

AusCheck Answers to Questions on Notice supplied by the Senate Legal and Constitutional Affairs Committee

1. For each of the Maritime Security Identification Card and Aviation Security Identification Card systems:

A) Provide a sample application form and instructions (applicable after 1 July 2007)

There are no plans to produce a physical hard-copy application form. AusCheck, in conjunction with Change Corporation Pty Ltd, is currently developing an electronic application website for Issuing Bodies to access.

The web-site is designed to be simple to operate and requires no additional instruction beyond the simple on-screen prompts. AusCheck has engaged in extensive stakeholder consultations with the IT areas of ASIC and MSIC Issuing Bodies to ensure that the AusCheck IT system will be interoperable with the Issuing Bodies' existing systems.

B) List of the supporting documentation required for an application (applicable after 1 July 2007)

AusCheck will not receive any documentation from applicants for ASICs or MSICs in order to process requests for background checks.

Individuals who wish to apply for an ASIC or MSIC must apply to an authorised ASIC or MSIC Issuing Body and cannot directly apply to AusCheck.

It is the Issuing Body that then applies for background checks based on information supplied by the individual to the Issuing Body. AusCheck will receive and record the Issuing Body's confirmation that they have sighted the required documentation and are satisfied that the documentation meets the requirements set down in the *Aviation Transport Security Regulations 2005* and the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

The documentation typically sighted by Issuing Bodies consists of:

- Identification documents
- The consent of the individual (if in paper form)
- Authentication of foreign identity documents (if required)
- Proof of operational need (if required in paper form)

C) Detail of what processes are currently in place (e.g. for the storage/retention of applications, the details of any databases etc.)

The Department of Transport and Regional Services (DOTARS) is the portfolio with responsibility for the issues raised in this question. After consulting with AusCheck, DOTARS has agreed to address this question in their submission to the Committee.

D) Details of the provisions of the relevant Act and regulations which cover the application and background-checking processes.

DOTARS is the portfolio with responsibility for the issues raised in this question. After consulting with AusCheck, DOTARS has agreed to address this question in their submission to the Committee.

2. Details of the process for building the AusCheck database, in particular:

The answers below relate only to the development of the AusCheck IT System.

This covers all software development and licensing costs for the business application. Software development covers design, build and implementation of databases, websites and system-to-system interfaces. Licensing costs are third-party products required for the system to operate, and include Windows Server 2003, BizTalk and K2.NET.

The answers below do not include hardware costs, network costs, travel expenses, or the Department's own costs such as managing contracts, defining requirements, and consulting with industry and government stakeholders.

All values are GST-exclusive.

A) Timeline (date work to commence or commenced and expected completion date)

Detailed planning for the Open Tender process commenced in March 2006. The Department called for Expressions of Interest in May 2006. Responses from the market were evaluated in June 2006. Change Corporation Pty Ltd was engaged to deliver a detailed design ("Planning and Envisioning Phase"). The design and costing was reviewed, and Change Corporation was engaged to deliver the AusCheck system ("Developing, Stabilizing and Implementing Phase").

The system will be delivered in April 2007.

For the "Planning and Envisioning" contract:

- Contract was entered into on 1 /8/2006.
- Delivery date was on 15/9/2006.

For the "Developing, Stabilising and Implementing" contract:

- Contract was entered into on 30/11/2006.
- Expected delivery date is on 30/4/2007.
- Expected contract completion date (expiration of warranty period) is on 31/7/2007.

B) Procurement methods

AusCheck utilised an 'open tender' procurement method. The Department called for Expressions of Interest in May 2006. Responses from the market were evaluated in June 2006.

- **If an RFT has been issued, provide a copy.**
See Attached, Request for Expressions of Interest, Commercially Proven Software for Background Checking.
- **ii. If an RFT is to be issued provide the intended release date**
N/A.

C) Expected cost

The expected cost is \$2.5 million.

D) Whether any contractors have been engaged, and if so detail:

- **i. The name of the contractor**
Change Corporation Pty Ltd.
- **ii. The work engaged**
For the "Planning and Envisioning" contract:
 - to define detailed plans to build the AusCheck IT system, including technical planning and high-level design activities.
 For the "Developing, Stabilising and Implementing" contract:
 - to build and implement the AusCheck IT System.
- **iii. The contract reference or ID number**
For the "Planning and Envisioning" contract:
 - 06/18669.
 For the "Developing, Stabilising and Implementing" contract:
 - 06/21690.
- **iv. The value of the contract**
For the "Planning and Envisioning" contract:
 - Fixed price \$204,360.00.

For the "Developing, Stabilising and Implementing" contract, most system components are being purchased under a fixed-price engagement.

There were some components that could not be specified in detail at the time the contract was entered into. Rather than pay a substantial "risk premium" for these components, the Department elected to purchase these components on a "time and materials" basis. Also, industry consultation is being conducted as the system is being developed. Any significant changes that are identified during industry consultation are made on a "time and materials" basis.

- Fixed Price components \$1,856,270.62.
- Total cost of all components not expected to exceed \$2,350,000.00.

