people, in an identified target population, who do not have symptoms of the disease or condition being screened for. The process can identify:
  - (i) a pre-disease abnormality;
  - (ii) early disease; or
  - (iii) disease risk markers.
- (b) The aim of screening for a disease or a risk marker for a disease is to reduce the burden of the disease in the community including incidence of disease, morbidity from the disease or mortality. This is achieved by intervening to reduce individual risk of the disease or detecting the disease earlier on average than is usually the case in the absence of screening and thereby improving disease outcome.
- (c) Screening can reduce the risk of developing or dying from a disease, but it does not guarantee that disease will not occur, or if it occurs, that it can be cured. A 'positive' screening test identifies people who are at increased likelihood of having the condition and who require further investigation to determine whether or not they have the disease or condition.
- (d) As screening has benefits, costs, and harms, there is an ethical obligation to maximise benefits and minimise harm; and the overall benefits should outweigh any harms that result from screening. In addition, when community resources are used to fund screening there should be community consensus that the benefits of screening justify the expense of screening.
- (e) A population-based screening program is an organised integrated process where all activities along the screening pathway are planned, coordinated, monitored and evaluated through a quality improvement framework. All of these activities must be resourced adequately to ensure benefits are maximised.

#### 4.2.4 The Screening Pathway

- (a) The following diagram describes the Australian Population Based Screening Framework's Screening Pathway. Underlying the Pathway is the principle of quality assurance at each point. Further details on the Screening Pathways for the NBCSP and NCSR can be found in Part 2, Schedule 1 of this RFT.

# DEFINED TARGET POPULATION



**Figure 1: Population Based Screening Framework – Screening Pathway**

## **4.3 National Cervical Screening Program (NCSP)**

- 4.3.1 The National Cervical Screening Program is a joint program of the Australian and state and territory governments. Major policy decisions about the program are determined through AHMAC.
- 4.3.2 The Program aims to reduce morbidity and deaths from cervical cancer, in a cost-effective manner through an organised approach to cervical screening.
- 4.3.3 Since its inception in 1991, the current NCSP has halved the morbidity and mortality of cervical cancer and this success has been attributed to the implementation of an organised approach to screening underpinned by registers that facilitate participation and follow-up.

## **4.4 National Bowel Cancer Screening Program (NBCSP)**

- 4.4.1 Around 4,000 Australians die each year from bowel cancer. It is the second most common cause of cancer-related deaths in Australia.
- 4.4.2 The National Bowel Cancer Screening Program aims to reduce the morbidity and mortality from bowel cancer by actively recruiting and screening the target population for early detection or prevention of the disease.
- 4.4.3 Bowel cancer screening involves testing for bowel cancer in people who do not have any obvious symptoms of the disease. The aim is to find cancers early when they are easier to treat and cure. Screening can also find polyps, which may develop into cancer over time.

## **SECTION 2 - INFORMATION ABOUT THIS RFT**

### **5 Definitions and interpretation**

- 5.1.1 The definitions for capitalised terms used in this RFT, and the rules for interpretation of this RFT, are set out in the Glossary in Part 4 of this RFT.

### **6 Intended timeframe for the RFT Process**

- 6.1.1 The intended timetable for the RFT Process is as follows:

RFT Release Date:	10 August 2015
Industry Briefing:	17 August 2015
RFT Closing Time:	8 October 2015 (2:00pm EST)
Services Agreement Execution:	February/March 2016

- 6.1.2 However, any time or date set out in this RFT (other than the Closing Time, which may only be changed in accordance with section 14.1.6) is indicative only, and creates no obligation on Health in relation to these dates.
- 6.1.3 Health may change the intended timetable set out in this section (other than the Closing Time) in its sole and absolute discretion at any time, and without issuing any addenda or giving any other notice to Tenderers.

### **7 Enquiries about this RFT**

- 7.1.1 All initial enquiries in relation to this RFT, including registration for the Industry Briefing and submission of the completed Attachment B – Confidentiality Deed Poll, should be submitted to the Contact Officer set out on page 3 this RFT. No other person is authorised by Health to answer or respond to enquiries relating to this RFT as per clause 7.1.12. below.
- 7.1.2 Health may be using the Data Room as set out in section 9 for receiving all further enquiries about the RFT. Instructions for the use of the Data Room will be made available once Tenderers have submitted the completed Attachment B – Data Room Deed.
- 7.1.3 All enquiries following the initial enquiries identified in section 7.1.1, in relation to this RFT should be:
- (a) in the form of the RFT Question Form set out in Attachment A to Part 1 of this RFT;
  - (b) in Microsoft Word 2010 compatible format; and
  - (c) submitted no later than seven (7) Business Days before the RFT Closing Time.

- 7.1.4 Tenderers may submit any number of RFT Question Forms. A new RFT Question Form is to be used for each enquiry. Health will not respond to questions that are not submitted on an RFT Question Form.
- 7.1.5 Health encourages Tenderers to send enquiries as soon as they arise, rather than waiting to send all enquiries at one time. Health will endeavour to respond to questions as soon as reasonable, but will not respond to any questions that are received by the Contact Officer less than seven (7) Business Days before the RFT Closing Time.
- 7.1.6 Tenderers should complete each field of the "Required Question Submission Information" in the RFT Question Form.
- 7.1.7 All RFT Question Forms should have a file name in the following format:

[Tenderer Name][Tenderer Question Form Sequence Number].docx

where:

- (a) "[Tenderer Name]" is replaced with the Tenderer's name or an easily and consistently identified short name or acronym; and
- (b) "[Tenderer Question Form Sequence Number]" is replaced with the sequence number of the Tenderer's question form, expressed as a three digit number.

**Note to Tenderers:**

For example, the 3rd RFT Question Form submitted from Tenderer ABC should have the file name "ABC003.docx"

- 7.1.8 Health may refuse to respond to any enquiry not made in accordance with this section 7.
- 7.1.9 Health intends to provide all registered Tenderers with access to the questions and answers to enable so far as practicable all Tenderers to have the opportunity to access the same information relating to the RFT (unless identified as commercial in-confidence by a Tenderer).
- 7.1.10 Health may issue any addenda in accordance with section 9, setting out any enquiry in relation to this RFT and Health's response, on a non-attributable basis.
- 7.1.11 Tenderers should promptly make an enquiry to the Contact Officer about any actual or possible discrepancy, error, ambiguity, inconsistency, omission or potentially misleading statement (error) in this RFT or in any other information given or made available by Health. Health may then issue an addendum to correct or clarify the error in accordance with section 9.
- 7.1.12 All communications related to this RFT should be addressed to the Contact Officer (via the arrangements set out in this section 7) and not to other Commonwealth officers or other persons. A Tenderer who communicates with someone other than the Contact Officer in relation to this RFT Process or the Services generally may be excluded from participating further in the RFT Process.

## **8 Industry Briefing**

8.1.1 Details of the time and place of the Industry Briefing are:

Monday, 17 August 2015

11.30 am - Registration

11.45 am – Briefing commencement

1.30 pm – Briefing close

Location – Hellenic Club of Canberra

Aegean Room

1 Matilda St

Phillip ACT 2606

8.1.2 Health may change the date, location and/or time of the Industry Briefing by issuing an addenda in accordance with section 9.

8.1.3 Any Registered Tenderer may attend the Industry Briefing if they have provided the following information to the Contact Officer by email before 5.00 pm EST on Thursday, 13 August 2015.

- (a) the name of the Registered Tenderer;
- (b) the name of the Registered Tenderers company (if applicable);
- (c) a contact telephone number for the day of the Industry Briefing (preferably a mobile phone number); and
- (d) the person(s) who will be attending the Industry Briefing on behalf of the Registered Tenderer (to a maximum of 4 people).

8.1.4 The Industry Briefing will allow Registered Tenderers to clarify Health's objectives and priorities for this RFT and allow Health to respond to questions arising out of the RFT Process. If Health considers that it is necessary or desirable to distribute additional information relating to or concerning this RFT (including the Services) as a result of the Industry Briefing, then Health may distribute that information by issuing an addenda in accordance with section 9.

8.1.5 Tenderers should not rely on a statement made at the Industry Briefing as amending or adding to this RFT unless that amendment or addition is included in an addenda issued in accordance with section 9. Section 41.1.2 will apply to any information given by or on behalf of Health at the Industry Briefing.

8.1.6 Attendance at the Industry Briefing will be at the Registered Tenderer's own cost.

8.1.7 Attendance at the Industry Briefing is not compulsory.

## **9 Provision of further materials by Health through a Data Room**

- 9.1.1 Health may provide Registered Tenderers with access to a virtual Data Room containing further information and material in electronic form which may be relevant to this RFT, on condition that before being given access to the Data Room, the Registered Tenderer and each individual personnel of the Tenderer who is to be given access to the Data Room (up to a maximum of four (4) individuals), executes and provides to Health a copy of the Data Room Deed in the form of Attachment B to Part 1 of this RFT.
- 9.1.2 In accordance with section 7.1.1, completed Data Room Deed's are to be returned to the Contact Officer.
- 9.1.3 Individual personnel of the Tenderer who have provided Health with a properly executed Data Room Deed will (unless Health considers that that individual should not be given access to the Data Room for security reasons) receive details of their own unique, non-transferable, login and instructions for access to the virtual Data Room. Health may also issue those individuals with conditions or protocols for accessing and using the virtual Data Room.
- 9.1.4 Health will endeavour to make the virtual Data Room accessible 24/7 during the period from the release of this RFT until the Closing Time, however Health does not warrant or guarantee that all individuals will be able to access the virtual Data Room at all times during this period. Any Tenderer experiencing any difficulties in accessing the virtual Data Room should notify the Contact Officer as soon as possible.
- 9.1.5 If Health becomes aware of any breach of a Data Room Deed, or of any conditions or protocols issued by Health for accessing or using the Data Room Deed, or any security issue affecting or relating to access or use of the Data Room, Health may cancel the access to the virtual Data Room for that Tenderer, or any or all of its individual personnel.
- 9.1.6 If Health decides to establish a physical Data Room containing hard copies of further information and material, it will issue an addenda in relation to this in accordance with section 10.

## **10 Issue by Health of addenda and notices**

- 10.1.1 Health may vary, supplement or clarify this RFT at any time, by issuing notices and other information as addenda. An addenda may also permit actions that Health considers necessary or desirable to ensure Tenderers are treated fairly and equitably, such as allowing revision and resubmission of Tenders.
- 10.1.2 For addenda issued before the Closing Time:
- (a) Health may issue the addendum by posting it on the page for this RFT on AusTender;
  - (b) AusTender will notify Registered Tenderers via email of the issue of an addendum.  
Tenderers should:



- (i) ensure they have correctly recorded their contact details before downloading RFT documentation;
  - (ii) if they have not recorded their details correctly, amend their details and download this RFT again; and
  - (iii) if they have obtained RFT documentation in a manner other than from AusTender, visit AusTender, register as a user and download this RFT; and
- (c) Tenderers should log in to AusTender and collect addenda. Neither the Commonwealth or Health will have any responsibility if a Tenderer fails to become aware of any addendum that would have been apparent from a visit to the AusTender page for this RFT.

10.1.3 For any addenda issued after the Closing Time:

- (a) Health may issue the addendum by:
- (i) sending a copy of the addendum to the email address provided by AusTender to Health for each Registered Tenderer; or
  - (ii) if Health considers that it is fair and equitable to do so, by sending a copy of the addendum only to the email address of Tenderers as set out in their Tender;
- (b) Health will not have any responsibility if a Registered Tenderer or Tenderer fails to become aware of any addendum because the email address they provided is incorrect or unmonitored, or because the email sent by Health is not delivered because of issues or problems with the infrastructure or internet connectivity of the Registered Tenderer or its information and communications technology systems;
- (c) Health does not warrant that unauthorised access to information and data transmitted via the internet will not occur; and
- (d) Health is not required to issue any addenda to Registered Tenderers that have been notified that they have been excluded from further consideration before the applicable addendum is issued.

10.1.4 Each addendum forms part of this RFT upon issue.

## **11 Participation of other Agencies in this RFT Process**

11.1.1 A successful Tenderer, if any, will be required to offer to provide the Services to other Agencies on substantially the same terms and conditions as it provides them to Health (including price). The Services Agreement sets out the mechanisms which can be used to create a separate agreement between the successful Tenderer and another Agency.

11.1.2 Health makes no warranty, representation or assurance that any or any number of Agencies, or any particular Agency, will accept the offer of a successful Tenderer, if any, to provide the Services to other Agencies.

11.1.3 Health will not undertake any evaluation on behalf of any other Agency for the purposes of this section during its evaluation of this RFT. Other Agencies will undertake their own evaluation if and when they wish to consider a Service Provider's, if any, offer to provide the Services to it.

## **12 Commonwealth coordinated procurement**

12.1.1 Without limiting section 42, Tenderers should note that it is Commonwealth policy to develop and/or maintain a coordinated procurement system for the delivery of certain goods and services to Commonwealth Agencies (**WoG Arrangements**), for example, where it can be established that the coordinated procurement of those goods and services could deliver savings or value for money to the Commonwealth.

12.1.2 The Services Agreement contains provisions explaining Health's options if part or all of the Services fall within the scope of any existing or future WoG Arrangement.

12.1.3 The process of identifying such goods and services is on-going. If the Commonwealth requires some or all of the same goods or services as the Services to be provided under a WoG Arrangement:

- (a) before the Closing Time, then Health reserves the right to discontinue this RFT Process;
- (b) after the Closing Time but before a contractual arrangement is entered into with the successful Tenderer, if any, Health reserves the right to discontinue this RFT Process and not to proceed to enter into any contractual arrangement as a result of this RFT, or to continue with the RFT Process and, if a contract is entered into with the successful Tenderer, if any, apply the terms of the Services Agreement dealing with WoG Arrangements; or
- (c) during the period of any Services Agreement entered into as a result of this RFT in which case Health may exercise its rights under the relevant contractual arrangement, without compensation for loss of potential profits.

## SECTION 3 - INFORMATION ABOUT LODGING A TENDER IN RESPONSE TO THIS RFT

### 13 Tenderer to use AusTender

- 13.1.1 Tenders in response to this RFT **must** be lodged electronically using the AusTender website, in accordance with the Tender lodgement procedures set out in this RFT and on AusTender. Tenders lodged by any other means, including by hand, facsimile or email, will not be considered.
- 13.1.2 Access to and use of AusTender is subject to the AusTender Terms of Use which provide that users agree to be bound by the AusTender Terms of Use. Tenderers should therefore ensure that they carefully read the AusTender Terms of Use and comply with them and any applicable instructions, processes, procedures and recommendations as advised on AusTender at: <https://www.tenders.gov.au/?event=public.termsOfUse>.
- 13.1.3 Where there is any inconsistency between the AusTender Terms of Use and a provision in this RFT, this RFT will prevail to the extent of the inconsistency.
- 13.1.4 All queries and requests for technical or operational support in respect of AusTender should be directed to:

AusTender Help Desk

Telephone: 1300 651 698

Telephone (for Tenderers outside of Australia): +61 2 6215 1558

Email: [tenders@finance.gov.au](mailto:tenders@finance.gov.au)

The AusTender Help Desk is available between 9am and 5pm Monday to Friday (local time in Canberra, ACT), excluding ACT and Australian national public holidays.

