



**FEDERAL COURT  
OF AUSTRALIA**



**RFT-2020-0019**

FOR THE

**Provision of  
Transcription, Recording and AV Support  
and Maintenance Services**

**PART A  
TENDER TERMS AND CONDITIONS**

**Tender Closing Time:**

2pm, Tuesday 29 October 2019 (local time in Canberra, ACT).

**Contact Officer:** **Carmel Dollisson**

**Email:** [contracts@fedcourt.gov.au](mailto:contracts@fedcourt.gov.au)

**PLEASE NOTE:**

- Tenders must be lodged electronically via AusTender (see clause 10).
- Tenders should be lodged in the format described in clause 13.

**PART A – TENDER TERMS AND CONDITIONS**

---

**Contents**

**SECTION 1 - RFT DETAILS ..... 4**

- 1. Invitation to Tender .....4
- 2. Background .....4
- 3. Services required .....5

**SECTION 2 - GENERAL TENDER INFORMATION ..... 7**

- 4. Interpretation .....7
- 5. Timetable for RFT .....8
- 6. Amendment/clarification of this RFT .....8
- 7. Industry briefing and intention to respond .....9
- 8. Questions about this RFT and Contact Officer Details ..... 10
- 9. AusTender, the Australian Government Tender System ..... 10
- 10. Electronic Lodgement ..... 11
- 11. Tender Validity Period ..... 11
- 12. Tender Closing Time and Date ..... 11
- 13. Tender File Formats, Naming Conventions and Sizes ..... 11
- 14. Joint tenders (e.g. Consortium Tenders) and Multiple Responses ..... 12
- 15. Alternative Tenders..... 12
- 16. Scanned or imaged material, including Statutory Declarations ..... 13
- 17. The FCA Entity’s Rights ..... 13

**SECTION 3 - INFORMATION TO BE PROVIDED BY TENDERERS .....15**

- 18. Conditions for Participation ..... 15
- 19. Minimum Content and Format Requirements ..... 15
- 20. Format Of Tenders ..... 16

**SECTION 4 - LODGING A TENDER.....17**

- 21. Onus on the Tenderer ..... 17
- 22. Alterations to Tenders ..... 18
- 23. Corrections by a Tenderer after lodgement ..... 18
- 24. Unintentional Errors of Form ..... 18

**SECTION 5 - EVALUATION OF TENDERS .....19**

- 25. Tender Evaluation Process ..... 19
- 26. Evaluation Criteria ..... 20
- 27. Reservation of rights ..... 22
- 28. Tenderer Engagement ..... 23
- 29. Requests for Clarification ..... 24
- 30. Tendered Prices ..... 24
- 31. Negotiations ..... 25
- 32. Debriefing ..... 25

33.	Complaints Procedure.....	26
<b>SECTION 6 - TERMS AND CONDITIONS OF TENDERING .....</b>		<b>27</b>
34.	Intellectual Property in this RFT .....	27
35.	Small and Medium Enterprises (SMEs) .....	27
36.	Audit and Access .....	27
37.	Freedom of Information.....	27
38.	Commonwealth Ombudsman .....	28
39.	Privacy .....	28
40.	Confidentiality .....	28
41.	Material Change to Tenderer .....	30
42.	Conflict of Interest .....	30
43.	Tenderer Behaviour .....	31
44.	Responsibility for Tender Costs.....	31
45.	Acceptance .....	32
46.	Workplace Gender Equality .....	32
47.	Australian Industry Participation .....	32
48.	Illegal Workers.....	33
49.	Indigenous Procurement Policy .....	33
50.	Economic Benefit to the Australian Economy .....	33
51.	Unpaid Employee Entitlements .....	33
52.	Competitive Neutrality .....	34
53.	Compliance with legislation.....	34
54.	Standards.....	35
55.	Work Health and Safety Act 2011 .....	35
56.	Proceedings.....	36
57.	Ethical Dealing .....	36
58.	Competition and Consumer Act 2010 .....	37
59.	Anti-Terrorism Measures.....	37
60.	Security Requirements .....	37
61.	Subcontractors.....	38
62.	Public Statements .....	38
63.	Coordinated Procurement.....	38
64.	Applicable Law .....	39
<b>SECTION 7 - INTERPRETATION OF TERMS .....</b>		<b>40</b>
65.	Definitions.....	40