3. Has the Attorney-General's Department been contacted or itself contacted any other departments or agencies about introducing 'subsequent schemes'?

An officer from AusCheck within the Attorney General's Department has spoken to officers from the Department of Health and Aging (DHA) regarding the announcement by DHA of the planned introduction of a background checking scheme for aged care workers. One of the responsibilities of the AusCheck implementation team is to research new and proposed background checking schemes to examine their effectiveness and to incorporate the experience of these schemes into the development of the AusCheck system.

Does the Attorney-General's Department have any 'subsequent schemes' under consideration?

No. There are no subsequent schemes under consideration.

If yes to either, please detail

N/A

A) The agency or department administering the scheme

B) Details of the scheme, including:

- **i. title**
- **ii. date of inception**
- **iii. when it is expected to be incorporated into AusCheck**
- **iv. description the scheme's purpose**
- **v. details of the application process**
- **vi. details of the background check**

4. Has the Attorney-General's Department considered, or been asked by another Department/ Agency to consider, the types of information may be included as 'other matters' to be prescribed in regulations for the purposes of the definition of 'background check' in section 5 of the Bill?

The Attorney-General's Department (AGD) has developed the AusCheck Bill to facilitate coordination of background checks currently required under the *Aviation Transport Security Regulations* and the *Maritime Transport and Offshore Facilities Security Regulations* for the purpose of issuing Aviation Security Identification Cards (ASICs) and Maritime Security Identification Cards (MSICs).

In the course of consultation with the Department of Transport and Regional Services (DOTARS), the agency with continuing policy responsibility for *Aviation Transport Security Regulations* and the *Maritime Transport and Offshore Facilities Security Regulations*, the issue of whether and how substantiated criminal intelligence can be taken into account when assessing whether a person should be given access to secure areas of an air or sea port has been raised consistent with *An Independent Review of Airport Security and Policing for the Government of Australia*, The Rt Hon Sir John Wheeler DL, September 2005 (pages 68-69) and the practice established in Canada and the United Kingdom. These discussions have been of a preliminary nature and further advice is awaited from DOTARS.

It is also contemplated that background checking will also include use of the National Document Verification Service (DVS) to verify identity documents once the DVS is operational. The DVS will enable electronic verification of the detail on key proof-of-identity documents. The DVS is currently under development in conjunction with participating State and Territory governments.



Australian Government

Attorney-General's Department

Request for Expressions of Interest

Commercially Proven Software for Background Checking

COMMONWEALTH OF AUSTRALIA REPRESENTED BY THE ATTORNEY
GENERAL'S DEPARTMENT (ABN 92 661 124 436)

Tender reference number: EOI AGD 2006/AusCheck 0601
Tenders Close: 1400 hours (2pm) Australian
Eastern Standard Time, Wednesday
31 May 2006

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1. Invitation

1.1. The Commonwealth of Australia represented by the Attorney-General's Department (AGD) invites interested parties (respondents) to submit expressions of interest (EOIs) to provide an information technology (IT) system to service the business requirements of AusCheck (Services) subject to the terms and conditions set out, or referred to, in this request for EOIs.

1.2. Introduction

AGD serves the people of Australia by providing essential expert support to the Australian Government in the maintenance and improvement of Australia's system of law and justice.

AGD is the central policy and coordinating element of the portfolio, for which the Attorney-General and the Minister for Justice and Customs are responsible.

AGD is divided into five Groups which are each under the control of a Deputy Secretary or General Manager:

- a. Civil Justice and Legal Services;
- b. National Security and Criminal Justice;
- c. Information and Knowledge Services;
- d. Corporate Services; and
- e. Financial Services.

Further general information on AGD is available at <http://www.ag.gov.au>.

Last year, the Australian Government agreed to establish a new division in AGD to coordinate background checks on people who work in the secure areas of air and sea ports, namely, those who are required to have an Aviation Security Identification Card (ASIC) or Maritime Security Identification Card (MSIC).

The Division will be known as 'AusCheck' with the additional descriptor of 'The Australian Background Checking Service' to be used as appropriate. AusCheck will be part of the National Security and Criminal Justice Group.

The Australian Government's decision to establish AusCheck followed a recommendation of Sir John Wheeler's Airport Security and Policing Review and is part of the Australian Government's ongoing commitment to improve aviation and maritime security.

The establishment of AusCheck recognises that there are some limitations to the existing arrangements for the administration of ASICs, and the potential for those same problems to be replicated in the recently introduced MSIC scheme.

1.3. Services

AGD requires an IT system to support AusCheck's core business, that being background checking. The IT system is required to help the aviation and maritime

industries to identify high-risk individuals by interpreting the statutory requirements and recommending whether an ASIC or MSIC should be issued.

The AusCheck IT system must have the ability to be used for other background checking purposes once fully operational.