- 13.1.5 Tenders lodged through AusTender will be deemed to have been authorised by the Tenderer.

### 14 Tender Closing Time

#### 14.1 Tenders to be lodged before the Closing Time

- 14.1.1 Tenders must be lodged before the Closing Time set out in section 6.1.1.
- 14.1.2 AusTender will not permit any attempt to commence lodging a Tender, or any discrete file or other component of a Tender, on or after the Closing Time. This applies even if the "Lodge a Response" page on AusTender for this RFT is held open in a Tenderer's web browser.
- 14.1.3 AusTender will permit a Tender file that has commenced uploading to AusTender before the Closing Time to continue uploading after the Closing Time. If that file uploads successfully (that is, an official receipt is issued by AusTender), it will be deemed to have been lodged before the Closing Time.
- 14.1.4 Tenderers should note that where a Tender consists of multiple files (for example, because of the number or required size of the files):

- (a) Tenderers should allow sufficient time to ensure that all files are successfully lodged before the Closing Time;
- (b) section 14.1.3 will only apply to file(s) that commenced uploading before the Closing Time; and
- (c) Health may only consider those file(s) which are lodged, or deemed to be lodged due to section 14.1.3, before the Closing Time.

14.1.5 AusTender will display a 'countdown clock' in relation to this RFT, displaying the amount of time left until the Closing Time. This time will be deemed to be correct and will be the means by which Health will determine whether Tenders have been lodged before the Closing Time. The judgement of Health as to the time a Tender has been lodged will be final.

14.1.6 Health may extend the Closing Time for all Tenderers, at its sole and absolute discretion. If it does so, Health will issue an addendum notifying Registered Tenderers of the extension in accordance with section 9.

## **14.2 Late Tenders**

14.2.1 Tenders which are not properly lodged (or not deemed to be lodged in accordance with section 14.1.3) before the Closing Time will not be accepted, unless the Tender is late as a consequence of mishandling by Health.

14.2.2 Lodgement of Tenders before the Closing Time is entirely the Tenderer's responsibility. Tenderers should allow sufficient time for Tender lodgement, including time that may be required for any problem analysis and resolution before the Closing Time.

14.2.3 Tenderers should retain the official receipt provided by AusTender confirming successful lodgement of their Tender and recording the date and time of receipt of the Tender file(s) by AusTender. Failure to receive a receipt means that the Tender lodgement has not been completed successfully before the Closing Time.

## **15 Tender file formats, naming conventions and sizes**

15.1.1 Tenderers should lodge their Tender in accordance with the requirements set out in this section 15 for file format(s), naming conventions and file sizes. Failure to comply with any or all of these requirements may result in:

- (a) the Tender not uploading properly before the Closing Time;
- (b) the Tender not being successfully lodged before the Closing Time; or
- (c) Health being unable to open, read or decrypt the Tender or part of the Tender, in which case Health may exclude the Tender or part of the Tender from further consideration or evaluation.

15.1.2 Tenders should be lodged in Microsoft Word (2010 compatible), Microsoft Excel (2010 compatible), Portable Document Format or another format which has been agreed in writing by the Contact Officer.

15.1.3 The Tender file name(s) should:

- (a) incorporate the Tenderer's name;
- (b) reflect the various parts of the Tender they represent, where the Tender comprises multiple files;
- (c) not contain any special characters, including the following characters: \ / : \* ? " < > | (Tenderers should note that AusTender will not allow files containing these characters to be uploaded); and
- (d) not exceed 100 characters including the file extension (Tenderers should note that AusTender will not allow files with names exceeding this requirement to be uploaded).

15.1.4 The Tender file(s) should:

- (a) not exceed a combined file size of 5 megabytes per upload;
- (b) be uploaded from a high level directory on the Tenderer's desktop, so as not to impede the upload process;
- (c) not be selected from a secure or password protected location, or from portable media such as a CD, DVD or USB;
- (d) be zipped (compressed) for transmission to AusTender;
- (e) not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by the Contact Officer;
- (f) not be encrypted in any way, unless otherwise required by this RFT or approved by the Contact Officer in writing; and
- (g) not contain anything that might reasonably affect usability or the security or operations of AusTender or Health's computing environment.

15.1.5 AusTender will accept up to a maximum of five (5) files in any one (1) upload of a Tender. Each upload should not exceed the combined file size specified in section 15.1.4(a). If an upload would otherwise exceed this limit, the Tenderer should either:

- (a) without limiting section 15.1.4(d), transmit the Tender file(s) as a compressed (zip) file not exceeding the size limit; or
- (b) lodge the Tender in multiple uploads ensuring that each upload does not exceed the size limit and clearly identify each upload as part of the Tender.

15.1.6 Where Tenderers uploaded a duplicate Tender response, the most recent lodged tender will be considered for evaluation (subject to section 14).

## **16 Signed or initialled material, including statutory declarations**

16.1.1 If this RFT requires a Tender to include a document that is to be signed or initialled by or on behalf of the Tenderer, including statutory declarations and deeds of confidentiality:

- (a) that document is to be physically signed (a typed or electronic signature is not permitted);
- (b) the signed document should be scanned using Portable Document Format or other format specified in the Response Form(s) in Part 3 of this RFT (or approved by the Contact Officer in writing); and
- (c) the scanned document is to be included in the Tender.

**Note to Tenderers:**

Scanned images may increase the file size of a Tender or component of a Tender. Tenderers should ensure that the total file size is still within the limit specified in section 15.1.4(a).

16.1.2 Health may require a Tenderer to send the originally signed document (or the signature and initialled pages of that document) by courier or security post to Health at any time after the Closing Time at the Tenderer's cost.

16.1.3 Where a discrepancy is identified between the electronically lodged document and the hard copy, the electronic document lodged prior to the Closing Time will take precedence.

## **17 AusTender security**

17.1.1 The Tenderer acknowledges that although the Commonwealth has implemented the security measures described on AusTender, the Commonwealth does not warrant that unauthorised access to information and data transmitted via the internet will not occur.

17.1.2 Tenderers agree that:

- (a) Tenderers are responsible for informing themselves about all security measures and other aspects of the AusTender information and communications technology environment and making their own assessment of the AusTender system before using it for any matter concerning this RFT;
- (b) Tenderers are responsible for ensuring that their infrastructure (including operating system and browser revision levels) meet the minimum standards as defined on AusTender;
- (c) neither Health nor the Commonwealth take any responsibility for any problems arising from Tenderers' infrastructure or internet connectivity; and

- (d) Health and the Commonwealth will not be liable for any loss, damage, costs or expenses incurred by Tenderers or any other person arising in respect of any use or attempted use of AusTender, including if, for any reason, a Tender or any other material or communication relevant to this RFT, is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

17.1.3 Each Tenderer warrants that, when it lodges its Tender electronically, it has taken reasonable steps to ensure that all Tender files are free of viruses, malicious code, worms, other disabling features or anything else that might compromise the integrity or security of AusTender or Health's computing environment. Health may exclude from evaluation any Tender file which it reasonably considers contains a virus, malicious code, worm or other disabling feature.

## SECTION 4 - INFORMATION ABOUT THE CONTENT OF TENDERS

### 18 Format for Tenders

18.1.1 A Tender **must** comply with the following Minimum Content and Format Requirements:

- (a) as the Building Code 2013 applies to this RFT Process and any resulting contractual arrangement because the required Services may include 'communication systems' (see sections 37.16.1 to 37.16.5 below), Tenderers **must** include in their Tender a completed and signed copy of a "Declaration of Compliance" substantially in the form set out in the Response Form in Part 3 of this RFT;
- (b) all language, including in all attachments and supporting technical data, **must** be written in English;
- (c) unless otherwise expressly specified in this RFT, all measurements **must** be expressed in Australian legal units of measurement;
- (d) submission **must** be in accordance with the lodgement procedures set out in clause 13.

18.1.2 Health may exclude a Tender from further consideration if it does not comply with a Minimum Content and Format Requirement, unless Health considers the failure is due to an Unintentional Error of Form under section 20.

18.1.3 Tenders should be completely self-contained, with no hyperlinked or other material incorporated by reference.

18.1.4 All prices should be stated in Australian dollars and identified in both GST inclusive and GST exclusive terms, with the GST component separately identified.

### 19 Conditions for Participation

19.1.1 A Tender **must** demonstrate compliance with the following Conditions for Participation:

- (a) Tenderers **must** meet the provisions set out in clauses 21 and 22;

19.1.2 Health may exclude a Tender from evaluation if it does not demonstrate compliance with the Condition for Participation.

### 20 Unintentional Errors of Form

20.1.1 If Health considers that there are Unintentional Errors of Form in a Tender, Health may request the Tenderer to correct or clarify the error in accordance with section 26. If Health considers that the correction or clarification would introduce unfairness into the evaluation process, the correction or clarification will not be admitted for evaluation.



## **21 No Part Tenders**

- 21.1.1 Except as part of an alternative approach submitted in accordance with section 23 of Part 1, Tenderers are to offer to provide the entire Services. Health may exclude from further consideration any Tender which offers only part of the Services.
- 21.1.2 The Tenderer may propose Subcontractors to provide various aspects of the Services. Details of proposed Subcontractors should be provided by the Tenderer in accordance with the requirements set out in Part 3 - Response Form.

## **22 No Consortia or Joint Tenders**

- 22.1.1 A Tender is required to be lodged by a single legal entity that exists at the Closing Time and who proposes to contract with Health for provision of the Services.

## **23 Alternative Approaches**

- 23.1.1 Health encourages Tenderers to submit innovative solutions for meeting the Outcomes described in this RFT.
- 23.1.2 Tenderers may in their Tender propose alternative approaches or solutions so long as any alternative approach meets the Minimum Content and Format Requirements set out at clause 18.1.1, and the Conditions for Participation set out at section 19 of this RFT, and the alternative approach or solution provides for all of the Services as set out in Part 2 of this RFT, and which will still allow the Tenderer to meet all of the Outcomes described in this RFT.
- 23.1.3 Any Tender containing an alternative approach or solution should:
- (a) clearly identify that it is proposing an alternative approach or solution;
  - (b) propose an approach or solution that still provides for all of the Services and that satisfies the Outcomes, functionality and performance requirements of the Services;
  - (c) clearly identify, in detail, the proposed alternative approach or solution, showing each instance of change from the Services;
  - (d) demonstrate how the proposed alternative approach or solution is more beneficial to Health;
  - (e) show how the alternative approach or solution satisfies each Evaluation Criteria; and
  - (f) include any other information required by Response Form in Part 3 of this RFT for alternative Tenders.
- 23.1.4 Health, at its sole and absolute discretion, will consider alternative approaches proposed by Tenderers. Any alternative approach or solution will be evaluated against the same Evaluation Criteria.

## **24 Tender Validity Period**

- 24.1.1 Tenderers agree that their Tender remains valid for consideration and acceptance by Health for a Tender Validity Period of 12 months after the Closing Time, unless the Tenderer specifies a longer validity period in its Tender.
- 24.1.2 Health may in its sole and absolute discretion, at any stage in the RFT Process, request an extension of the Tender Validity Period.

## **SECTION 5 - INFORMATION ABOUT PROCESSES AFTER LODGEMENT OF TENDERS**

### **25 Corrections by a Tenderer after lodgement**

- 25.1.1 If, after lodgement of a Tender but before the Closing Time, a Tenderer becomes aware of any discrepancy, error or omission in its Tender and wishes to lodge a correction or additional information, it should relodge its whole Tender in accordance with this RFT, clearly indicating on all documents that it relodges that the Tender is a replacement Tender. If more than one Tender has been lodged, Health will evaluate the last submitted Tender.
- 25.1.2 If a Tenderer becomes aware of any discrepancy, error or omission in its Tender after the Closing Time, it may notify the Contact Officer in writing of the correction(s) or additional information. As per section 20 above, Health is not obliged to consider any corrections or additional information provided after the Closing Time, but may do so where it considers it appropriate in the circumstances.

### **26 Requests by Health for clarification, correction or further information**

- 26.1.1 If Health, at any time during the RFT Process:
- (a) requires clarification of any information contained in a Tender;
  - (b) requires further information from one or more Tenderers (including information in respect of any proposed Subcontractors); or
  - (c) wishes to allow a Tenderer to correct an Unintentional Error of Form,
- Health may request the Tenderer to provide an additional response in writing with any clarification, further information and/or correction.
- 26.1.2 If Health provides a Tenderer with the opportunity to correct an Unintentional Error of Form under this section 26 and section 20, it will provide that opportunity equitably to all Tenderers that remain in the RFT Process. However, Health may request a Tenderer to provide a clarification or additional information, whether or not the same or similar clarification or additional information has been sought from other Tenderers.
- 26.1.3 Health will issue any request under this section 26 to the contact details for the Tenderer contained in its Tender. The Tenderer should ensure that those contact details are correct, monitored at all times during the RFT Process, and remain valid during the Tender process (unavoidable changes should be immediately notified to the Contact Officer).
- 26.1.4 Tenderers should:
- (a) respond to any request under this section within the time period and in the format and manner specified by Health;

- (b) ensure that the information it provides answers or addresses the issue(s) raised by Health; and
- (c) ensure any clarifying or additional information is not inconsistent with the Tender lodged by the Tenderer in any material respect.

26.1.5 The Tenderer should not interpret a request under this section 26 as being an indication that it will or will not be a successful Tenderer. The Tenderer should treat all requests under this section 26 as Confidential Information.

## **27 Presentations, interviews and site visits**

27.1.1 Health may request one or more Tenderers to give a presentation regarding its Tender, attend an interview(s) and/or host a site visit to any of the Tenderer's premises (or other premises where the Services will be provided). Health may give Tenderers details of any requirements for presentations, interviews and/or site visits and Tenderers should comply with those requirements.

27.1.2 Any costs incurred by the Tenderer in relation to any presentations, interviews or site visits will be borne by the Tenderer.

## **28 The Evaluation Criteria and Evaluation Process**

28.1.1 Health will conduct the evaluation of Tenders in accordance with the Evaluation Process set out in Attachment B to Part 1 of this RFT.

28.1.2 Tenders will be evaluated to determine which Tenderer(s) represents the overall best value for money using the Evaluation Criteria specified in Attachment B to Part 1 of this RFT. Without limiting the requirements of this RFT, Health will conduct the evaluation of Tenders with an Outcomes focus in accordance with the Evaluation Criteria.