---

## SECTION 1 - RFT DETAILS

---

### 1. Invitation to Tender

- 1.1 The Commonwealth of Australia (**Commonwealth**) as represented by the Federal Court of Australia Entity (**FCA Entity**) invites interested parties (**Tenderers**) to submit tenders (**Tenders**) to provide the Services described in Part B of this RFT (**Statement of Requirements**), subject to the terms and conditions of this Request for Tender (**RFT**).
- 1.2 Tenders submitted in response to this RFT will be evaluated in accordance with Section 5 of this Part A of the RFT to determine which Tenderer or Tenderers (if any) will be approached to provide the Services.
- 1.3 The FCA Entity proposes to enter into a contract or contracts with the successful Tenderer(s) (if any), substantially in the form of the Draft Contract, for the provision of the Services. The Draft Contract may be amended to reflect the category or categories of Services that a successful Tenderer is selected to provide.

***[Note to Tenderers: Part C - Draft Contract contains further information about the Court's ability to enter into one or more contracts.]***

---

### 2. Background

- 2.1 The Federal Court Entity is a non-corporate Commonwealth entity for the purposes of the *Public Governance, Performance and Accountability Act 2013* (Cth) (**PGPA Act**) and a statutory agency for the purposes of the *Public Service Act 1999* (Cth). The Federal Court Entity supports the operations of the Federal Court of Australia (**FCA**), Family Court of Australia (**FCAoA**), the Federal Circuit Court of Australia (**FCC**) and the National Native Title Tribunal (**NNTT**). The FCA, FCAoA and FCC are Chapter III Courts under the Australian Constitution and continue to operate as individual judicial jurisdictions. Both the FCA and FCC sit in all capital cities and regional areas in Australia from time to time. The FCAoA sits in all capital cities and regional areas in Australia, except in Western Australia.
- 2.2 The FCA supports, in addition to the NNTT, a number of other tribunals, including the Australian Competition Tribunal, Copyright Tribunal of Australia and Defence Force Discipline Appeal Tribunal. FCA Judges hold appointments as President or Deputy President of these tribunals and sit, alone or with other Tribunal members, to hear proceedings in these tribunals, including in FCA court rooms. FCA Judges also hold appointments as Chief Justice, Judges or Additional Judges of Territory Supreme Courts (including External Territories) and sit, alone or with other Judges of those courts, to hear proceedings in these courts, including in FCA court rooms.
- 2.3 The FCA Entity facilitates the provision of transcription and recording services for the FCA, FCAoA and FCC proceedings, where parties in proceedings and the media may purchase the whole or part of a transcript in a proceeding, unless the FCA has ordered or directed that a transcript:
- 2.3.1 is, in whole or in part, confidential or the subject of restrictions on access; or
  - 2.3.2 may not be published or reproduced without leave of the Court.
- 2.4 The FCA, FCAoA and FCC require the following Services, as further described in Part B Statement of Requirements:
- 2.4.1 Recording Services;

- 2.4.2 In-Court Monitoring Services;
- 2.4.3 Transcription Services;
- 2.4.4 Administrative Services;
- 2.4.5 AV Support and Maintenance Services; and
- 2.4.6 Transition Services;

(together, the **Services**).

2.5 In this RFT, the Services have been divided into the following categories:

- 2.5.1 Transcription and Recording Services for the FCA, FCoA and FCC, including In-Court Monitoring Services, Transition Services, and Administrative Services; and
- 2.5.2 AV Support and Maintenance Services for the FCA, FCoA and FCC, including Transition Services.

2.6 Tenderers must offer to provide Transcription and Recording Services for the FCA, FCoA and FCC, including the associated Transition Services, and Administrative Services.

***[Note to Tenderers: Although Tenderers must offer to provide these Services for all of the Courts, Tenderers may offer differing pricing models for the FCA, and for the FCoA and FCC – Tenderers are referred to the Pricing Response Forms in Part E of this RFT for further details.]***

2.7 In addition, Tenderers may (but are not required to) offer to provide AV Support and Maintenance Services for the FCA, FCoA and FCC, including the associated Transition Services. The FCA Entity does not seek Tenders to provide AV Support and Maintenance Services only, and may exclude any Tender that does not also offer to provide Transcription and Recording Services from further consideration.

2.8 The FCA Entity's preference is for the Transcription and Recording Services for the FCA, FCoA and FCC to be provided by a single entity. The FCA Entity's preference is that the successful Tenderer for Transcription and Recording Services will also be able to provide AV Support and Maintenance Services. However, the contractual approach ultimately used by the FCA Entity will depend on its evaluation of the Tenders, including the tendered funding, commercial models and approach to the Services. For example, the FCA Entity may decide to enter into multiple contractual arrangements, for different bundles of Services.