The AusCheck IT system is required to:

- a. receive and assess criminal and security background information from a variety of sources;
- b. assess applicants suitability for ASICs and MSICs against set criteria;
- c. advise the relevant issuing body when an applicant meets the criteria;
- d. improve the integrity of background checking in the aviation and maritime industries;
- e. maintain a database of current information on persons who apply for and are ultimately issued with ASICs and MSICs;
- f. incorporate electronic processes to provide industry with a timely, efficient, cost-effective and high-quality background checking service;
- g. provide a high level of protection for applicants' personal information in accordance with the Information Privacy Principles described in the *Privacy Act 1988* (Cth); and
- h. have the capability to be used for background checking for other industries once fully operational.

The target implementation date for the IT system is December 2006.

“Off the Shelf” or Commercially Proven Software Requirements

AGD is seeking a commercially developed (preferably off-the-shelf) proven software solution, which provides the following features. The system should:

- a. receive applications for background checks via the internet (through a web page or another interface, such as a web service or batch file that includes multiple applications);
- b. send and receive information from multiple Australian Government agencies in varying formats ** (the current requirements require connection to four agencies);
- c. interpret the information received from different sources and apply business rules for the system to make electronic recommendations
- d. allow authorised users to manually review the recommendations for final decisions;
- e. send out information to applicants and other parties either electronically or in hard copy;
- f. cater for background check renewal and appeal processes;
- g. provide functionality that supports workflow management and ad-hoc reporting;

- h. provide functionality that supports performance management and reporting;
- i. manage multiple applications types and background checking criteria, with varying costing models;
- j. cater for a complex business rule environment where changes may be necessary in the future;
- k. interface with AGD's finance system for revenue and expense. AGD's current finance system is SAP currently Version 4.6c;
- l. run an architecture of Microsoft .NET, Microsoft SQL Server, in a Microsoft Windows environment;
- m. be scalable;
- n. provide security on role based permissions;
- o. provide a full audit track of all data changes and accesses; and
- p. adhere to the security, privacy protection, and other legal requirements of the Australian Government.

** It is envisaged that this capability will need to be added to the 'off-the-shelf' product.

2. AusTender, the Australian Government Tender System

2.1. AusTender

AusTender is the online tendering system for Australian Government Agencies. AusTender allows respondents to download tender documentation and upload tender responses. Respondents must first register with AusTender at www.tenders.gov.au.

Access to and use of AusTender is subject to terms and conditions. Respondents must agree to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender.

It is the responsibility of respondents to ensure that their information and communications technology (ICT) infrastructure, including operating system and browser revision levels, meet the minimum standards defined on AusTender. Neither the AGD nor the Commonwealth take any responsibility for any problems arising from respondents' ICT infrastructure and/or internet connectivity.

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.

Respondents should inform themselves concerning all security measures and other aspects of the AusTender technical environment. Respondents should make their own assessment of the AusTender system prior to using it for any matter related to this request for EOIs and no responsibility will be accepted by the AGD arising in respect of any use or attempted use by any party of AusTender.

2.2. **Registered Respondents and Notices**

Respondents may be informed of changes to this request for EOIs or other related information by notices and other information issued as addenda posted on this request for EOIs' page on AusTender.

Respondents who have registered and downloaded the request for EOIs will be notified by AusTender via email of any addenda. It is in the interest of respondents to ensure they have correctly recorded their contact details prior to downloading request for EOIs documentation. If respondents have not recorded their details correctly, they should amend their details and download the request for EOIs documentation again.

The Commonwealth will accept no responsibility if a respondent fails to become aware of any addendum or other notice or information which would have been apparent from a visit to the AusTender page for this request for EOIs.

If a respondent has obtained request for EOIs documentation other than from AusTender, they should visit AusTender, register as a user and download the tender documentation for this request for EOIs.

2.3. **AusTender Help Desk**

All queries and requests for technical or operational support should be directed to:

AusTender Help Desk
Telephone: 1300 651 698
Email: tenders@agimo.gov.au

The AusTender Help Desk is available between 9:00am and 5:00pm, Monday to Friday (excluding ACT and national public holidays).

3. **Endorsed Supplier Arrangement**

- 3.1. For purchases by AGD of information technology and related services or major office machines, it is mandatory that respondents are or become, either registered as an Endorsed Supplier, or an authorised distributor of an Endorsed Supplier, on or before the EOI Closing Time in paragraph 6.1. Although not mandatory, it is preferable that suppliers of Commercial office furniture and auctioneering services be endorsed as well. The status of "Endorsed Supplier" and "authorised distributor" will be determined by reference to the Endorsed Supplier Arrangement (ESA) multi-use list published by the Department of Finance and Administration (Finance) on the Finance website. Respondents must provide their ESA number, the date they signed the ESA Head Agreement and the date that agreement expires.
- 3.2. Endorsed suppliers of information technology and related services or major office machines are responsible for ensuring that any subcontractors engaged also comply with the mandatory requirements of the ESA.

- 3.3. Information on the ESA is available on the Finance website at www.finance.gov.au.
- 3.4. Respondents should indicate what financial and/or performance and/or parental guarantees have been lodged under the ESA.