28.1.3 For the purpose of evaluating Tenders, Health may:

- (a) use any material included in a Tender in the evaluation of any Evaluation Criteria, including using material provided in response to one Evaluation Criterion in the evaluation of other Evaluation Criteria;
- (b) seek clarification, correction or further information from any Tenderer in accordance with section 26 and 20 and use the response in its evaluation;
- (c) make independent enquiries about any matters that Health, in its sole and absolute discretion, may determine are relevant to the evaluation including security, financial and probity checks in relation to the Tenderer, its officers, employees, partners, associates, Subcontractors or consortium members and their respective officers, employees and Subcontractors, and use the information obtained from those inquiries in its evaluation (and Health may decide to exclude a Tender from further consideration if the Tenderer does not provide, at its cost, all reasonable assistance to Health in relation to such inquiries if requested by Health);

- (d) obtain, and use in its evaluation, information about the Tenderer from referees nominated by the Tenderer or from any other person contacted by Health;
- (e) normalise and adjust Tender pricing in order to establish a common base for comparative assessment of Tenders, including in relation to:
  - (i) consideration of nominal and discounted cash flow;
  - (ii) costs associated with Health administering the contractual arrangement;
  - (iii) cost associated with transitioning;
  - (iv) any assumptions, qualifications or caveats attached to the Tender prices;
  - (v) an analysis of risks related to the Tender;
  - (vi) an analysis of the impact of potential material changes to Health portfolio's consumption of the Services or business profile; and
  - (vii) any other costs or impacts on Health that may arise from selecting the Tender; and
- (f) undertake any form of sensitivity analysis in evaluating Tender prices.

28.1.4 Subject to this RFT, Health will consider the entirety of each Tender.

## **29 Acceptance of Tenderer's offer**

- 29.1.1 Lodging a Tender will constitute an offer in accordance with this RFT by the Tenderer.
- 29.1.2 Health is not bound to accept any Tender. Health may accept the whole or any part of the Tenderer's offer. Neither the lowest priced Tender, nor any Tender, will necessarily be accepted by Health.
- 29.1.3 Despite the evaluation of Tenders resulting in the selection of a Tenderer, the acceptance or purported acceptance of any Tender by Health is subject to the execution of a contractual document, in a form acceptable to Health, between the Tenderer and Health.
- 29.1.4 Without limiting the legal effect of the Confidentiality Deed Poll in Attachment B of this Part 1 and the Tenderer Declaration at Part 3 of this RFT lodged by the Tenderer and subject to clause 29.1.6, nothing in this RFT will be constructed to create any binding contract (express or implied) between Health and the Tenderer unless and until a Services Agreement is entered into with the successful Tenderer, if any. The Tenderer is however required to comply with the obligations expressed to apply to them in this RFT. The issue of this RFT (and the lodgement of any Tender) does not create any legal relationship or obligation (or quasi-legal relationship or obligation) in respect of:
  - (a) the process to be followed (including in relation to evaluation and assessment of any Tender);
  - or

(b) entering into a contractual arrangement with the Tenderer.

29.1.5 Any conduct or statement whether prior to or subsequent to the issue of this RFT is not, and must not be deemed to be:

(a) an offer to contract by Health; or

(b) a binding undertaking of any kind by Health on the basis of any promissory estoppel, quantum meruit, quantum valebat, or any other contractual, quasi-contractual or restitutionary grounds or in negligence.

29.1.6 If a court finds that, despite section 29.1.4 and 29.1.5, there is a contract between Health and a Tenderer regarding the conduct of this RFT Process, the Tenderer agrees that Health's liability for any breach of the terms of that contract, or for any action in negligence or breach of statute, is limited (to the maximum extent permitted by Law) to the Tenderer's direct and substantiated costs of participating in this RFT Process, not exceeding \$10,000. For the avoidance of doubt, Health will not be liable for any lost profit, lost opportunity or other indirect or consequential losses of the Tenderer.

## **30 Outcome of the RFT Process**

30.1.1 Health proposes to enter into a contractual arrangement with the successful Tenderer, if any, substantively in the form of the Services Agreement in Part 2, Schedule 8 of this RFT for the provision of the Services.

30.1.2 Health does not intend to enter into negotiations with a preferred Tenderer on any matter which is not included in a Tenderer's 'Table of Compliance' (see the Response Form in Part 3 of this RFT).

## **31 Debriefing**

31.1.1 Health will notify all unsuccessful Tenderers in writing and offer an opportunity for a debriefing about their Tender after a contractual arrangement has been entered into with the successful Tenderer, if any. Unsuccessful Tenderers should contact the Contact Officer to arrange a suitable time for their debrief. Debriefs may be undertaken in person or via teleconference.

31.1.2 In accordance with Commonwealth policy, Health will not provide a Tenderer with information about other Tenders or Tenderers, except for publicly available information or where comparative statements can be made without breaching confidentiality.

## **32 Change in Tenderer**

32.1.1 The Tenderer agrees to notify Health promptly in writing of any change, after lodgement of its Tender, that will have an adverse impact on its access to the necessary skills, resources or corporate or financial backing to perform the Services Agreement.

32.1.2 Where such change would alter any of the information or assurances including, without limitation, in relation to its ability to achieve the Outcomes that the Tenderer has given in its Tender, the Tenderer agrees to promptly in writing:

- (a) notify the Contact Officer;
- (b) identify with specificity (including all relevant page, section, clause, paragraph, schedule, exhibit and other like references to its Tender, and any other Material and information provided to Health) all such information and assurances; and
- (c) state in detail the alterations to such information and assurances required by such change.

## SECTION 6 - OTHER PROVISIONS APPLYING TO THIS RFT PROCESS

### 33 Intellectual Property Rights in Tender documents

33.1.1 All Intellectual Property Rights in this RFT vest in the Commonwealth. Tenderers may use the material in this RFT for the purposes of considering whether to lodge a Tender, and preparing any Tender.

33.1.2 The Tenderer agrees that all Tenders (and any subsequent material provided to Health by the Tenderer in connection with the Tender) become the property of Health on lodgement of the Tender.

33.1.3 Ownership of Intellectual Property Rights in material comprising the Tender (and any subsequent material provided to Health by the Tenderer in connection with the Tender) is not transferred to the Commonwealth on lodgement of the Tender. However, in submitting a Tender, the Tenderer grants Health, its officers, employees, agents, advisers, Ministers and their advisers and other Agency representatives a licence to retain, use, copy, adapt, modify, disclose, communicate or do anything else to any material provided to it by the Tenderer that Health, in its sole and absolute discretion, considers necessary for the purpose of:

- (a) considering and evaluating the Tender or any subsequent offer, including;
  - (i) requesting and considering any clarification, correction or further information from the Tenderer; or
  - (ii) requesting and considering any information from another entity in relation to the Tender;
- (b) negotiating any resultant contractual arrangement with the Tenderer;
- (c) managing any resultant contractual arrangement with the Tenderer;
- (d) complying with any Law;
- (e) referring any material suggesting collusion by Tenderers to the Australian Competition and Consumer Commission (**ACCC**) or other appropriate body and the use by the ACCC or other body of that material to conduct any review it deems necessary;
- (f) responding to any challenge in the RFT Process;
- (g) providing information to another person in the situations specified in section 34.4.1 or 34.4.3; and
- (h) anything else related to the above purposes or otherwise to the RFT Process, including audit and complying with governmental and parliamentary reporting requests and requirements,

and allow anyone assisting Health, or any other Agency considering whether to take advantage of the Tenderer's offer to provide the Services to that Agency, to do any of these things.



33.1.4 Health may make such copies of each Tender as it requires for the purposes listed in 33.1.3.

33.1.5 Each Tenderer represents and warrants that they are able to give the Intellectual Property Rights in section 33.1.3.

## **34 Confidentiality**

### **34.1 General**

34.1.1 Each Tenderer acknowledges that Health is subject to a number of specific requirements, which support internal and external scrutiny of its tendering and contracting processes. These include:

- (a) the requirement to publish details of its contracts with an estimated value of \$10,000 (inclusive of GST) or more and all standing offers on AusTender (this includes details to whom the contract, agreement or standing offer was awarded and the contract price. The Department of Finance's guidance, "*Contracts and Entity Agreements*" is available at: <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/reporting-requirements/contracts-agency/principles.html>. The Commonwealth Procurement Rules are available at: <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/commonwealth-procurement-rules/index.html>);
- (b) the requirement to publish a report listing all agreements, standing offers and contracts providing for consideration to the value of \$100,000 (inclusive of GST) or more, which have not been fully performed or which have been entered into during the previous 12 months, on the internet with access through Health's home page, and identify confidentiality requirements in accordance with the Senate Order on Departmental and Agency Contracts;
- (c) disclosure requirements under the *Freedom of Information Act 1982* (Cth) or the *Auditor-General Act 1997* (Cth);
- (d) compliance with Health's record keeping policies, standards and guidelines; and
- (e) compliance with record keeping obligations under the *Archives Act 1983* (Cth).

### **34.2 Disclosure to Parliament and its Committees**

34.2.1 Each Tenderer acknowledges that the Australian Parliament and its Committees have the power to require the disclosure of Commonwealth agreements and contract information to enable them to carry out their functions.

### **34.3 Health's confidentiality obligations**

34.3.1 Subject to sections 34.2.1, 34.4.1 and 34.4.3, Health undertakes to keep confidential any Confidential Information provided to Health by Tenderers before entering into any contractual arrangements and, in respect of unsuccessful Tenderers, after the execution of such arrangements.

### **34.4 Limitation of obligation of confidentiality**

- 34.4.1 The obligation of confidentiality in section 34.3.1 does not apply if the Confidential Information:
- (a) is disclosed by Health to Health Personnel solely in order to evaluate the Tender and during contract negotiations;
  - (b) is disclosed by Health to Health Personnel to enable effective management or auditing of tender and contract related activities;
  - (c) is disclosed by Health to the responsible Minister(s);
  - (d) is disclosed by Health in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - (e) is shared by Health within the Commonwealth, or with another government Agency, where this serves the Commonwealth's or State's interests;
  - (f) is authorised or required by Law to be disclosed;
  - (g) is in the public domain otherwise than due to a breach of section 34.3.1; or
  - (h) is disclosed with the consent of the Tenderer.

34.4.2 If Confidential Information of a Tenderer is to be disclosed under section 34.4.1(d) or 34.4.1(f), Health will give the Tender reasonable notice of the disclosure, unless it is not possible to do so.

34.4.3 Health may provide any information supplied by a Tenderer in its Tender or as part of this RFT Process to any other Agency to assist that Agency determine if it wishes to take advantage of the Tenderer's offer to provide the Services to that Agency. The provisions of this section 34 will apply in respect of the relevant Agency as if references to Health were references to that Agency.

#### **34.5 Preservation of confidentiality**

34.5.1 Once the RFT Process has been finalised and a Services Agreement, if any has been entered into, Health will not keep such information provided by the successful Tenderer confidential unless it, in its sole and absolute discretion, considers it appropriate to do so having regard to the matters covered by the Commonwealth's Guidance on Confidentiality in Procurement and the matters covered by the Department of Finance's "Confidentiality Through the Procurement Cycle Principles" (<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/principles.html>), and includes that information as Confidential Information under the resulting contractual arrangements. Tenderers are referred to the requirements of the Response Form in Part 3 of this RFT for further information.

34.5.2 To enable Health to consider whether it agrees to keep specific information confidential, the Tenderer should include in its Tender any request that information is to be treated as confidential following the award of a contractual arrangement to it, if any, specifying the information and giving reasons why it is necessary to keep the information confidential.

34.5.3 Health will consider any request made under section 34.5.2 and will inform the Tenderer whether or not Health, in its absolute discretion, agrees to the request and the terms under which it agrees. If no information is listed as being confidential, Health will assume that no obligation of confidentiality applies.

## **35 Conflict of interest**

35.1.1 The Tenderer should not, and should 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 Health and the Tenderer's interests during this RFT Process.

35.1.2 Each Tenderer should declare in its Tenderer Declaration any circumstances or relationship that constitutes or may constitute an actual or potential conflict of interest concerning the Tenderer or a Related Body Corporate of the Tenderer. If the Tenderer declares such circumstances or relationships, it should also set out its proposed strategy for managing that actual or potential conflict of interest.

35.1.3 Tenderers should immediately notify Health in writing if the Tenderer becomes aware of an actual or potential conflict of interest at any time before the completion of the RFT Process which is not fully disclosed in its Tender. A conflict of interest may exist where there is an affiliation or interest that might prejudice, or be seen to prejudice, a person's impartiality and may, for example if:

- (a) the Tenderer or any Tenderer Personnel have a relationship (whether professional, commercial or personal) with any Personnel in Health;
- (b) the Tenderer has a relationship with, and obligations to, an organisation which would affect the performance of the Services or would bring disrepute to or embarrass Health; or
- (c) the Tenderer or any Tenderer Personnel have a relationship which could affect Health's security.

35.1.4 If a Tenderer has or may have an actual or potential conflict of interest, Health may in its sole and absolute discretion:

- (a) enter into discussions to seek to resolve or manage the conflict of interest;
- (b) impose conditions on the Tenderer for the resolution or management of the actual or potential conflict of interest; or
- (c) take any other action which it considers appropriate.

35.1.5 If a Tenderer is unwilling or unable to enter into discussions under section 35.1.4(a), comply with the conditions imposed under section 35.1.4(b) or otherwise resolve the actual or potential conflict of interest in a manner satisfactory to Health, Health may then exclude the Tender from further consideration (including terminating any contract negotiations).

## 36 Complaints

- 36.1.1 Any complaints arising out of the RFT Process should be directed to the following complaints officer in writing, clearly identifying the issue of concern and the facts and evidence which support the Tenderer's complaint and as soon as possible after the issue arises or occurs:

The Director, Procurement Advice Services  
Department of Health  
MDP 301  
GPO BOX 9848  
CANBERRA ACT 2601

- 36.1.2 Any probity concerns arising out of the RFT Process should be directed to the Probity Advisor in writing, clearly identifying the issue of concern and the facts and evidence which support the Tenderer's concern and as soon as possible after the concern arises or occurs:

O'Connor Marsden & Associates  
Level 3, 1 York Street  
Sydney, NSW 2000  
Tel: 1300 882 633

- 36.1.3 Health will undertake a review of the complaint applying equitable and non discriminatory complaint-handling procedures, including the process outlined in the Department of Finance's guidance on handling complaints and providing feedback, available at: <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/accountability-and-transparency/>.

## 37 Compliance with Commonwealth Policies

### 37.1 The Australian National Audit Office

- 37.1.1 The attention of Tenderers is drawn to the *Auditor-General Act 1997* (Cth), which provides the Auditor-General or an authorised person with a right to have, at all reasonable times, access to information, documents and records.