***[Note to Tenderers: The Draft Contract in Part C contains more information about the differing contracting options available to the Court.]***

---

### **3. Services required**

3.1 The scope of the Services is set out in the Statement of Requirements and summarised below:

- 3.1.1 Recording Services at the identified locations to produce high quality audio files that enable the production of high quality transcripts including provision of audio record equipment;
- 3.1.2 In-Court Monitoring Services to provide real-time markings on a Recording to enhance the accuracy of Transcripts;

- 3.1.3 Transcription Services, including:
  - (a) hand-typed (i.e. not machine generated) verbatim records of the words spoken by all participants of Court Proceedings based on high quality audio files produced by the Recording Services and (if applicable) the In-Court Monitoring Services; and
  - (b) the provision of equipment, including adequate hardware, software and networking equipment/data links required and for the storage of Transcripts;
- 3.1.4 Administrative Services, including:
  - (a) all tasks involved in the centralised management of the FCA Entity, FCC and FCoA's records;
  - (b) facilitating compliance with applicable legislative and reporting requirements; and
  - (c) maintenance, accessibility, storage, retrieval and disposal of all Recordings, Transcripts and associated files;
- 3.1.5 AV Support and Maintenance Services for Recording and AV Equipment provided by the Service Provider, as well as Recording and AV Equipment owned by the FCA, FCC and FCoA; and
- 3.1.6 Transition Services including:
  - (a) transition-in services 3 months before the Commencement Date of the Contract; and
  - (b) transition-out services 3 months before the end of the Contract Term; and
- 3.1.7 any other services, as described in the Statement of Requirements.
- 3.2 The requirements for Transcript and Recording Services to the FCA, FCoA and FCC includes elements that are consistent across all categories of Services, and elements that are specific to the FCA or to the FCoA and FCC, as further detailed in the Statement of Requirements.
- 3.3 The Services are to be provided to the FCA, FCoA and FCC, and at the locations, that are described in the Statement of Requirements.

---

## SECTION 2 - GENERAL TENDER INFORMATION

---

### 4. Interpretation

4.1 In this RFT, unless the contrary intention appears, capitalised terms have the meaning given in Section 7 of this Part A of the RFT. Additional definitions may appear throughout the RFT. A separate glossary applies to:

4.1.1 the Statement of Requirements, as set out in Part B of this RFT; and

4.1.2 the Draft Contract, as set out in Part C of this RFT.

***[Note to Tenderers: These glossaries may be consolidated in the final contract with the successful Tenderer(s) (if any).]***

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

4.2.1 the provisions in Section 1 to Section 7 of Part A of this RFT;

4.2.2 Part B – Statement of Requirement;

4.2.3 Part C – Draft Contract;

4.2.4 Part D – Technical Response Schedules;

4.2.5 Part E – Pricing Response Schedules;

4.2.6 any other document provided by the FCA Entity to Tenderers following the release of this RFT and in conjunction with this RFT.

4.3 To the extent of the inconsistency (and subject to clause 6.3), the provisions in the document ranked higher in clause 4.2 will prevail.

4.4 This RFT is an invitation to treat and must not be construed, interpreted, or relied upon, whether expressly or impliedly, as:

4.4.1 an offer capable of acceptance by any person; or

4.4.2 creating any form of contractual, quasi-contractual, restitutionary or promissory estoppel rights, or rights based upon similar legal or equitable grounds.

4.5 No binding contract (including a process contract) or other understanding (including, without limitation, any form of contractual, quasi-contractual, restitutionary or promissory estoppel rights, or rights based upon similar legal or equitable grounds) will exist between the FCA Entity and a Tenderer unless and until a Contract (if any) is signed by both parties.

4.6 Clauses 4.4 to 4.5 do not apply to:

4.6.1 the Tenderer Declaration executed by a Tenderer; or

4.6.2 any other deed or contractual arrangement entered into by the Tenderer or any other person either in accordance with this RFT or as otherwise required by the FCA Entity from time to time.

- 4.7 If a court finds there to be a contract between the FCA Entity or the Commonwealth and a Tenderer regarding the conduct of this RFT process contrary to clause 4.4 or 4.5, the FCA's and the Commonwealth's liability for any breach of the terms of such contract is limited to the Tenderer's substantiated direct costs of participation in this RFT process up to a maximum of \$5,000. The FCA Entity's and the Commonwealth's liability generally in connection with this RFT process (including for negligence or otherwise) is limited to the same amount. For the avoidance of doubt, the FCA Entity and the Commonwealth will not be, and are not, liable for any indirect or consequential loss or any lost revenue, lost profit opportunity, or other losses of the Tenderer.