4. Expressions of Interest

4.1. Expression of Interest Response Requirements

Respondents are referred to paragraph 1.3 and the evaluation criteria for information in paragraph 13.2 on the requirements sought by AGD. Respondents should submit, as their EOI:

Item	Information required from Respondents	Form of Required Information	Respondent Checklist
1	Declaration	Respondents must make the representations, acknowledgements and offer substantially in the form set out in the Declaration in Attachment A.	
2	Respondent's details	Respondents should provide their details by completing Attachment B. Where an EOI is lodged by a consortium, a separate Attachment B should be lodged by the respondent and by each consortium member.	
3	Respondent's full and detailed response to the Services	<p>Respondents should explain in detail how they would provide the Services specified in paragraph 1.3.</p> <p>Respondents should provide a description of their proposed Service delivery solution for the Services described in paragraph 1.3. This description should include:</p> <ul style="list-style-type: none"> o. a description of the computer environment required to support the software and hardware solution if it departs from the preferred AGD environment of .NET, Microsoft SQL Server, in a Microsoft Windows environment; p. proposed software; q. proposed hardware; r. a description of implementation of 	

Item	Information required from Respondents	Form of Required Information	Respondent Checklist
		<p>the Services;</p> <p>s. proposed ongoing maintenance;</p> <p>t. proposed project management of the Services such as how the implementation of new versions of proposed software will be managed; and</p> <p>u. an estimated project time line.</p>	
4	Respondent experience	Respondents should include details of their past performance and experience in providing services similar to the Services described in paragraph 1.3.	
5	Pricing information (see also paragraph 4.3 of this request for EOIs)	<p>Respondents should provide their indicative costs for the Services including in relation to, for example:</p> <p>cc. software;</p> <p>dd. full implementation;</p> <p>ee. ongoing maintenance; and</p> <p>ff. full project management of Services.</p>	
6	Information about the respondent's personnel	Respondents should provide details about all of their personnel who would perform the Services, including the skills, experience and qualifications of those personnel.	
7	Referee Information	Respondents should provide a list of, and contact details for, at least three recent clients of the respondent who are prepared to act as referees and a description of the services supplied by the respondent to each referee.	
8	Financial viability information	Respondents should complete the questionnaire at Attachment C.	

4.2. Length

Respondents EOIs should be no more than 20 pages, excluding any documents that may be attached to EOIs in order to comply with Attachment C.

4.3. **Indicative Costs**

Indicative costs should be inclusive of:

- a. GST (as defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*); and
- b. all costs of complying with this request for EOIs.

Indicative costs should not vary according to the mode of payment.

4.4. **Language and Units**

The EOI, including all attachments and supporting material, must be written in English. Measurement must be expressed in Australian legal units of measure and prices must be expressed in Australian dollars.

5. **Consortium EOIs**

5.1. **Consortia**

An EOI submitted by a consortium may be rejected by AGD if the respondent:

- a. does not propose to contract with AGD as one separate legal entity;
- b. has not completed a separate Attachment B in respect of each member of the consortium; or
- c. has not specified one single point of contact for its consortium.

5.2. **Exclusions**

AGD will not consider:

- a. a joint EOI submitted on the basis that two or more organisations will be jointly and severally liable; or
- b. an EOI from a legal entity that does not exist at the time of submission of the EOI.

6. **EOI Lodgement**

6.1. EOIs must be lodged on or before 2pm Australian Eastern Standard time (EOI Closing Time) in the Australian Capital Territory on 31 May 2006. The EOI Closing Time may be extended by written notice from AGD. Any extension notice will be given the same distribution as the original request for EOIs.

6.2. EOIs should be enclosed in a plain envelope and delivered to:

Tender Box
Attorney General's Department
Tender - AusCheck 0601
Robert Garran Offices
2 National Circuit
BARTON ACT 2600

- 6.3. The Tender Box is accessible between 9:00am and 5:00pm, Monday to Friday (excluding ACT and national public holidays).
- 6.4. EOIs should be delivered by hand (by the respondent or the respondent's private agent) to the Tender Box. Respondents should note that the postal service does not deliver to the Tender Box.
- 6.5. EOIs submitted via email or facsimile will not be accepted.
- 6.6. The closing date and/or time may be extended by AGD.
- 6.7. An original plus three (3) copies of each EOI should be submitted. The original should be marked "Original" and the copies marked "Copy". If no copy is marked "Original" AGD may choose a copy and mark it as the "Original".
- 6.8. EOI documents should be enclosed in a sealed envelope or other sealed container endorsed with the Contact Officer's name, the request for EOIs title, number and the EOI Closing Time.

7. Non Compliant Lodgement

7.1. Late EOIs

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

7.2. Exclusion

Subject to this paragraph 7.2, AGD will not admit late EOIs to evaluation.

AGD will admit to evaluation any EOI that was received late solely due to mishandling by AGD.