- 37.1.2 In addition to the Auditor-General's powers under the *Auditor-General Act 1997* (Cth), the Services Agreement contains a right of access by the Auditor-General, or an authorised person, to information, documents, records and Health assets, including those on the Service Provider's premises at reasonable times on reasonable notice for the purpose of carrying out the Auditor-General's functions. The right of access is restricted to information and assets which are in the custody or control of the Service Provider or its employees, agents or Subcontractors, and which are related to the relevant contractual arrangement. Such access applies for the term of the contractual arrangement and for seven (7) years after its expiry or termination.

### 37.2 Privacy Legislation

- 37.2.1 The Tenderer is advised that it is Commonwealth policy to ensure that there is no loss of privacy protection when the Commonwealth contracts for the delivery of goods or services.
- 37.2.2 The *Privacy Act 1988* (Cth) establishes a national scheme providing for the appropriate collection, holding, use, correction, disclosure and transfer of Personal Information by public and private sector organisations.
- 37.2.3 The Services Agreement requires the Service Provider to comply with the *Privacy Act 1988* (Cth), including the Australian Privacy Principles and other privacy obligations (where applicable), although there may be no legislative requirement to do so.

### **37.3 Freedom of Information**

- 37.3.1 The *Freedom of Information Act 1982* (Cth) gives certain rights to the community to access information in the possession of the Commonwealth, which may include any Tender lodged and any contractual arrangement resulting from this RFT Process and related documents. Access is only limited by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by Commonwealth departments and public authorities.

### **37.4 Ombudsman**

- 37.4.1 The attention of Tenderers is drawn to the *Ombudsman Act 1976* (Cth), which provides rights of access to places occupied by Commonwealth contractors to conduct investigations at those places.
- 37.4.2 The Services Agreement includes a right of access by the Ombudsman to the Tenderer's premises and relevant documents.

### **37.5 Workplace Gender Equality**

- 37.5.1 Commonwealth policy prevents the Commonwealth from entering into contracts with suppliers who are non-compliant with the *Workplace Gender Equality Act 2012* (Cth) (**WGE Act**). The Services Agreement requires that a Service Provider must:
- (a) comply with its obligations, if any, under the WGE Act;
  - (b) if the term of the Services Agreement exceeds 18 months, provide a current letter of compliance from the Workplace Gender Equality Agency within 18 months of the commencement of the Services Agreement, and then after this annually, to Health; and
  - (c) notify Health if during the Term of the Services Agreement the Service Provider becomes non-compliant with the WGE Act.
- 37.5.2 The attention of Tenderers is drawn to the requirements in relation to Workplace Gender Equality in the Response Form in Part 3 of this RFT. Further information on the WGE Act is available by contacting the Workplace Gender Equality Agency on +61 2 9432 7000.

### **37.6 Prohibition of Illegal Workers**

37.6.1 Tenderers should note that it is Commonwealth policy not to contract with providers engaging Illegal Workers and the declaration in the Response Form in Part 3 of this RFT contains a statement from the Tenderer confirming that it will comply with this policy.

37.6.2 Health may decide not to further consider a Tender submitted by a Tenderer who does not comply with this policy.

### **37.7 Anti-Terrorism Measures**

37.7.1 The Tenderer's attention is drawn to the obligations under Part 4 of the *Charter of United Nations Act 1945* (Cth) and the *Charter of United Nations (Dealing with Assets) Regulations 2008* (Cth). These laws require any person who holds assets or funds belonging to a person or organisation on the list of persons and entities designated as terrorists to immediately freeze those assets. A consolidated list of such persons, entities and associated assets is maintained by the Department of Foreign Affairs and Trade (<http://www.dfat.gov.au/international-relations/security/sanctions/pages/sanctions.aspx>).

37.7.2 The Tenderer and any nominated Subcontractors proposed in the Tender may not at the Closing Time be listed as terrorists under section 15 of the *Charter of the United Nations Act 1945* (Cth). It is an offence to make any funds or assets available to a person or organisation on the list.

37.7.3 Health will not enter into any contractual arrangement with a person or organisation on the list, and Tenderers are required to declare that they are not listed (see the declaration in the Response Form in Part 3 of this RFT).

37.7.4 The successful Tenderer, if any, will be required to comply with all applicable Laws dealing with the supply and/or export of goods, services and information to foreign nationals or institutions including under the *Customs Act 1901* (Cth) and the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995* (Cth).

### **37.8 State and Territory Laws**

37.8.1 A range of State and Territory Laws may apply to the Services.

### **37.9 Competitive Neutrality**

37.9.1 Competitive neutrality requires that government business activities should not enjoy net competitive advantages over their private sector competitors simply by virtue of public sector ownership.

37.9.2 Tenderers from the public sector which are a government business enterprise should identify themselves as such and demonstrate in the pricing of their Tender that the requirements of competitive neutrality have been met, including payment of relevant taxes and charges, rates of return and costs of funds. Compliance with the requirements of competitive neutrality may be tested by Health.

### **37.10 Small and Medium Enterprises (SMEs)**

- 37.10.1 Health is obliged to comply with the Commonwealth purchasing policy to encourage Small to Medium Enterprises (SMEs).
- 37.10.2 Commonwealth purchasing policy requires that, for ICT contracts with an expected value of \$20 million or more, Agencies are required to ensure that Tenderers meet minimum SME participation levels as follows:
- (a) hardware (for example personal computers, network equipment, mainframes, and printers) - minimum SME participation level of 10 per cent of contract value; and
  - (b) services (for example systems integration, software, software development/support, services provision, consultancies, telecommunications) - minimum SME participation level of 20 per cent of contract value.
- 37.10.3 An SME is a body corporate incorporated in Australia or New Zealand which, together with its related bodies corporate and parent entities, has an average annual revenue over the last four financial years of less than AUD\$500 million.

**Note to Tenderers:**

More information relating to SME participation can be found at <http://www.innovation.gov.au/INDUSTRY/INFORMATIONANDCOMMUNICATIONSTECHNOLOGIES/Pages/SmallandMediumEnterpriseParticipationProcurementPolicy.aspx>

- 37.10.4 To ensure that SMEs have appropriate opportunities to compete for Health's business, Tenderers should, where possible, identify any SME involvement in their Tenders.

**37.11 Fair Work Act 2009 (Cth)**

- 37.11.1 Tenderers are required to comply with all relevant workplace relations Laws, including:

- (a) the *Fair Work Act 2009* (Cth) or any applicable workplace relations Laws;
- (b) work health and safety Laws; and
- (c) worker's compensation Laws.

- 37.11.2 The Services Agreement contains obligations relevant to these requirements.

**37.12 Fraud Control**

- 37.12.1 The Tenderer's attention is drawn to the Australian Government's position on fraud control, set out in the Commonwealth Fraud Control Guidelines (available at: [www.ag.gov.au](http://www.ag.gov.au)).

- 37.12.2 The description of the Services in Part 2 of this RFT sets out all requirements for fraud control in connection with the Services, including any measures needed to ensure the high standard of accountability required as part of the Commonwealth's financial management framework.

### **37.13 Open Source Software Policy**

- 37.13.1 Where the Tenderer intends to provide software to meet the Services, Health encourages Tenderers to submit and/or develop Open Source Software as part of their Tender. When responding to this RFT, the Tenderers should demonstrate a willingness to actively consider Open Source Software throughout all stages of procurement, solution design and implementation in order to produce a product that demonstrates value for money and is fit for purpose. This may include incorporating Open Source Software components together with proprietary software components.
- 37.13.2 In evaluating Tenders, Health will consider Open Source Software equally alongside proprietary software.

### **37.14 Cloud Computing Policy**

- 37.14.1 Tenderers' attention is drawn to the Australian Government's position on cloud computing (further information can be found at <http://www.finance.gov.au/policy-guides-procurement/cloud>).
- 37.14.2 Health encourages Tenderers to consider the use of cloud services in the delivery of the Services to meet the Outcomes, where the Tenderer can demonstrate that the cloud service meets the Key Requirements, represents the best value for money and adequate management of risks compared to other available options. Where Tenderers propose cloud based solutions, they should include suitable material in their Tender about the proposed cloud services, including about proposed risk management, data security, privacy and any storage and processing of data offshore, so that Health can properly consider the benefits of such services against the identified risks.

### **37.15 Indigenous Procurement Policy**

#### **37.15.1 Indigenous Procurement Policy**

- (a) Tenderers should note that the Indigenous Procurement Policy applies or may apply to this procurement. More information on the Indigenous Procurement Policy can be found at [www.dpmc.gov.au/indigenoussaffairs](http://www.dpmc.gov.au/indigenoussaffairs).
- (b) 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).

#### **37.15.2 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 Contract (see Part 3 of the RFT).



- (c) 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.

### 37.16 Building Code 2013

37.16.1 The Tenderer's attention is drawn to the Building Code 2013 (**Building Code**) and the Supporting Guidelines to the Building Code 2013 (**Supporting Guidelines**). Copies of the Building Code and Supporting Guidelines are available at [www.employment.gov.au/BuildingCode](http://www.employment.gov.au/BuildingCode).

37.16.2 Tenderers will be deemed to:

- (a) have read; and
- (b) agree to comply with,

the Building Code and the Supporting Guidelines.

37.16.3 Notwithstanding any other provisions of this RFT, Tenderers consent to the disclosure of information concerning compliance with the Building Code, including details of whether or not a sanction (see section 8.2 of the Supporting Guidelines) has been imposed. This consent extends to disclosure by the Commonwealth, its Agencies and Ministers, and disclosure to others for the purposes of facilitating compliance with the Building Code and the exercise of their statutory and portfolio responsibilities. Tenderers are to ensure that their proposed Subcontractors and consultants are also aware of, and agree to comply with, these rights of use and disclosure.

37.16.4 Tenderers should be aware that the Building Code applies to:

- (a) the project which is the subject of this RFT; and
- (b) all construction building work undertaken by the Tenderer and its related entities (see section 8 of the Building Code) thereafter as defined in the Building Code, including work on all new privately funded construction projects in Australia.

37.16.5 While acknowledging that value for money is the core principle underpinning decisions on Commonwealth procurement, Tenderers should note that when assessing Tenders, preference may be given to Tenders that demonstrate a commitment to:

- (a) adding and/or retaining trainees and apprentices;
- (b) increasing the participation of women in all aspects of the industry; or
- (c) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.

The extent to which these matters will be evaluated in connection with this RFT is set out in Attachment B to Part 1 of this RFT.

### **37.17 Building and Construction OHS Accreditation Scheme**

- 37.17.1 A successful Tenderer, if any, must be accredited under the Australian Government Building and Construction OHS Accreditation Scheme (**the Scheme**) established by the Fair Work (Building Industry) Act 2012 when entering into contracts for building work covered by the Scheme, and maintain accreditation under that Scheme while the building work is being carried out.
- 37.17.2 A successful Tenderer, if any, must comply with all conditions of Scheme accreditation.

### **37.18 Anti-Money Laundering**

- 37.18.1 The successful Tenderer, if any, will be required to comply with any obligations applicable to it contained in the legislation arising from the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

### **37.19 Archiving**

- 37.19.1 The Tenderer should be familiar with the requirements of record keeping in an outsourced environment, particularly the National Archives publication "Records Issues for Outsourcing". Copies can be downloaded from [http://www.naa.gov.au/Images/GDA25\\_tcm16-47736.pdf](http://www.naa.gov.au/Images/GDA25_tcm16-47736.pdf).

### **37.20 Hazardous Substances**

- 37.20.1 The Tenderer's attention is drawn to the Model Work Health and Safety Regulations and Managing Risks of Hazardous Chemicals in the Workplace Code of Practice, copies of which are available at the Safe Work Australia website: <http://www.safeworkaustralia.gov.au/sites/SWA>.

### **37.21 Environmental policy and procurement**

- 37.21.1 The Australian Government aims to improve the implementation of Ecologically Sustainable Development within its Agencies.
- 37.21.2 Health is committed to operating in an ecologically sustainable manner and seeks to implement and maintain an Environmental Management System compliant to ISO14001 standards, with the following key business focus areas:
- (a) compliance with all relevant environmental legislation, regulations and other initiatives to which it subscribes;
  - (b) integrating environmental management into business decision making at all levels;
  - (c) reducing cost through better resources usage and waste management;
  - (d) setting objectives and target for continuous improvement;
  - (e) monitoring, reporting and reviewing achievements;

- (f) exploring best practice and innovative environmental management approaches to the use of technology, property and related resources; and
- (g) building an environmentally aware business culture.

37.21.3 See also the National Waste Policy and the Australian Packaging Covenant, copies of which are available at the Department of the Environment website: <http://www.environment.gov.au/>.

37.21.4 Health's procurement activities are a key means of implementing its environmental policy.

### **37.22 Lobbying**

37.22.1 The Lobbying Code of Conduct is intended to promote trust in the integrity of government processes and ensure that contact between lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty. Lobbyists and Government representatives are expected to comply with the requirements of the Lobbying Code of Conduct in accordance with their spirit, intention and purpose. A copy of the Lobbying Code of Conduct is available at: [http://lobbyists.pmc.gov.au/conduct\\_code.cfm](http://lobbyists.pmc.gov.au/conduct_code.cfm).

37.22.2 "Government representative" for the purposes of the Lobbying Code of Conduct includes a person engaged as contractor or consultant by an Australian Government Agency whose staff are employed under the *Public Service Act 1999* (Cth).

37.22.3 A successful Tenderer, if any, must, and must ensure that its Subcontractors (if any) will, comply with the Lobbying Code of Conduct and the Australian Public Service Commission Circular 2008/4, Requirements relating to the *Lobbying Code of Conduct and Post Separation Contact with Government* where their activities fall within the scope of the Lobbying Code of Conduct.

### **37.23 Work Health and Safety**

37.23.1 Health has obligations under the *Work Health and Safety Act 2011* (Cth) (**WHS Act**) in relation to the maintenance of a safe workplace and safe systems of work. Health acts in strict compliance with its obligations.

37.23.2 The successful Tenderer, if any, will be required to act in such a way, so as not, by action or omission, to place Health in breach of its obligations under the WHS Act. The Tenderer should be aware that it may also have its own obligations under the WHS Act in relation to these matters with which strict compliance will be required.

### **37.24 Subcontractors**

37.24.1 The Tenderer should provide details of any Subcontractors that the Tenderer wishes to utilise in accordance with the requirements set out in Part 3 – Response Form.

37.24.2 Tenderers should note that under paragraph 7.19 of the Commonwealth Procurement Rules, Commonwealth entities are required to make available on request, the names of any Subcontractor

engaged by a contractor in respect of a Commonwealth contract for procurement and that it is the responsibility of Tenderers to secure proposed Subcontractors' agreement to this.

37.24.3 The successful Tenderer, if any, will need to agree in the Services Agreement to the public disclosure of the names of any Subcontractors engaged to perform services in relation to the Services Agreement.

37.24.4 The successful Tenderer, if any, must inform relevant Subcontractors that the Subcontractor's participation in fulfilling the Services Agreement may be publicly disclosed.