---

## 5. Timetable for RFT

- 5.1 An indicative timetable for the conduct of this RFT is described below.
- 5.2 This is an indicative timetable only and may be amended by the FCA Entity from time to time at the FCA Entity's sole discretion. Any date or time in this RFT is provided for convenience and does not create any obligation on the FCA. Any amendment to the timetable will be notified in accordance with clause 6.

Event/activity	Proposed date
Release of RFT	20 September 2019
Industry briefing	12noon, 30 September 2019
Intend to Respond Lodgement	By 5pm on 4 October 2019
Tenderer Questions Closing Time	5pm, 21 October 2019
Tender Closing Time	As per cover page of this Part A
Negotiation with preferred Tenderer(s)	December 2019
Execution of Contract/s with successful Tenderer/s (if any)	December 2019/January 2020
Notification of unsuccessful Tenderers	February 2020
Intended Commencement of Services	1 July 2020

---

## 6. Amendment/clarification of this RFT

- 6.1 If the FCA Entity elects to amend or supplement this RFT, it will make reasonable efforts to inform Tenderers in accordance with this clause 6.
- 6.2 The FCA Entity may amend or provide clarification of this RFT, at its discretion and without prior notice by issuing an addendum.
- 6.3 If the FCA Entity amends this RFT under this clause 6 after Tenders have been submitted, it may take actions that the FCA Entity considers necessary or desirable to ensure Tenderers are treated fairly and equitably, such as allowing revision and resubmission of Tenders.
- 6.4 This RFT or any amendment with the latest date of issue published through AusTender will take precedence over any other version of this RFT or any other amendment if there is any inconsistency.

- 6.5 For addenda issued before the Tender Closing Time:
- 6.5.1 the FCA Entity may issue the addenda by posting it on the page for this RFT on AusTender;
- 6.5.2 AusTender will notify Registered Tenderers via email of the issue of the addenda. Tenderers should:
- (a) ensure they have correctly recorded their contact details before downloading this RFT;
  - (b) if they have not recorded their details correctly, amend their details and download this RFT again; and
  - (c) if they have obtained this RFT in a manner other than from AusTender, visit AusTender, register as a user and download this RFT; and
- 6.5.3 Tenderers should log in to AusTender and collect addenda. Neither the Commonwealth nor the FCA Entity 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.
- 6.6 For any addenda issued after the Tender Closing Time:
- 6.6.1 the FCA Entity may issue the addenda by:
- (a) sending a copy of the addenda to the email address provided by AusTender to the FCA Entity for each Registered Tenderer; or
  - (b) if the FCA Entity considers that it is fair and equitable to do so, by sending a copy of the addenda only to the email address of Tenderers detailed in the applicable Tenders; and
- 6.6.2 the FCA Entity will not have any responsibility if a Registered Tenderer or Tenderer fails to become aware of any addendum because the email address it provided is incorrect or unmonitored, or because the email sent by the FCA Entity is not delivered because of issues or problems with the infrastructure or internet connectivity of the Registered Tenderer or Tenderer's information and communications technology systems.
- 6.7 The FCA Entity does not warrant that unauthorised access to information and data transmitted via the internet will not occur.
- 6.8 Each addendum forms part of this RFT upon issue.

---

## **7. Industry briefing and intention to respond**

- 7.1 The FCA Entity will hold an industry briefing for Registered Tenderers to clarify the objectives and priorities for this RFT and to respond to questions arising out of this RFT.
- 7.2 During the Industry Briefing, Tenderers will have the opportunity to inspect Court Rooms and the installed technology.
- 7.3 Registered Tenderers must pre-register their attendance at the industry briefing with the Contact Officer no later than 11am, Thursday 26 September. Attendance at the industry briefing will be at the Registered Tenderer's own cost. Attendance at the industry briefing is not compulsory.

7.4 The industry briefing details are as follows:

**Date:** Monday, 30 September 2019

**Location:** Law Courts Building, Queens Square Sydney NSW 2000

**Time:** 12 noon

7.5 The FCA Entity may change the date, location and/or time of the industry briefing at its absolute discretion, in accordance with clause 6 of this RFT.

7.6 Tenderers must not rely on a statement made at the industry briefing as amending or adding to this RFT unless that amendment or addition is confirmed by the FCA Entity in accordance with clause 6.