8. Point of Contact

- 8.1. The contact officer named below (Contact Officer) is the only point of contact for all matters pertaining to this request for EOIs and the EOI evaluation. The Contact Officer is:

Matthew Branford
AusCheck IT Director
Fax: +61 2 6280 9706
Email: matthew.branford@ag.gov.au
Address: Robert Garran Offices
National Circuit
BARTON ACT 2600

- 8.2. Respondents should direct all communications through the Contact Officer, in writing, unless advised otherwise by the Contact Officer.
- 8.3. AGD may send responses either to the respondent who lodged any enquiry or to all respondents on a non attributable basis.
- 8.4. Any notice given by a respondent to AGD will be effective upon receipt only if in writing and delivered to the Contact Officer at the address specified in paragraph 8.1.
- 8.5. AGD may deliver any written notification to a respondent by leaving it or causing it to be left at the address of that respondent, or by sending it to the email address of that respondent as specified in their EOI or as otherwise subsequently nominated in writing by the respondent to the Contact Officer.

9. Unintentional Errors of Form

- 9.1. EOIs in which all information is not clearly and legibly stated may be excluded from consideration.
- 9.2. Any alteration or erasure made to an EOI should be initialled by the respondent or the EOI may be excluded from consideration.
- 9.3. Should the respondent become aware of any discrepancy, error or omission in the EOI document submitted and wish to lodge a correction or additional information, that material should be in writing and lodged in the same manner as the EOI and prior to the EOI Closing Time. If correcting information is delivered after the EOI Closing Time, AGD will consider the information on the same basis as if it were a late EOI (see further paragraph 7.2).
- 9.4. If AGD considers that there are unintentional errors of form in an EOI, AGD may request the respondent to correct or clarify the error, but will not permit any material alteration or addition to the EOI.
- 9.5. Should a respondent find or reasonably believe it has found any discrepancy, error, ambiguity, inconsistency or omission in this request for EOIs or any other information given or made available by AGD (Error), the respondent should promptly notify the Contact Officer in writing setting out the Error in sufficient detail as soon as the respondent becomes aware of it so that AGD may take whatever corrective action, if any, it deems appropriate. Any actual Error will be corrected by AGD by making the proper information available to all respondents.

10. Minimum Content and Format Requirements

Subject to paragraph 9, AGD will exclude an EOI from further consideration if AGD considers that the EOI does not comply with the following requirements:

- a. execution of the Declaration contained in Attachment A; and
- b. paragraph 4.4.

11. Conditions for Participation

AGD will exclude an EOI from further consideration if AGD considers that the respondent does not comply with the following conditions:

- a. paragraph 3.1;
- b. paragraph 5.2;
- c. paragraph 6.1 (subject to paragraph 7); and
- d. paragraphs 19, 20 and 22.

12. Exclusion of EOIs and Respondents

- 12.1. EOIs which are incomplete or clearly non competitive may be excluded from consideration at any time during the evaluation process at AGD's discretion, but AGD may still consider such EOIs and seek clarification under paragraph 25.
- 12.2. Subject to paragraphs 10 and 11, AGD may reject any EOI or respondent which breaches or fails to comply with any provision of this request for EOIs.

13. Evaluation

- 13.1. EOIs which have not been excluded from consideration by AGD will be evaluated by AGD in accordance with the process and evaluation criteria described in paragraph 14 to identify a shortlist of respondents to participate in a request for tenders process. The evaluation will comprise a technical assessment in the context of the risk profile presented by each respondent.
- 13.2. Respondents will be shortlisted through application of the following evaluation criteria:

Item	Evaluation Criteria	Information to be supplied
1	Extent to which the proposed solution meets the requirements described in paragraph 1.3.	Respondents should provide the information specified in item 3 in the table in paragraph 4.1.
2	Indicative price, including the total cost to AGD of implementing and supporting the respondent's proposal.	Respondents should provide the information specified in item 5 in the table in paragraph 4.1, having regard to the requirements set out in paragraph 4.3.
3	The extent of the respondent's overall compliance with this request for EOIs.	Respondents should provide all the information required by paragraph 4.1 of this request for EOIs.
4	Level of expertise and track record at providing similar products/services of this scale and complexity, including AGD's assessment of the track record and experience of the respondent's personnel and subcontractors.	Respondents should provide the information specified in items 4, 6 and 7 of the table in paragraph 4.1.

5	Respondents financial viability	Respondents should provide the information specified in item 8 in the table in paragraph 4.1.
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13.3. The evaluation criteria are not necessarily listed in any order of importance and may or may not be weighted. In addition, AGD may use material submitted in response to one evaluation criterion in the evaluation of other evaluation criteria.

13.4. AGD may seek presentations from, or interview, respondents as part of its evaluation process. Respondents should indicate whether they wish to make a presentation to AGD.

14. Evaluation Process

14.1. Step 1 - Receipt and Registration

AGD will register EOIs following the EOI Closing Time. EOIs lodged otherwise than in accordance with this request for EOIs will be registered separately.

14.2. Step 2 - Screening

EOIs will be screened to identify those which:

- a. have failed to comply with minimum content and form requirements;
- b. have failed to comply with conditions for participation;
- c. contain unintentional errors of form; or
- d. which are otherwise non compliant with this request for EOIs.

AGD may at any stage during the evaluation process reach the view that EOIs or respondents fall within the categories listed in paragraphs a to d above.

14.3. Step 3 - Technical Evaluation

14.4. AGD will conduct a technical evaluation of EOIs through application of the evaluation criteria set out in items 1 and 4 of the table in paragraph 13.2 above.