### **37.25 Own advice**

37.25.1 The Tenderer should obtain and will be deemed to have obtained its own advice on any Laws and Commonwealth policies including those referred to above in its participation in the RFT Process and performance of any Services Agreement.

### **37.26 Disclosure**

37.26.1 The Tenderer should disclose in the completed Tenderer Declaration all relevant information, including any regulatory issues, litigation, arbitration, mediation, conciliation or proceeding, or any investigations (**Proceedings**), that, to the best of the Tenderer's knowledge and belief after having made proper enquiry, are taking place, pending or threatened, against it or a Related Body Corporate where such Proceedings will or have the potential to impact adversely upon either:

- (a) the Tenderer's capacity to perform and fulfil its obligations if contracted as a result of the RFT Process; or
- (b) the Tenderer's reputation.

37.26.2 In circumstances where there are no Proceedings as detailed in clause 37.26.1, Tenderers should declare in the completed Tenderer Declaration that there are no Proceedings (as defined in clause 37.26.1).

37.26.3 Health will consider the Tenderer's response to clause 37.25, and the commercial, technical or financial capacity of the Tenderer or any Subcontractor proposed in the Tender, including the existence of any breach or default or alleged breach or default of any agreement, order or award building upon the Tenderer as part of the evaluation.

37.26.4 A Tenderer who fails to disclose Proceedings in accordance with 37.26.1 or who fails to make a declaration in accordance with 37.26.2 (as applicable) and are subsequently found to have Proceedings that Health considers in its sole and absolute discretion should have been disclosed will immediately be disqualified from the RFT Process. If it is found that a successful Tenderer, if any, has Proceedings as detailed in clause 37.26.1 after it is engaged under the Services Agreement, Health has the right to terminate the Services Agreement immediately without any penalty to Health.

### 37.26.2 Unpaid employee entitlements

37.26.5 Commonwealth entities will not entering into contracts with Tenderers who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not satisfied any resulting order. Tenderers are required to declare that they have no such unsettled judgements (see the declaration in Part 3 of this RFT).

## 38 Public Statements

38.1.1 Tenderers may not make any public statements (by means of advertisement or otherwise) in relation to this RFT, or any subsequent contractual arrangement arising out of this RFT, without the prior written consent of Health. However, nothing in this section is to be read as limiting a Tenderer's right to enter into public debate or criticism of the Australian Government, its agencies, or personnel.

## 39 Ethical Dealing

39.1.1 Health seeks to engage in the highest standards of ethical behaviour and fair dealing throughout the RFT Process. Health requires the same standards from those with whom it deals.

39.1.2 The Tenderer should not:

- (a) lodge a Tender that has been compiled with improper assistance of employees or former employees of, consultants, advisers or contractors to, or former consultants, advisers or contractors to, Health or any State or Territory or that uses information improperly obtained or obtained in breach of an obligation of confidentiality or fidelity or a breach of section 70 or 79 of the *Crimes Act 1914* (Cth);
- (b) engage in misleading or deceptive conduct in relation to Tenders or the RFT Process;
- (c) engage in any collusive Tendering, anti-competitive conduct, or any other unlawful or unethical conduct (including offering inducements) with any other Tenderer, or any other person in connection with the preparation of their Tender or the RFT Process;
- (d) attempt to solicit information from or improperly influence any officer, employee or agent of Health, or violate any applicable Laws or Commonwealth policies in connection with the RFT Process; or
- (e) otherwise act in an unethical or improper manner, or contrary to any Law.

39.1.3 Health may exclude from further consideration any Tender lodged by a Tenderer that, in Health's reasonable opinion, has engaged in any behaviour contrary to section 39.1.1 in relation to the RFT Process. This right is in addition to any other remedies Health may have under Law or in any contractual arrangement with a successful Tenderer, if any.

## **40 Assistance Provided in Preparation of this RFT**

- 40.1.1 In preparing this RFT, Health has consulted with various parties in order to understand the business model currently used to deliver the National Cervical Screening Program, including with its counterparts in State and Territory governments.
- 40.1.2 State and Territory governments currently provide, either on their own behalf and/or on the behalf of other State or Territory governments, operational services in relation to the National Cervical Screening Program. This typically includes the provision of a register capability to support the operation of the National Cervical Screening Program.
- 40.1.3 Tenderers should be aware that State or Territory governments may elect to tender to provide the Services.
- 40.1.4 Tenderers should also be aware that Health has endeavoured to manage any potential conflict of interest created through consultation with State and Territory representatives in the development of this RFT. All information provided to the States and Territory as part of the consultation process has been made available for release as part of the RFT where it is deemed relevant to the RFT Process. This has included Health obtaining the services of an independent Probity Advisor. Health has also put in place strategies arranging for role separation and information quarantining within State and Territory bodies such that individuals involved in the consultation process are bound by confidentiality obligations and are not permitted to assist with the development of Tenders. These strategies also include the appointment of compliance officers in each State and Territory agency to monitor the ongoing separation of roles and information.

## **41 Acknowledgement and Disclaimer**

- 41.1.1 The Tenderer acknowledges and agrees that:
- (a) by lodging a Tender it accepts the conditions set out in this RFT;
  - (b) lodgement of its Tender on time and in accordance with this RFT is entirely the Tenderer's responsibility;
  - (c) it has read and understood the acknowledgement made by Health at section 40 of this Part 1;
  - (d) Health does not warrant that unauthorised access to information and data transmitted via the internet will not occur (Tenderers should take their own measures to protect information transmitted electronically);
  - (e) Health will not be liable for any loss, damage, costs or expenses incurred by the Tenderer or any other person if, for any reason, any material or communication relevant to this RFT is not received on time, is corrupted or altered or otherwise not received as sent, cannot be read or decrypted, or has its security or integrity compromised;
  - (f) under subsection 137.1 of the *Criminal Code Act 1995* (Cth), giving false or misleading information to the Commonwealth is a serious offence;

- (g) the Tenderer is deemed to have:
  - (i) examined this RFT, any documents referred to in it, and any other information made available in writing by Health to Tenderers for the purpose of tendering;
  - (ii) examined all further information which is obtainable by the making of reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on its Tender;
  - (iii) satisfied itself as to the correctness and sufficiency of its Tender, including its tendered prices;
  - (iv) obtained independent, professional advice on the effect of all relevant Law and Commonwealth policies (including those referred to in this RFT) in relation to the Tenderer's participation in this RFT and performance of the Services Agreement and any other contractual arrangement; and
  - (v) examined the AusTender Terms of Use.
- (h) The Tenderer is expected to undertake an examination of all matters relevant to the lodging of its Tender. The Tenderer will be deemed to have made its own inquiries regarding the participation in the RFT Process. Health may in its sole and absolute discretion exclude from further consideration any Tender which is made subject to any due diligence or other investigation to be performed after a Tender is lodged.

41.1.2 All information (whether written, oral or in any other form) which has been and may subsequently be made available to the Tenderer is provided on the following conditions:

- (a) in deciding to lodge or not lodge a Tender, or in the interpretation of this RFT, the Tenderer does not rely on any:
  - (i) representation (whether oral or in writing) other than as expressed in this RFT; or
  - (ii) other conduct of Health, or any of its officers, employees, advisers or agents;
- (b) any information contained in this RFT or otherwise provided by Health may not be accurate or may change;
- (c) where any such information relates to future matters, no steps have been taken to verify that the information is based upon reasonable grounds, and no representation or warranty, expressed or implied, is made by Health, or any of its officers, employees, agents or advisers that the statements contained in this RFT or otherwise provided by Health will be achieved;
- (d) this RFT is designed to reflect and summarise information concerning Health's Services only and is not a comprehensive description of it;

- (e) neither the delivery of this RFT nor any contractual arrangement made subsequent to this RFT will imply that there has been no material change since the date of this RFT or since the date as at which any information contained in this RFT is stated to be applicable;
- (f) except as required by Law and only to the extent so required, Health and its respective officers, employees, agents and advisers will not be liable to any person or body for any loss, damage, cost or expense arising from any information or representations, actual or implied, contained in or omitted from this RFT or other information provided by Health, or by reason of any reliance by any person or body on any such information or representation; and
- (g) the Tenderer should seek its own independent, professional advice as appropriate and should not construe this RFT or other information provided by Health as investment, legal or tax advice.

41.1.3 The Tenderer is responsible for all costs and expenses related to the preparation and lodgement of their Tenders, any subsequent negotiations and any other action or response in relation to this RFT.

## **42 Health's rights**

42.1.1 Notwithstanding anything else contained in this RFT and without limiting its rights at Law or otherwise, Health reserves the right in its sole and absolute discretion to:

- (a) vary the terms of this RFT, including the structure, requirements, processes or conditions referred to in this RFT;
- (b) vary the timing referred to in this RFT;
- (c) determine at any stage or stages after the Closing Time, short-list(s) of Tenderers on any basis that Health considers appropriate;
- (d) cease, suspend or vary the RFT Process, or any part of it, where:
  - (i) this is in the public interest;
  - (ii) the Tenderer does not meet a Condition for Participation, or the Minimum Content and Format Requirements of this RFT;
  - (iii) the Tenderer is not fully capable of providing Services in accordance with the Services Agreement; or
  - (iv) the Tenderer does not represent value for money.
- (e) where clause 42.1.1(d) applies, negotiate with any person (who may or may not be a Tenderer) and enter into a Services Agreement for the provision of some or all of the Services with that person on such terms as Health in its sole and absolute discretion accepts without prior notice to the Tenderer;



- (f) amend this RFT, including extending the Closing Time and/or amending the nature of the Services, by giving written notice (including by email), to a Tenderer (where possible);
- (g) require additional information or clarification from a Tenderer or anyone else or provide additional information or clarification;
- (h) seek amended Tenders and allow a Tenderer to amend its Tender, or call for new Tenders;
- (i) reject a Tender received after the Closing Time;
- (j) publish or disclose the names of the shortlisted preferred/successful Tenderer, if any;
- (k) call for a best and final offer at any time;
- (l) accept a Tender;
- (m) discontinue evaluation of a Tender;
- (n) conduct a subsequent procurement process in relation to all or any part of the Services described in this RFT and use information provided or obtained under or in connection with the RFT Process;
- (o) select and negotiate with any number of Tenderers and/or discontinue those negotiations at any time for any reason;
- (p) enter into a Services Agreement for the entire scope of the Services with one Tenderer;
- (q) enter into a Services Agreement on terms different to those in the Services Agreement; and
- (r) allow or not allow an entity to take over a Tender in substitution for the original Tenderer.

42.1.2 Without limiting its other rights under this RFT or at Law, if Health concludes that a Tenderer has retracted, or attempts to retract, undertakings under which material technical, commercial, financial, corporate, relationship management, legal or contractual issues were resolved during negotiations, Health may choose to not proceed with consideration of that Tender and/or exercise another right given by this RFT.

42.1.3 Participation in any stage of the RFT Process, or in relation to any matter concerning this RFT will be at the Tenderer's sole risk, cost and expense. Health will not be liable or in any way responsible for any loss, cost, expense, claim or damage incurred by a Tenderer or any other person in responding to or taking any other action in relation to the RFT Process, even if Health:

- (a) exercises or fails to exercise any of Health's rights under this RFT or in respect of any discussions, negotiations, enquiries in relation to taking part in the RFT Process or any work undertaken by the Tenderer after its Tender is lodged; or
- (b) fails to inform a Tenderer of its exercise or non-exercise of those rights.

- 42.1.4 Without limiting clauses 17.1.2, 29.1.4, 29.1.6 or 42.1.3, Health is not liable to the Tenderer on the basis of any promissory estoppel, quantum meruit, quantum valebat, or any other contractual, quasi-contractual or restitutionary grounds or in negligence as a consequence of any matter or thing relating to or incidental to a Tenderer's participation in the RFT Process, including (without limitation):
- (a) the procurement process for this RFT;
  - (b) where a Tenderer is not successful under the RFT Process;
  - (c) where Health varies, suspends or terminates the RFT Process or negotiates with a Tenderer;  
or
  - (d) where Health exercises, or fails to exercise, any of its other rights under or in relation to this RFT.
- 42.1.5 Health may exclude from further consideration any Tender lodged by a Tenderer that is engaging or has engaged in any conduct that contravenes any Laws or contravenes the Terms and Conditions.
- 42.1.6 Any time or date in this RFT is for the sole convenience of Health. The establishment of a time or date in this RFT does not create an obligation on the part of Health to take any action or create any right in the Tenderer that any action be taken on the date established. Health may, but is not obliged to, notify affected Tenderers if Health exercises any of its rights listed above in clause 42.1.1 but will not be obliged to provide any reasons for its actions.

## **43 Applicable Law**

- 43.1.1 The Laws of the Australian Capital Territory apply to this RFT, and the RFT Process.
- 43.1.2 Tenderers must comply with all relevant Laws in preparing and lodging its Tender and taking part in the RFT Process.

## ATTACHMENT A - RFT QUESTION FORM

All enquiries to Health in connection with this RFT should be made using this form and lodged in the manner described at section 7 of Part 1 of this RFT.

Required Question Submission Information (to be completed by Tenderer)		
1.	<b>Date:</b>	
2.	<b>Tenderer Name:</b> (in Full)	
3.	<b>RFT Part:</b> (including reference to any relevant Schedule, Attachment, Appendix, Exhibit)	
4.	<b>RFT Page Number:</b> (if applicable)	
5.	<b>Tenderer Question Form Sequence Number:</b> (expressed as a three digit number, e.g. 001)	

Tenderer's Question

## ATTACHMENT B - CONFIDENTIALITY DEED POLL

### DATE

This Deed Poll is dated the [insert date] day of [insert month] 2015.

### THIS DEED POLL IS MADE BY:

[Note to Tenderer - Insert Tenderer name and ACN/ABN], [Note to Tenderer - insert registered office or other address] (Tenderer)

in favour of the Department of Health (**Health**)

#### 44 Purpose

- A. Health has issued a Request for Tender (**RFT**) for the provision and management of the National Cancer Screening Register (the **Services**) on [insert].
- B. The Tenderer requires access to Health Confidential Information from Health in relation to the Services, and in order to participate in the RFT Process and to prepare and lodge a Tender in response to the RFT.
- C. Improper use or disclosure of Health's Confidential Information may severely damage the Commonwealth's interests.
- D. Health therefore requires, and the Tenderer agrees, that it is necessary to take steps (including the execution of this Deed) to ensure that Health's Confidential Information is kept confidential.