Clarification of EOIs may be sought from respondents and investigations may be undertaken of respondents. Additional or new information will not be sought unless it is by way of clarification of elements of the information already submitted with the EOIs.

AGD may also conduct reference checks.

AGD may shortlist respondents following Step 3 for progression to Step 4.

14.5. Step 4 - Indicative Cost

An assessment of indicative cost will be undertaken.

AGD may shortlist respondents following Step 4 for progression to Step 5.

14.6. Step 5 - Ranking of Respondents

AGD will shortlist respondents by a consideration of the technical evaluation and AGD's assessment of:

- a. financial viability;
- b. compliance generally with this request for EOIs; and
- c. any other risks identified in the evaluation process.

15. Request for EOIs and Representations

- 15.1. This request for EOIs is and will remain the property of AGD. This request for EOIs may only be used for the purpose of preparing an EOI and any subsequent agreement in respect of the Services.
- 15.2. No representation made by or on behalf of AGD in relation to the request for EOIs will be binding on AGD unless that representation is in writing and is incorporated into a formal agreement with AGD.
- 15.3. Respondents will have no claim against AGD, or any officer, employee or adviser of AGD with respect to the exercise of, or failure to exercise, any right under this request for EOIs.

16. EOI Documents

- 16.1. All EOI documents (including paper and electronic copies) will become the property of AGD on submission.
- 16.2. Without prejudice to any other right of AGD under this request for EOIs or at law, AGD may disclose or allow the disclosure of any information contained in or relating to any EOI (at any time) for any of the following purposes:
 - a. evaluating or clarifying the EOI;
 - b. evaluating any subsequent offer;
 - c. negotiating an agreement;
 - d. managing an agreement following its execution;
 - e. referring any material suggesting collusion by respondents to the Australian Competition and Consumer Commission (ACCC) and the use by the ACCC of that material to conduct any review it deems necessary; or
 - f. anything else related to the above purposes, including audit requirements, compliance with Government reporting requirements and responding to any challenge to the EOI process or audit.
- 16.3. AGD may disclose or allow at any time the disclosure of any information contained in or relating to any EOI:
 - a. to its advisers or employees solely in order to evaluate or otherwise assess the EOI, and negotiate or manage an agreement for the Services;
 - b. to its internal management personnel for purposes related to the EOI process;

- c. to the responsible Minister;
 - d. in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. within AGD's organisation, or with another agency, where this serves the legitimate interests of the Commonwealth;
 - f. where the information is authorised or required by law to be disclosed; or
 - g. where the information is in the public domain otherwise than by AGD's disclosure.
- 16.4. Notwithstanding this paragraph 16, ownership of the intellectual property in each EOI will remain unchanged.
- 16.5. Subject to paragraphs 16.2 and 16.3, all documents provided by each respondent will be held in confidence so far as circumstances permit.

17. Statements

- 17.1. Respondents should not:
- a. furnish any information;
 - b. make any statement; or
 - c. issue any document or other written or printed material,
- concerning the acceptance of any EOI in response to this request for EOIs, for publication in any media without the prior written approval of AGD.
- 17.2. AGD may exclude an EOI from further consideration if the respondent contravenes this requirement.

18. Security, Probity and Financial Checks

- 18.1. AGD may perform such security, probity and financial investigations and procedures as AGD may determine are necessary in relation to any respondent, its employees, officers, partners, associates, subcontractors or related entities including consortium members and their officers, employees and subcontractors.
- 18.2. An EOI may be rejected by AGD if the respondent does not provide, at its cost, all reasonable assistance to AGD in this regard.

19. Conflicts of Interest

- 19.1. Where a respondent identifies that a conflict of interest exists or might arise in the provision of the Services, the respondent must identify that actual or potential conflict of interest in its Declaration (see Attachment A). A conflict of interest may exist, for example, if:
- a. the respondent or any of its personnel have a relationship (whether professional, commercial or personal) with a party who is able to influence the EOI process (such as AGD personnel); or

- b. the respondent has a relationship with an organisation which would affect the performance of any agreement in respect of the Services or would bring disrepute to or embarrass AGD.
- 19.2. If at any time prior to entering into a formal agreement with AGD, an actual or potential conflict of interest arises or may arise for any respondent, that respondent should immediately notify AGD in writing.
- 19.3. If a conflict of interest is identified AGD may:
- a. exclude the EOI from further consideration;
 - b. enter into discussions to seek to resolve such conflict of interest; or
 - c. take any other action it considers appropriate.

20. Respondent Conduct

20.1. False and Misleading Claims

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

Respondents must not make false or misleading statements in their EOIs.

20.2. Collusive Bidding

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

AGD may also involve the ACCC to provide assistance to AGD in relation to any competition issues concerning a respondent or related to an EOI.

20.3. Unlawful Inducements

Respondents and their officers, employees, agents or advisers must not have violated and must not violate any applicable laws or Commonwealth, State or Territory policies regarding the offering of inducements in connection with the preparation of their EOI.

20.4. Improper Assistance

Respondents must not use the improper assistance of any AGD employee or use information obtained unlawfully or in breach of an obligation of confidentiality to AGD in preparing their EOIs.

21. Future Matters

- 21.1. The requirements and obligations, detailed in this request for EOIs are based on projected future requirements that may vary significantly from current and historical requirements and all information provided to respondents (whether incorporated

into this request for EOIs or otherwise) is based on historical information. It is usual that future events may differ significantly from historical results and the differences may be material.

- 21.2. Respondents should make their own independent assessments of actual workload requirements under any resultant agreement.

22. Return of Information

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

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

23. No Contract or Undertaking

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

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

24. No AGD Liability

- 24.1. Participation in any stage of this request for EOIs process, or in relation to any matter concerning this request for EOIs will be at each respondent's sole risk, cost and expense. AGD will not be responsible in any circumstance for any costs or expenses incurred by any respondent in preparing or lodging an EOI or in taking part in the request for EOIs process or taking any action related to the request for EOIs process.

- 24.2. Neither AGD nor its officers, employees or advisers will be liable to any respondent on the basis of any promissory estoppel, quantum meruit or on any other contractual, quasi contractual or restitutionary grounds or any rights with a similar legal or equitable basis whatsoever or in negligence as a consequence of any matter or thing relating or incidental to a respondent's participation in this request for EOIs process, including instances where:

- a. a respondent is not shortlisted to participate in a request for tender process in respect of the Services;

- b. AGD decides not to proceed with a request for tender in respect of the Services;
- c. AGD decides not to outsource all or any of the Services;
- d. AGD exercises or fails to exercise any of its other rights under or in relation to this request for EOIs; or
- e. AGD makes information available or provides information to a respondent relating to its assets, procedures, plans, tenders, existing arrangements for provision of the Services or any possible future arrangements.

25. AGD's Rights

- 25.1. AGD may at any stage of the request for EOIs process, including during the evaluation process:
- a. vary the request for EOIs, including the timing and processes referred to in this request for EOIs for respondents;
 - b. seek amended or call for new EOIs;
 - c. forward any clarification of the meaning of the content of this request for EOIs to all known respondents on a non attributable basis and without disclosing any confidential information of a respondent;
 - d. subject to paragraph 7, accept or reject any EOI received after the EOI Closing Time;
 - e. allow or not allow another legal entity to take over an EOI in substitution for the original respondent where an event occurs that has the effect of substantially altering the composition or control of the respondent or the business of the respondent;
 - f. obtain clarification or additional information from respondents or anyone else (including a formal presentation in support of their EOI and/or a demonstration of existing components of their proposed solution) and use this information for the evaluation of the EOIs
 - g. provide additional information to respondents;
 - h. negotiate with one or more respondents (including negotiating with all respondents without shortlisting) or discontinue negotiations; and/or
 - i. publish or disclose the names of respondent(s) (whether successful or unsuccessful).
- 25.2. AGD will not be liable or in any way responsible for any losses, costs, expenses, claims or damage resulting from the exercise of any of AGD's rights under this request for EOIs whether or not AGD has informed a respondent of its exercise of the rights.
- 25.3. The establishment of a time or date in this request for EOIs does not create an obligation on the part of AGD to take any action or create any right in any respondent that any action be taken on the date established.

26. Debriefing of Respondents

- 26.1. AGD will promptly notify each unsuccessful respondent in writing that its EOI has not been shortlisted and, where requested, provide a written explanation of the reasons for its decisions.
- 26.2. Respondents will be debriefed against any evaluation criteria contained in this request for EOIs. Respondents will not be provided with information concerning other respondents, except for publicly available information and except in so far as comparative statements can be made without breaching confidentiality.

27. Applicable Law

- 27.1. The law applying in the Australian Capital Territory applies to this request for EOIs and to the request for EOIs process.
- 27.2. Each respondent should ensure that it has complied with all relevant laws and with Australian Government policy in preparing and lodging its EOI and taking part in the request for EOIs process.

ATTACHMENT A - DECLARATION BY RESPONDENT***Expression of Interest***

The respondent expresses interest in providing the Services described in the request for EOIs.

Conflicts of Interest

The respondent represents that, having made all reasonable enquiries, it either:

- does not have any known actual or potential conflicts of interest in respect of the request for EOIs, its EOI or the provision of the Services; or
- has in this Declaration declared all such actual or potential conflicts to AGD.

The respondent represents that, having made all reasonable enquiries, the following represents its only known actual or potential conflicts of interest in respect of the request for EOIs, its EOI or the provision of the Services:

- *List*

The respondent undertakes to advise AGD in writing of all actual or potential conflicts of interest in respect of the request for EOIs, its EOI or the provision of the Services immediately upon becoming aware of the same.

Improper Assistance

The respondent represents that:

- this EOI has been compiled without the improper assistance of any AGD employee and without the use of information obtained unlawfully or in breach of an obligation of confidentiality to AGD; and
- it has not contravened paragraph 20 of the request for EOIs.