#### 45 Operative Part

##### 45.1 Definitions

45.1.1 In this Deed, unless the contrary intention appears:

- (a) "**Authorised Person**" in relation to the Tenderer means the natural persons set out or referred to in Item A of the attached Schedule 1 to this Deed;
- (b) "**Business Day**" any day of the week other than Saturday, Sunday or a national public holiday or a public holiday in the Australian Capital Territory. A national public holiday is a Commonwealth public service holiday throughout Australia promulgated in the Commonwealth Government Gazette;
- (c) "**Commonwealth**" means the Commonwealth of Australia;
- (d) "**Health Confidential Information**" means all information made available to or accessed by the Tenderer in the RFT or Data Pack, but does not include information which:

- (i) is or becomes public knowledge other than by breach of this Deed or other confidentiality obligation;
  - (ii) is in the possession of the Tenderer without restriction in relation to disclosure before the date of receipt from Health; or
  - (iii) has been independently developed or acquired by the Tenderer;
- (e) **"Data Pack"** means all information and Documents provided by or on behalf of Health as part of or in relation to the RFT Process:
- (i) obtained from any source;
  - (ii) in any form or media, and
  - (iii) made available to or accessed by the Tenderer, and
- (for the avoidance of doubt) includes the Transaction Website and information and/or Documents made available in a Data Room;
- (f) **"Data Room"** means collection of documents, material and information, either in physical or in electronic form, which is made available or provided to Tenderers by or on behalf of Health, in connection with this RFT process. Virtual Data Room has a similar meaning.
- (g) **"Data Pack Protocol"** means the Document of that name attached at Schedule 2 to this Deed;
- (h) **"Deed"** means this confidentiality deed;
- (i) **"Document"** includes:
- (i) any paper or other material on which there are marks, figures, symbols or perforations having a meaning to persons qualified to interpret them;
  - (ii) any article, material or media from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device (including, by way of example and without limitation, disks, CDs, USB or other drives, recording devices, tapes, hard drives and any like device); and
  - (iii) a copy of any of the things referred to in paragraphs i.- ii.,
- which records, contains, sets out or refers to Health Confidential Information;
- (j) **"Harmful Code"** means any virus, disabling or malicious device or code, worm, trojan, time bomb or other harmful or destructive code, or any other mechanism (including but not limited to automatic and/or random expiry date) which is likely to disable or reduce the functionality or performance of Health's information and communication technology environment;

- (k) "**Health**" means the Commonwealth acting through and represented by the Department of Health;
- (l) "**Loss**" includes all losses, liabilities, damages, fines, costs and expenses, including reasonable legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;
- (m) "**Nominated Representative**" in relation to the Tenderer means the person referred to in section 2.2.2 of the Data Pack Protocol;
- (n) "**Parties**" means Health and the Tenderer;
- (o) "**Permitted Purpose**" means in order for the Tenderer to participate in the RFT Process, to prepare a Tender in response to the RFT and to negotiate a contract (if any) with Health in connection with the provision of the Services;
- (p) "**Personnel**" in relation to Health, Health Personnel; and in relation to the Service Provider, Service Provider Personnel;
- (q) "**Representative**" means the persons specified in Item B of the attached Schedule 1 to this Deed;
- (r) "**RFT**" means Document(s) issued by Health requesting submission of a Tender from the market, including details of Health's objectives, requirements and conditions for submission of a Tender. It also includes any amendments or addenda issued in accordance with the RFT;
- (s) "**RFT Process**" means the RFT process which commences on the date the RFT is issued by Health and concludes once Health has entered into a Services Agreement with the successful Tenderer(s) (if any);
- (t) "**Service(s)**" means the services and any Deliverables delivered or required to be delivered by the Service Provider in accordance with the Services Agreement, including all services and Deliverables described in Part 2 of the RFT and the Draft Services Agreement;
- (u) "**Tender**" means a tender lodged in response to the RFT;
- (v) "**Tenderer**" means the person making this Deed;
- (w) "**Tenderer Personnel**" means officers, employees, agents, advisers, consultants, contractors and subcontractors and other personnel of the Tenderer;
- (x) "**Transaction Website**" means a website to which Tenderers will be granted access in accordance with the Data Pack Protocol and the Transaction Website Terms and Conditions for the purposes of conducting due diligence for the RFT;
- (y) "**Transaction Website Terms and Conditions**" means the conditions of this name, a copy of which is found at Annexure B to the Data Pack Protocol;

(z) **"writing"** means any representation of words, figures or symbols, whether or not in a visible form; and

(aa) all other capitalised terms have the same meaning as in the RFT.

## **45.2 Interpretation**

45.2.1 In this Deed, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing persons include a partnership and a body whether corporate or otherwise;
- (e) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (f) "includes" in any form is not a term of limitation; and
- (g) a reference to a matter being to the knowledge of a person means that the matter is to the best of the knowledge and belief of that person after diligent enquiry, including enquiry which a reasonable person would be prompted to make by reason of knowledge of a fact.

45.2.2 Tenderers acknowledge that information in the Data Pack may be updated during the RFT Process.

## **45.3 Commencement**

45.3.1 This Deed will be taken to have commenced on the date on which the Tenderer first received Health Confidential Information, whether or not that date was before the date of the execution of this Deed.

## **45.4 Health Confidential Information not to be disclosed**

45.4.1 Subject to clause 45.6.1, the Tenderer must not, without the prior written consent of Health, disclose any of the Health Confidential Information to any person.

45.4.2 In giving written consent to the disclosure of the Health Confidential Information, Health may impose such conditions as it thinks fit, and the Tenderer agrees to comply with these conditions.

## **45.5 Written undertakings**

45.5.1 Health may at any time require the Tenderer to arrange for its Authorised Persons, including Personnel approved by Health in accordance with clause 45.10.2, to give a written undertaking in

substantially the same terms as this Deed relating to the use and non-disclosure of the Health Confidential Information.

45.5.2 If the Tenderer receives a request under clause 45.5.1, it must promptly arrange for all such undertakings to be given.

#### **45.6 Exceptions to obligations**

45.6.1 The obligations on the Tenderer under clause 45.4.1 will not be taken to have been breached to the extent that Health Confidential Information:

- (a) is disclosed by the Tenderer to Authorised Persons, nominated in Item A of Schedule 1 to this Deed, solely for the Permitted Purpose;
- (b) is disclosed by the Tenderer to Authorised Persons approved by Health in accordance with clause 45.10.2 solely for the Permitted Purpose;
- (c) subject to clause 45.9.1, is authorised or required by law to be disclosed; or
- (d) is in the public domain otherwise than due to a breach of clause 45.4.1 or other confidentiality obligation.

#### **45.7 Obligation on disclosure**

45.7.1 Where the Tenderer discloses Health Confidential Information to another person pursuant to clauses 45.6.1(a) or 45.6.1(b), the Tenderer must:

- (a) notify the receiving person that the information is Health Confidential Information; and
- (b) not provide the information unless the receiving person agrees to keep the information confidential, including (where required by Health) giving the written undertaking referred to in clause 45.5.1.

#### **45.8 Additional Health Confidential Information**

45.8.1 The Tenderer and Health may agree in writing after the date of this Deed that certain additional information is to constitute Health Confidential Information for the purposes of this Deed.

45.8.2 Where the Tenderer and Health agree in writing after the date of this Deed that certain additional information is to constitute Health Confidential Information for the purposes of this Deed, this Deed is varied to that extent.

#### **45.9 Disclosure required by law**

45.9.1 The Tenderer may disclose any Health Confidential Information which the Tenderer is required by law to disclose, but only if:

- (a) the extent and manner of the disclosure is strictly limited to what is required by law;



- (b) the Tenderer gives Health sufficient notice to enable Health to seek a protective order or other relief from disclosure; and
- (c) the Tenderer provides all assistance and cooperation necessary to enable Health to protect against disclosure, where required.

#### **45.10 Use of Health Confidential Information**

45.10.1 The Tenderer agrees to only use and copy the Health Confidential Information for the Permitted Purpose.

45.10.2 The Tenderer may nominate Personnel in writing to Health, and where a person is approved by Health explicitly as an Authorised Person for the purposes of this Deed, the Tenderer may give access to or disclose Health Confidential Information to that person to the extent it is necessary for the Permitted Purpose.

45.10.3 The Tenderer agrees to take all necessary precautions to prevent unauthorised access, use, reproduction or disclosure of the Health Confidential Information in its control.

45.10.4 Without limiting clause 45.10.3, the Tenderer must:

- (a) do all things reasonably necessary and all things reasonably required by Health to keep the Health Confidential Information under the Tenderer's effective control;
- (b) immediately notify Health if the Tenderer becomes aware of any unauthorised access to, use, or disclosure of any Health Confidential Information; and
- (c) subject to clauses 45.10.1 and 45.10.5, not copy or reproduce the Health Confidential Information, nor allow any other person to use, copy or reproduce any Health Confidential Information.

45.10.5 The Tenderer may retain a copy of any Health Confidential Information if, and only to the extent to which, the Tenderer is required by law to do so.

#### **45.11 Production of Health Confidential Information on Demand**

45.11.1 Health may at any time demand (without needing to reduce the demand to writing) the Tenderer to deliver up to Health, or at the option of Health destroy, all Health Confidential Information and Documents in the Tenderer's possession, custody or control.

45.11.2 The Tenderer must immediately comply with any demand made under clause 45.11.1.

45.11.3 Subject to clause 45.11.1, the Tenderer must ensure that the Health Confidential Information is always within its possession or control.

#### **45.12 Disclaimer and Quality of Information**

45.12.1 Without limiting any disclaimer or exclusion clause in the RFT, the Tenderer acknowledges and agrees that Health and its Personnel:

- (a) are not responsible for ensuring that any Document in the Data Pack is accurate, current, reliable, suitable or complete, and are not liable for any failure to do so;
- (b) do not represent that they apply any expertise on behalf of the Tenderer or any other interested party in connection with the RFT or Data Pack;
- (c) make no express or implied representation or warranty that any estimate or forecast contained in the RFT or the Data Pack will be achieved or that any statement as to future matters will prove correct;
- (d) are not under any duty at any time to disclose or update any fact, matter, or circumstance concerning Health, the Services or any other matter;
- (e) do not represent that access to the Transaction Website will always be available;
- (f) are not responsible for the operation of any computer system, communication system, software or ancillary equipment used to access the Transaction Website;
- (g) are not responsible for delays, errors, inaccuracies, or omissions due to a failure or incompatibility in or between a computer system, communication system, software, the Transaction Website or ancillary equipment, or any other circumstances beyond their direct control;
- (h) may at any time choose to cease providing the Tenderer with access to one or more Transaction Website;
- (i) are not responsible for any improper access to information; and
- (j) expressly disclaim, and do not accept or assume, any and all:
  - (k) liability or responsibility for any Loss arising from the Data Pack (including, without limitation, where arising through negligence or because of errors in or omissions from the Data Pack);
    - (i) without limiting clause 45.12.1(k), liability or responsibility for any Loss suffered by any person as a result of that person or any other person placing any reliance on the Data Pack;
    - (ii) liability or responsibility for Loss arising from delays, errors, inaccuracies, or omissions due to a failure or incompatibility in or between a computer system, communication system or software, the Transaction Website or ancillary equipment, or any other circumstances beyond their direct control; and
    - (iii) duties to any interested person, including any fiduciary duty or duty of disclosure, except so far as their liability under any statute cannot be excluded.

45.12.2 The Tenderer acknowledges and agrees that:

- (a) it will decide whether or not to submit a Tender on the basis of its own due diligence, investigations, inquiries, advice and knowledge;
- (b) it should independently satisfy itself as to the accuracy of the Data Pack, and conduct its own enquires, investigations, analysis and appraisal of, and should seek appropriate professional advice about, the Data Pack, including about the Services, and any assumptions, uncertainties and contingencies which may affect Health's future business;
- (c) the Data Pack does not, and does not purport to, contain all of the information that a Tenderer might desire or require to assess the opportunity to provide, or the scope of, the Services;
- (d) there may be material changes in the affairs of Health which alter or affect the accuracy of the information contained in the Data Pack;
- (e) it has had or will have the opportunity to clarify the Data Pack in relation to the RFT;
- (f) the terms of the Data Pack Protocol and the Transaction Website Terms and Conditions provided to the Tenderer bind the Tenderer and Tenderer Personnel, and the Tenderer agrees to abide by the terms of the Data Pack Protocol and the Transaction Website Terms and Conditions as a condition of being given access to the Data Pack;
- (g) it may only use the Data Pack for the purpose of deciding whether or not to submit, and for preparing, a Tender for the Services. Use of the Data Pack for any other purpose may be an offence under the Criminal Code Act 1995 (Cth) and may also result in the Tenderer being disqualified from the RFT Process;
- (h) to facilitate the Tenderer's access to, and to improve and monitor use of, the Transaction Website, the Tenderer may provide personal information, and Health and its Personnel may collect information about the Tenderer's use of and access to the Transaction Website and the information available on them. The use of, and the Tenderer's access to, such information will be in accordance with Health's privacy policy;
- (i) there may be certain Transaction Websites, Documents and Data Rooms which it is not able to access or use for the purpose of responding to the RFT;
- (j) it will ensure that it does not access any Transaction Website, Document, Data Room or information using the Transaction Website which it is not entitled to access;
- (k) it will not use or attempt to gain access to the Transaction Website using software that Health or its Personnel may declare as unsuitable or any screen capture utilities programs;
- (l) access to and use of the Transaction Website is subject to the compatibility of its computer and communication system and software with those used in relation to the Transaction Website; and

(m) it will not introduce any form of Harmful Code into the Transaction Website.

#### **45.13 Indemnity and Release**

45.13.1 The Tenderer will indemnify Health in respect of any Loss suffered by Health arising out of or in connection with a breach of the obligations of the Tenderer under this Deed.

45.13.2 Without limiting clause 45.13.1, the Tenderer will indemnify Health in respect of any Loss incurred by it which is caused by or arises out of any failure (whether negligent or otherwise) by Authorised Persons, or any other person, to whom the Tenderer has disclosed Health Confidential Information to keep that information confidential.

45.13.3 The Tenderer waives and releases Health and Health Personnel from (to the maximum extent permitted by law) any and all claims or rights of action in relation to the operation of the Data Pack and provision or failure to provide information in relation to the RFT, Health and the Services.

#### **45.14 No Exclusion of Law or Equity**

45.14.1 This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Health Confidential Information.

#### **45.15 Acknowledgement**

45.15.1 The Tenderer acknowledges that failure to comply with this Deed may cause harm to Health for which monetary damages would be inadequate, and that in addition to any other remedies available, Health is entitled to specific performance or an injunction or other equitable relief as a remedy for any breach or threatened breach of this Deed by the Tenderer.

#### **45.16 Waiver**

45.16.1 No waiver by Health of one breach of any obligation or provision herein contained or implied shall operate as a waiver of another breach of the same or of any other obligation or provision contained or implied in this Deed.

#### **45.17 Variation**

45.17.1 None of the obligations of the Tenderer under this Deed are to be varied, waived, discharged or released unless agreed in writing by Health.

#### **45.18 Remedies Cumulative**

45.18.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.

#### **45.19 Conflict of interest**

45.19.1 The Tenderer warrants that before entering into this Deed it has disclosed to Health all the past, current and expected interests of the Tenderer and its Authorised Persons which may conflict with

or restrict the Tenderer in meeting the obligations under this Deed in favour of Health fairly and independently.

45.19.2 The Tenderer shall not, and shall ensure that its Authorised Persons do not, during the course of this Deed, engage in any activity or obtain any interest likely to conflict with or restrict the Tenderer in meeting the obligations under this Deed in favour of Health fairly and independently.

#### **45.20 Notices**

45.20.1 Any notice given by one party (Notifier) to another party (Receiver) under this Deed is only effective if it is given in writing by the Notifier's Representative (or any superior officer to the Notifier's Representative) and addressed to the Receiver's Representative at the address specified below or as otherwise notified by the Receiver.

45.20.2 A notice is to be:

- (a) signed by the person giving the notice and delivered by hand; or
- (b) signed by the person giving the notice and sent by pre-paid post; or
- (c) transmitted by the person giving the notice by facsimile transmission.

45.20.3 A notice is deemed effective if:

- (a) delivered by hand - upon delivery to the relevant address;
- (b) sent by post - upon delivery to the relevant address; or
- (c) transmitted by facsimile - upon actual receipt by the addressee.

45.20.4 A notice received:

- (a) after 5:00pm on a Business Day; or
- (b) on a day that is not a Business Day,

is deemed to be effected on the next Business Day.

45.20.5 Health's address for service of notices is specified in Item C of Schedule 1 to this Deed.

45.20.6 The Tenderer's address for service of notices is specified in Item D of Schedule 1 to this Deed.

#### **45.21 Governing Law**

45.21.1 This Deed is subject to and is to be construed in accordance with the laws in force in the Australian Capital Territory.

45.21.2 The courts of the Australian Capital Territory will have exclusive jurisdiction to decide any matter arising out of this Deed.

**45.22 Survival**

45.22.1 This Deed shall survive for as long as the Health Confidential Information remains confidential.

# SCHEDULE 1

## Item A Authorised Persons

**Authorised Persons** in relation to the Tenderer means the natural persons set out below: **List here all persons that you propose as the Nominated Representative or Authorised Person in accordance with the Data Pack Protocol, you may update this list by notifying Health in writing during the RFT Process (see Schedule 2).**

a.

b.

c.

d.

and any other natural persons subsequently notified to and approved by Health explicitly as Authorised Persons in accordance with clause 45.10.2.

## Item B Representative

**Representative** means:

- (a) in relation to Health – **[insert]**, or any substitute notified to the Tenderer;
- (b) **in relation to the Tenderer - Insert Name of Tenderer**, telephone **- Insert Telephone No**, or any substitute notified to Health.

## Item C Health's Address

Health's address for service of notices is as follows:

**physical address:** **Health to insert**

**postal address:** **Health to insert**

**email:** **enter group mailbox**

## Item D Tenderer's Address

The Tenderer's address for service of notices is as follows:

**physical address:** **Tenderer to insert**

**postal address:**

**email:**

**EXECUTED AS A DEED POLL**

**SIGNED SEALED AND DELIVERED**

on behalf of **^insert Tenderer's name^**

by **^insert name of signatory^**

**^insert position of signatory^**

.....  
Signature

in the presence of:

**^insert name of witness^**

**^insert position of witness^**

.....  
Signature of witness

Or, if the Tenderer is a corporation under the *Corporations Act 2001 (Cth)*:

**Executed** by **^insert company's name^** in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of company secretary/director



## SCHEDULE 2 - DATA PACK PROTOCOL

### 1 Introduction

#### 1.1 Overview

- 1.1.1 This data pack protocol (**Data Pack Protocol**) summarises the procedures by which the Department of Health (**Health**) allows access by the Tenderer or Tenderer and its advisors (**Receiving Party**), through the Authorised Persons listed in Annexure A, to the Data Pack by way of a data rooms (**Data Room**), including Data Rooms (**On-Line Data Rooms**) hosted on a transaction website (**Transaction Website**).
- 1.1.2 The Receiving Party will be given access to the Transaction Website including Data Room for the purposes of conducting due diligence in accordance with this Data Pack Protocol.
- 1.1.3 Information and Documents provided to the Receiving Party in relation to Services are subject to the terms of the RFT and Confidentiality Deed in relation to Health Confidential Information signed by the Tenderer in relation to the RFT and Data Pack (**Confidentiality Deed**). Capitalised terms which are not defined in this Document have the same meaning as in the Confidentiality Deed.
- 1.1.4 The Receiving Party:
- (a) agrees to; and
  - (b) agrees to ensure each Authorised Person with which it is affiliated, agrees to, accept and abide by the terms of this Data Pack Protocol and the Transaction Website Terms and Conditions, displayed when first using the Transaction Website, and the obligations contained in the Confidentiality Deed as if it were a party to that agreement, in consideration for being given access to the Data Pack.
- 1.1.5 As between the parties, the Data Pack is the proprietary and Health Confidential Information and must be treated by each Receiving Party in accordance with the Confidentiality Deed.

#### 1.2 Contact Points

- 1.2.1 All communications in relation to the RFT Process, the Transaction Website, Data Pack or due diligence should be referred to Health in accordance with the RFT.

### 2 Transaction Website

#### 2.1 Overview of Transaction Website

- 2.1.1 The Transaction Website will have a unique url, username and password for each Authorised Person.

- 2.1.2 Health may add Documents to a Data Room, or remove Documents from a Data Room, during the course of the RFT Process, in which case a revised or supplementary index will be distributed or posted on the Transaction Website.
- 2.1.3 The Nominated Representative referred to in section 2.2.2 will receive emails to notify them of any updates to a Transaction Website, including updated and supplemental indexes and notices that new Documents have been posted to that Transaction Website.

## **2.2 Access to the Transaction Website**

2.2.1 The following general procedures and protocols will apply to access to the Transaction Website.

2.2.2 Before access will be provided to the Transaction Website:

- (a) the Receiving Party must provide a completed and signed original copy of the Confidentiality Deed and Annexure A - Authorised Persons, providing the name, email address, and contact details of the one person (the Nominated Representative) who will be the primary contact for Health in managing access to the Transaction Website and Data Room and all related matters;
- (b) the Nominated Representative should, in the 'Authorised Persons' section of Annexure A provided to Health in accordance with Section 2.2.2(a) above, list each person the Receiving Party wishes to be granted access to the Transaction Website (in addition to the Nominated Representative). This list should include the person's full name, company name, job title, department, email address and phone number. Subject to Health approving access for those persons to the Transaction Website, each approved person (Authorised Persons) will receive their username and password via an automatic email message for the Transaction Website to which they will have access. The Receiving Party may request access to relevant Transaction Website for additional persons during the course of its due diligence; and
- (c) once the Authorised Person receives their username and password, they will be required to accept the Transaction Website Terms and Conditions, displayed when first using a Transaction Website, to gain any further access to that Transaction Website.

Users are required to keep details of their Authorised Persons up to date.

2.2.3 A Nominated Representative is automatically an Authorised Person.

2.2.4 Usernames and passwords are personal and must not be provided to any other person, including other members of the Receiving Party's team. Misuse of a username or password may result in the suspension of Transaction Website access, the exclusion of a Tenderer from evaluation as part of the RFT Process and may constitute an offence against the Criminal Code Act 1995 (Cth).

2.2.5 From the time that the Receiving Party is advised that a Transaction Website is available, access to the Transaction Website will generally be available 24 hours each day, until such time as Health determines that access is no longer required to facilitate participation in the RFT.

- 2.2.6 Documents must not be viewed by or distributed to anyone who is not an Authorised Person and must be used strictly in accordance with the Confidentiality Deed.
- 2.2.7 Receiving Parties must inform themselves concerning all security measures and other aspects of the Transaction Website's technical environment. Receiving Parties must make their own assessment of the Transaction Website prior to using it for any matter related to the RFT Process. No responsibility will be accepted by Health arising in respect of any use or attempted use by any party of the Transaction Website.

### **3 Terms of Use**

#### **3.1 Confidentiality Deed and Transaction Website Terms and Conditions**

- 3.1.1 The Transaction Website, Data Room and Data Pack are made available pursuant to this Data Pack Protocol and strictly subject to the terms and conditions of the Confidentiality Deed and the Transaction Website Terms and Conditions, displayed when first using a Transaction Website, and annexed to this Data Pack Protocol as Annexure B - Transaction Website Terms and Conditions.

#### **3.2 Health Confidential Information**

- 3.2.1 Health reserves the right to blank out Health Confidential Information or sensitive commercial details from service contracts and consultant's agreements made available in a Data Room.

### **4 Amendment**

#### **4.1 Amendment of Data Pack Protocol**

- 4.1.1 Health may at any time at its absolute discretion amend the terms of this Data Pack Protocol by notice to the Receiving Party and such alteration will be effective from the time such notice is provided.

#### **4.2 Notice of Amendment**

- 4.2.1 Notice of amendment to the terms of this Data Pack Protocol may be given in any manner.

**Annexure A - Authorised Persons**

*Nominated Representative to return this Document when completed to [insert]*

<b>Name of Receiving Party:</b>
<b>Nominated Representative:</b>

**Authorised Persons**

Please list the Authorised Persons who will be provided access to the Transaction Website listed above.

Salutation	First Name	Last Name	Mobile Phone	Email	Job Title	Company

**Signature of person authorised to accept the Data Pack Protocol and the Transaction Website Terms and Conditions on behalf of Receiving Party:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

## Annexure B - Transaction Website Terms and Conditions

1. To use the Transaction Website, including the Data Pack provided by Health through the Transaction Website, please confirm that you accept and agree to be bound by these terms and conditions by clicking on the "I Agree" button at the bottom of this screen. If you do not accept these terms and conditions, please select the "Do Not Agree" button, in which case, you will not be able to access the Transaction Website.
2. The Transaction Website is provided for the sole use of Tenderers in deciding whether or not to lodge a Tender to the RFT, and in preparing that Tender.
3. Without limiting the Confidentiality Deed, the Authorised Person (as defined in the Data Pack Protocol), and the Tenderer with which that Authorised Person is affiliated, **(you, your)** acknowledge and agree that Health and its officers, employees, contractors, advisers, consultants and agents **(we, us or our)**:
  - (a) are not responsible for ensuring that any Document in the Data Pack is accurate, current, reliable, suitable or complete, and are not liable for any failure to do so;
  - (b) do not represent that we apply any expertise on behalf of you or any other interested party in connection with the RFT or Data Pack;
  - (c) make no express or implied representation or warranty that any estimate or forecast contained in the Data Pack will be achieved or that any statement as to future matters will prove correct;
  - (d) are not under any duty at any time to disclose or update any fact, matter, or circumstance concerning Health, the Services or any other matter;
  - (e) do not represent that access to the Transaction Website will always be available;
  - (f) are not responsible for the operation of any computer system, communication system, software or ancillary equipment used to access the Transaction Website;
  - (g) are not responsible for delays, errors, inaccuracies, or omissions due to a failure or incompatibility in or between a computer system, communication system, software, the Transaction Website or ancillary equipment, or any other circumstances beyond our direct control;
  - (h) may at any time choose to cease providing you with access to the Transaction Website;
  - (i) are not responsible for any improper access to information; and
  - (j) expressly disclaim, and do not accept or assume, any and all:
    - (i) liability or responsibility for any Loss arising from the Data Pack (including, without limitation, where arising through negligence or because of errors in or omissions from the Data Pack);
    - (ii) without limiting clause 3.j.i, liability or responsibility for any Loss suffered by any person as a result of that person or any other person placing any reliance on the Data Pack;
    - (iii) liability or responsibility for Loss arising from delays, errors, inaccuracies, or omissions due to a failure or incompatibility in or between a computer system, communication system or software, the Transaction Website or ancillary equipment, or any other circumstances beyond their direct control; and
    - (iv) duties to any interested person, including any fiduciary duty or duty of disclosure, except so far as our liability under any statute cannot be excluded.

4. You acknowledge and agree that:
- (a) you will decide whether or not to submit a Tender on the basis of your own due diligence, investigations, inquiries, advice and knowledge;
  - (k) you should independently satisfy yourself as to the accuracy of the Data Pack, and conduct your own enquires, investigations, analysis and appraisal of, and should seek appropriate professional advice about, the Data Pack, including about the Services, and any assumptions, uncertainties and contingencies which may affect Health's future business;
  - (l) the RFT and Health Confidential Information do not, and do not purport to, contain all of the information that you might desire or require to assess the opportunity to provide, or the scope of, the Services. Among other things, the Transaction Website and the RFT may contain further information;
  - (m) there may be material changes in the affairs of Health which alter or affect the accuracy of the information contained in the RFT or Data Pack;
  - (n) you have had or will have the opportunity to clarify the Data Pack in relation to the RFT;
  - (o) the terms of the Data Pack Protocol and the Transaction Website Terms and Conditions provided to you bind you and your Personnel, and you agree to abide by the terms of the Data Pack Protocol and the Transaction Website Terms and Conditions as a condition of being given access to the Transaction Website;
  - (p) you may only use the Transaction Website for the purpose of deciding whether or not to submit, and for preparing, a Tender for the Services. Use of the Transaction Website for any other purpose may be an offence under the Criminal Code Act 1995 (Cth) and may result in the Tenderer with which you are affiliated being disqualified from any RFT Process;
  - (q) to facilitate your access to, and to improve and monitor use of, the Transaction Website, you may provide personal information, and we may collect information about your use of and access to the Transaction Website and the information available on it. Our use of, and your access to, such information will be in accordance with Health's privacy policy;
  - (r) there may be a certain Transaction Website, Document and Data Room which you are not able to access or use for the purpose of responding to the RFT;
  - (s) you will ensure that you do not access any Transaction Website, Document, Data Room or information using the Transaction Website which you are not entitled to access;
  - (t) you will not use or attempt to gain access to the Transaction Website using software that we may declare as unsuitable or any screen capture utilities programs;
  - (u) your access to and use of the Transaction Website is subject to the compatibility of your computer and communication system and software with those used in relation to the Transaction Website; and
  - (v) you will not introduce any form of Harmful Code into the Transaction Website.
5. Your username and password are personal to you. You agree to:
- (b) protect your username and password from being lost, stolen or disclosed;
  - (w) not record or provide your username or password electronically or physically in a manner that will allow someone else to obtain or use them; and
  - (x) tell us as soon as you think or suspect that someone knows your username or password or they have been lost or stolen.
6. Subject to the terms of the Deed of Confidentiality which you signed and returned to us in relation to the RFT Process in which you are participating (Confidentiality Deed), which governs your access to or use of the Data Pack contained in the Transaction Website, you agree not to give, show, amend or distribute any Documents or information obtained by or made available to you or another person, in whatever form, through or by the Transaction Website without our prior written consent.

7. Capitalised words which are not defined in these terms and conditions have the same meaning as in the Confidentiality Deed, unless otherwise specified.