Further Representations and Acknowledgements

The respondent makes the following further representations to AGD:

- it has examined the AusTender Terms of Use which are obtainable on the AusTender website (www.tenders.gov.au);
- it has examined the request for EOIs, all documents referred to in the request for EOIs and all other information made available to it and all applicable legislation and policies;
- it has examined all further information which is obtainable by making reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on its EOI;
- it has satisfied itself as to the correctness and sufficiency of its EOI;
- it has relied entirely on its own enquiries and has not relied on any representation, warranty or other conduct by or on behalf of AGD, except as expressly provided in the request for EOIs or in notices received by it; and

- it has accepted and has fully complied with the provisions of the request for EOIs .

The respondent acknowledges that:

- AGD may exercise any of its rights set out in the request for EOIs, at any time;
- the statements, opinions, projections, forecasts or other information contained in the request for EOIs may change;
- the request for EOIs is a summary only of AGD's requirements and is not intended to be a comprehensive description of it;
- neither the lodgement of the request for EOIs nor the acceptance of any EOI nor any agreement made subsequent to the request for EOIs will imply any representation from or on behalf of AGD that there has been no material change since the date of the request for EOIs or since the date as at which any information contained in the request for EOIs is stated to be applicable;
- except as required by law and only to the extent so required, neither AGD, nor its respective officers, employees, advisers or agents will in any way be liable to any person or body for any loss, damage, cost or expense of any nature arising in any way out of or in connection with any representations, opinions, projections, forecasts or other statements, actual or implied, contained in or omitted from the request for EOIs; and
- the respondent has sought its own professional advice as appropriate and has not construed the request for EOIs as investment, legal, tax or other advice.

Confidentiality

The respondent acknowledges that AGD may disclose, and consents to AGD disclosing, any information provided by respondent, whether confidential or not:

- to its advisers or employees solely in order to evaluate or otherwise assess the EOI, and negotiate or manage an agreement for the Services;
- to its internal management personnel solely in order to evaluate or otherwise assess the EOI;
- to the responsible Minister;
- in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- within AGD, or with another Commonwealth agency, where this serves the Commonwealth's legitimate interests;
- where the information is authorised or required by law to be disclosed;
- where the information is in the public domain otherwise than by a AGD disclosure; and
- where the disclosure is required to meet AGD's reporting or accountability requirements, including, without limitation:
 - under the *Financial Management and Accountability Act 1997*;

- to the Australian National Audit Office or any other auditor appointed by AGD;
- in accordance with the provisions that require notification of AGD contracts in the Commonwealth Government Gazette;
- in accordance with the *Requirements for Departmental Annual Reports* (published by the Department of the Prime Minister and Cabinet); and
- to the Commonwealth Ombudsman.

The respondent acknowledges that AGD has received this EOI in reliance on this Declaration. The respondent acknowledges that AGD may suffer loss if any of the representations, undertakings, consents or other statements in this Declaration or the respondent's EOI are misleading or deceptive.

Dated:

Duly Authorised to Sign EOIs for and on Behalf of (state full name of respondent)

SIGNATURE OF REPRESENTATIVE

.....

NAME OF REPRESENTATIVE (In Block Letters)

.....

POSITION OF REPRESENTATIVE (In Block Letters)

.....

SIGNATURE OF WITNESS

.....

ADDRESS OF WITNESS

.....

REFER ENQUIRIES TO:
 (Name in Block Letters)

.....

TELEPHONE NO.

.....

ATTACHMENT B - RESPONDENT DETAILS

Respondent Name		
Registered Office		
Principal Place of Business		
Date and Place of Incorporation		
Trading and Business Names		
Registered Business Number		
Australian Business Number		
Registered for GST?	Yes	No
Office Hours	Week days	Emergency after hours

Contact Person

Name:	
Position	
Address:	
Phone Number:	
Fax Number:	
Email:	

ATTACHMENT C - FINANCIAL VIABILITY

Respondents should complete the following questionnaire and provide sufficient information to enable AGD to determine the financial viability of the respondent. Respondents should provide explanations of areas not addressed or items not provided.

Financial information

	Attached
Audited financial statements (for the last two (2) financial years) including a copy of the auditor's statement	Yes/No
Annual report	Yes/No
Any quality accreditations for the company such as ISO9001 certification	Yes/No
Copy of certificate of currency for public liability insurance	Yes/No
Copy of certificate of currency for workers compensation insurance	Yes/No
Copy of certificate of currency for professional indemnity insurance	Yes/No
Details of any petitions, claims, actions, judgements, or decisions, etc. Which is likely to adversely affect your performance of an agreement for the Services.	Yes/No

The operating entity is:
(Please ~~strike through~~ non-applicable types.)

Sole Trader
 Partnership
 Association
 Company
 Trust
 Government.

The operating entity has been in business for:
(Please ~~strike through~~ non-applicable periods.)

Less than 12 months
 1–2 years
 2–4 years
 4–6 years
 6–8 years
 longer than 8 years.

Financial statement summary – A\$

Item	Year to date	Previous financial year	Next to previous financial year
Operating income			
Interest paid			
Net operating income			
Dividends / distributions / drawings paid			
Cash at bank			
Total current / financial assets			
Total assets			
Level of debt			
Total current liabilities			
Total liabilities			
Total equity			