# ATTACHMENT C - EVALUATION PROCESS AND EVALUATION CRITERIA

## THE EVALUATION PROCESS

### 1 Registration of Tenders

- 4.2.2 As soon as practicable after the Closing Time, Tenders will be downloaded from the relevant section of AusTender.
- 4.2.3 Tenders received before the Closing Time will be registered on a procurement register.
- 4.2.4 Any Tenders received after the Closing Time and any disputes or issues regarding receipt of Tenders will be managed in accordance with the terms of Part 1 of this RFT.

### 2 Stage 1 – Compliance Assessment

- 2.1.1 The Tenderer will be taken to agree and comply with all parts and provisions of this RFT (including the Services Agreement) unless the Tenderer provides detail of the extent of and reasons for any non-compliance. Health will screen Tenders to identify any that:
- (a) do not comply with a Condition for Participation; or
  - (b) do not comply with any Minimum Content and Format Requirements.
- 2.1.2 Health will consider whether any Tenders identified in this stage may contain Unintentional Errors of Form, and whether any clarification or correction should be requested from the Tenderer in accordance with the Terms and Conditions.
- 2.1.3 Health may exclude any Tender from further consideration which has not complied with the Conditions for Participation and Minimum Content and Format Requirements (taking into account any permitted clarification or correction provided by the Tenderer). The Tender may be excluded from consideration if it is incomplete or clearly not competitive. However, Health may at its sole and absolute discretion seek clarification from the Tenderer in accordance with clause 26.
- 2.1.4 Tenderers excluded at this Stage 1 will be notified at the earliest opportunity of their exclusion, including reasons for such exclusion.
- 2.1.5 Screening is an ongoing process and Health may decide during any stage of the Evaluation Process that a Tender falls within the categories described in this stage and should therefore be excluded from further consideration.

### 3 Stage 2 - Evaluation Against the Evaluation Criteria

- 3.1.1 In this stage, Health will:
- (a) consider all relevant information for each Evaluation Criterion and conduct an assessment against each Evaluation Criterion; and
  - (b) conduct an analysis of the risks associated with each Tender and the Tenderer.

- 3.1.2 Tenderers should provide enough detail in their Tender against each Evaluation Criterion to ensure that Health has a clear understanding of their offer and that all requirements have been addressed. Unclear or contradictory statements may result in a poor assessment.
- 3.1.3 At any stage of the Evaluation Process, Health may decide to conduct:
- (a) site visits, presentations by, or interviews with, one or more Tenderers (see section 27 of Part 1 of this RFT);
  - (b) a detailed risk clarification process as described below;
  - (c) a collaborative dialogue process as described below;
  - (d) referee or reference checks and/or discussions with other persons about the Tenderer (see section 28.1.3(d) of Part 1 of this RFT); and/or
  - (e) independent enquiries about any matters that may be relevant to the evaluation of a Tender (see section 28.1.3(c) of Part 1 of this RFT).
- 3.1.4 The options in Attachment C section 3.1.3 may be conducted with one or more Tenderers and may not be conducted with all Tenderers.
- 3.1.5 At any stage of the Evaluation Process, Health may:
- (a) seek assistance from a financial advisor to undertake its assessment of the costs and prices contained in Tenders;
  - (b) seek assistance from a legal, probity or business advisor as it considers appropriate;
  - (c) adjust and “normalise” costs and prices if required (see section 28.1.3(e) of Part 1 of this RFT);
  - (d) ask all Tenderers (or, if Tenderers have been short-listed, the short-listed Tenderers) to submit new or revised pricing based on an alternative methodology;
  - (e) seek clarification on any pricing matters and to seek a 'Best and Final Offer' in respect of pricing from each Tenderer (or, if Tenderers have been short-listed, short-listed Tenderers) if it is deemed necessary to determine a clear value for money outcome for the Commonwealth; and/or
  - (f) in its assessment of any of the Evaluation Criteria, consider the extent to which a Tenderer is likely to meet the Outcomes.
- 3.1.6 At any time during the Stage 2 evaluation or after its completion, Health may short-list Tenders for progression within that stage or to further stages of the Evaluation Process. Health in its sole and absolute discretion will determine the number of Tenders on any short-list. Health may add to or reduce a short-list at any time.
- 3.1.7 Health will, in light of the all information received, apply and, where applicable may revise scores or rankings for Tenders in respect of the Evaluation Criteria.

### **3.2 Detailed Clarification Process**

3.2.1 Without limiting Health's rights under section 26 of Part 1 of this RFT, if at any stage of the Evaluation Process, Health requires clarification of any issue in connection with a particular Tender, Health may:

- (a) enter into discussions with the Tenderer about the issue requiring clarification; and/or
- (b) permit the Tenderer to revise or clarify any aspect of their Tender based on further information or feedback in relation to the clarification sought.

3.2.2 Health will ensure that its rights under Attachment C section 3.2.1 are exercised in a fair and equitable way in respect of all Tenderers.

### **3.3 Collaborative Dialogue and/or Negotiation Process**

3.3.1 At any stage of the Evaluation Process, Health may decide to conduct a collaborative dialogue and/or negotiation process in respect of:

- (a) all or any Tenderers;
- (b) all or any short-listed Tenderers; or
- (c) a single Tenderer.

3.3.2 Without limiting any other right in this RFT, Health may decide not to invite a Tenderer to participate in any collaborative dialogue and/or negotiation process for any reason (for example, if a Tenderer is unlikely to be successful, so it is not put to unnecessary effort or expense of participating in a collaborative dialogue and/or negotiation process).

3.3.3 If Health decides to conduct a collaborative dialogue and/or negotiation process:

- (a) affected Tenderers will be informed and given details of what steps are proposed, what involvement is required of the Tenderer, the timing involved and the rules that will apply to the collaborative dialogue process (for example, to ensure probity is maintained during the process and confidentiality of information is appropriately protected);
- (b) Tenderers who have been invited to participate in the process should prepare the deliverables requested of them and ensure availability to attend workshops or other discussions about their Tender; and
- (c) Health will utilise the information provided in the process in its evaluation of Tenders in accordance with this RFT.

3.3.4 For the purpose of this Attachment C section 3.3, Tenderers may be asked to:

- (a) revise or clarify any aspect of their Tender based on further information or feedback on their Tenders provided to them;
- (b) participate in due diligence exercises;

- (c) participate in one or more face-to-face session(s) with Health; and
- (d) participate in negotiation.

## **4 Value for Money**

4.1.1 Health will determine overall best value for money represented by the Tenders having regard to the Outcomes. Value for money is the core principle governing Health's procurement in accordance with the Commonwealth Procurement Rules and will be assessed taking into account the following:

- (a) scores or rankings for Tenders in respect of the Evaluation Criteria;
- (b) cost represented by the assessment of price; and
- (c) an analysis of the risks associated with each Tender and the Tenderer.

4.1.2 In assessing value for money for any alternative approach, Health, having regard to the Outcomes, may also consider:

- (a) the way(s) in which any alternative approach or solution is more beneficial to the Commonwealth (even if that Tender was given low or lower scores on one or more Evaluation Criteria);
- (b) other relevant information provided about that alternative approach or solution in accordance with section 23 of Part 1 of this RFT; and
- (c) any other matter that Health considers relevant to the assessment of the value for money offered by that alternative solution or approach.

4.1.3 At the end of Stage 2, the Tenderer(s) representing overall best value for money will be identified as preferred Tenderer(s).

## **5 Stage 3 - Contract Negotiation and Finalisation**

5.1.1 Health will enter into discussions with either:

- (a) the preferred Tenderer; or
- (b) the preferred Tenderer and one or more next ranked Tenderers (as Health considers appropriate),

to finalise the Services Agreement (see sections 29 and 30 of Part 1 of this RFT).

5.1.2 Health may cease negotiations with any Tenderer, and commence or continue negotiations with any other Tenderer, if Health considers it is unlikely it will be able to agree an acceptable contractual arrangement with that Tenderer.

## **6 Alternative Approaches**

- 6.1.1 Alternative approaches, if any, submitted in accordance with section 23 of Part 1 of this RFT, will be evaluated, to the extent possible, in accordance with the process in this Attachment C. However, Tenderers should ensure that any alternative approaches submitted as part of their Tender meet the requirements of section 23.
- 6.1.2 Health reserves the rights in Attachment C and elsewhere in this RFT in respect of alternative approaches and, as stated in section 23.1.4 of Part 1, will consider alternative approaches proposed by a Tenderer at its sole and absolute discretion. Health has no obligation to consider any alternative approaches.

## **7 Exclusion of Tenders**

- 7.1.1 Health may, at any time, also exclude a Tender from further consideration where, in Health's reasonable opinion, the Tender:

- (a) does not materially provide for all of the Services;
- (b) is materially incomplete;
- (c) the proposed pricing in the Tender is materially uncertain; or
- (d) is clearly uncompetitive when compared with the other Tenders received,

that it is likely to be evaluated so as to represent little or no value for money for the Commonwealth. The Evaluation Committee may, however, decide to consider these Tenders and seek further clarification from the Tenderer if it believes that this is appropriate.

- 7.1.2 Health may also exclude a Tender from further consideration if:

- (a) the Tenderer is bankrupt, insolvent or under administration, has made a false declaration, or has been significantly deficient in performance of any substantive requirement or obligation under a prior contract or under Australian law; or
- (b) another provision of this RFT allows for that exclusion from further consideration.

- 7.1.3 Screening is an ongoing process and Health may decide during any stage of the Evaluation Process that a Tender falls within the categories described in this section and should therefore be excluded from further consideration.

## **8 Parallel Stages**

- 8.1.1 Health may conduct any of the stages set out in Attachment C in parallel.

## 9 Evaluation Criteria

9.1.1 The Evaluation Criteria are not listed in any order of importance and Health reserves the right to attribute weightings to the criteria.

9.1.2 Tenders will be evaluated against the following Evaluation Criteria:

Evaluation Criteria	Elements Considered in the Assessment
<p style="text-align: center;"><b>The Tenderer's Demonstrated Capability to Deliver the Outcomes</b></p> <p style="text-align: center;">(evidenced based assessment that takes account of the Tenderer's proposed approach and solutions, demonstrated track record (including relevant references) and capabilities, resourcing, the extent of compliance with requirements and any risks associated with the Tenderer's proposal)</p>	<ol style="list-style-type: none"> <li>1. <b>Services</b> – demonstrated ability to deliver the Services ensuring the Outcomes are met, including:               <ol style="list-style-type: none"> <li>a. Implementation of an ICT capability to deliver the National Cancer Screening Register;</li> <li>b. Transition of existing registers to the Register;</li> <li>c. end to end ICT Services to maintain and support the Register;</li> <li>d. end to end Operator Services required to enable and facilitate the Australian Government administered and State and Territory based National Cancer Screening Programs;</li> <li>e. ensuring that the Services will be accessible, reliable and available;</li> <li>f. achievement of Service Levels Measures; and</li> <li>g. compliance with the Functional and Non-Functional Requirements.</li> </ol> </li> <li>2. <b>User Satisfaction</b> – demonstrated ability to provide and maintain Services with which End Users are satisfied, including:               <ol style="list-style-type: none"> <li>a. delivery of the Services to End Users in a consistent manner;</li> <li>b. responsiveness to End User requests;</li> <li>c. timely information enabling improved clinical decision making;</li> <li>d. understanding of the National Cancer Screening Programs and of population based cancer screening programs;</li> <li>e. End Users receive the right response the first time;</li> <li>f. availability of information supported by quality processes;</li> <li>g. quality and relevant experience of personnel; and</li> <li>h. ease of use and efficiency of access to the Register, Register ICT Services and the Operator Services.</li> </ol> </li> <li>3. <b>Data Quality</b> – demonstrated ability to deliver timely, accurate, reliable data and reporting on National Cancer Screening Programs, including:               <ol style="list-style-type: none"> <li>a. collection, storage, availability, analysis, reporting security and confidentiality of the Register data and historical data;</li> <li>b. ongoing review and assessment of data capture processes;</li> <li>c. continuous improvement activities associated with data capture, quality and reporting;</li> <li>d. statistical data analysis and reporting capability;</li> <li>e. understanding of the National Cancer Screening Program and a proven ability to translate information into Program relevant recommendations; and</li> <li>f. timely and accurate data and data analysis that facilitates improved clinical, policy and Participant decision making.</li> </ol> </li> <li>4. <b>Value</b> – demonstrated ability to continually improve the value of the Services over time, including:               <ol style="list-style-type: none"> <li>a. the extent to which the Services contribute to improving value to National Cancer Screening Programs;</li> </ol> </li> </ol>

	<ul style="list-style-type: none"> <li>b. annual quality assurance and quality improvement plans ensuring data and operational quality;</li> <li>c. expertise in delivering improvements which increase performance and reduce overall cost; and</li> <li>d. continuous improvement through ongoing analysis, review and monitoring of the Services to increase participation rates of the Program and improve National Cancer Screening Program outcomes.</li> </ul> <p>5. <b>Strategic Partnership</b> – demonstrated ability to build and maintain strategic relationships based on trust, including:</p> <ul style="list-style-type: none"> <li>a. understanding of how to deliver in an outcomes based contract arrangement, including of the value of the relationship between Health and the Service Provider;</li> <li>b. anticipate and/or respond promptly to support internal and external driven changes affecting the National Cancer Screening Program policies; and</li> <li>c. innovative approaches to meet Health and Stakeholder current and emerging business needs.</li> </ul>
<p><b>The Tenderer’s Pricing</b></p> <p>(comparative financial analysis)</p>	<p>Assessment of the Tenderer’s total Charges for the Services on a whole of life basis, including the cost of Implementation and Transition and Charges for ongoing Services.</p> <p><b>Note to Tenderer:</b> The assessment may also consider, as appropriate:</p> <ul style="list-style-type: none"> <li>a. Implementation costs associated with implementing the Register;</li> <li>b. Transition costs associated with transitioning to the Register and Operator Services;</li> <li>c. the impact of any scope, approach and solution variances;</li> <li>d. the impact of any pricing constraints or caveats identified in relation to the Tenderer’s proposal;</li> <li>e. the impact of any risks to Health or key Stakeholders related to the Tender response;</li> <li>f. the impact of potential material changes to the consumption of the Services or business profile; and</li> <li>g. any other financial impacts that may arise from engaging the Tenderer to deliver the Services.</li> </ul>
<p><b>The Tenderer’s Commercial Viability and Integrity</b></p> <p>(evidence based risk assessment that takes account of Tender response information and any independent verification undertaken by Health)</p>	<p>Assessment of the Tenderer’s commercial viability and integrity, including in relation to:</p> <ul style="list-style-type: none"> <li>a. the financial and market viability of the Tenderer;</li> <li>a. the Tenderer’s commitment to the market, including investment in contemporary capabilities that are relevant to the Services;</li> <li>b. the extent of compliance with the draft form of Services Agreement; and</li> <li>c. corporate ethics and social responsibility.</li> </ul>