7.7 Tenderers are encouraged to submit an Intend to Respond Form in accordance with the timetable in clause 5 of this RFT. The Intend to Respond Form is to be submitted via email to the contact officer.

---

## 8. Questions about this RFT and Contact Officer Details

8.1 All communications and enquiries about this RFT must be made by email addressed to the Contact Officer at:

contracts@fedcourt.gov.au

8.2 The FCA Entity encourages Tenderers to submit enquires to the FCA Entity on any aspect of the Services and this RFT which it considers to be unclear or about which it requires further information. The FCA Entity will use reasonable endeavours to provide answers to any reasonable enquiry from a prospective Tenderer that is received by the FCA Entity before the Tenderer Questions Closing Time set out in clause 5, in which case:

8.2.1 questions and related answers may be disclosed to all prospective Tenderers (without disclosing the source of the questions); and

8.2.2 any Tenderer Confidential Information contained in a question (that is expressly nominated as such by the relevant Tenderer and agreed to by the FCA Entity) will be removed prior to disclosure to other Tenderers.

8.3 A Tenderer who communicates other than to the Contact Officer may be excluded from participating further in this RFT process.

---

## 9. AusTender, the Australian Government Tender System

9.1 AusTender is the Australian Government's procurement information system. Access to and use of AusTender is subject to terms and conditions. In participating in this RFT process, Tenderers must comply with those terms and conditions and any applicable instructions, processes and procedures as advised on the [AusTender website](#).

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

**AusTender Help Desk**

Telephone: 1300 651 698

International: +61 2 6215 1558

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

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

---

## **10. Electronic Lodgement**

- 10.1 Tenders must be lodged electronically via AusTender, at <https://www.tenders.gov.au> before the Tender Closing Time and in accordance with the tender lodgement procedures set out in this RFT and on AusTender.
- 10.2 Where there is any inconsistency between the Tender lodgement procedures set out on AusTender and those set out in this RFT, this RFT will prevail.
- 10.3 If Tenderers need to lodge material that cannot be submitted via AusTender, Tenderers should contact the Contact Officer prior to Tender Closing Time to make arrangements for its submission.

---

## **11. Tender Validity Period**

- 11.1 Each Tenderer must hold its Tender open for acceptance by the FCA Entity for a period of 12 months from the Tender Closing Time.

---

## **12. Tender Closing Time and Date**

- 12.1 Tenders must be lodged before the date and time stated on the cover page of this Part A (**Tender Closing Time**).
- 12.2 The Tender Closing Time will also be displayed in the relevant AusTender webpage together with a countdown clock that displays in real time the amount of time left until the Tender Closing Time (for more information please see AusTender Terms of Use). For the purposes of determining whether a Tender has been lodged before the Tender Closing Time, the countdown clock will be conclusive.
- 12.3 The FCA Entity may extend the Tender Closing Time at its sole and absolute discretion, and will issue an addendum notifying any decision to extend in accordance with clause 6.

---

## **13. Tender File Formats, Naming Conventions and Sizes**

- 13.1 Tenderers must lodge Tenders in accordance with the requirements set out in clauses 13.1 to 13.5 for file format/s, naming conventions and file sizes. Failure to comply with any or all of these requirements may result in the Tender not uploading successfully and/or may eliminate the Tender from consideration.
- 13.2 The FCA Entity will accept Tenders lodged in a format compatible with Microsoft Word 2007 or above, Microsoft Excel 2007 or above or PDF format.
- 13.3 The Tender file name/s must:
- 13.3.1 incorporate the Tenderer's company name;
  - 13.3.2 reflect the various parts of the Tender it represents, where the Tender comprises multiple files;

- 13.3.3 not contain \ / : \* ? " < > | characters; and
- 13.3.4 not exceed 100 characters including the file extension.
- 13.4 Tender files must not exceed a combined file size of 5 megabytes per upload.
- 13.5 Tenders must be completely self-contained. No hyperlinked or other material may be incorporated by reference.

---

## 14. Joint tenders (e.g. Consortium Tenders) and Multiple Responses

- 14.1 The FCA Entity will only accept a Tender from a single legal entity, and will not consider a joint Tender from two or more separate legal entities. Each legal entity may only submit one Tender.
- 14.2 Where two or more separate legal entities wish to participate jointly in a Tender (e.g. as a consortium, each providing different categories of the Services), then the entities must nominate a single legal entity as the Tenderer, which if successful, will accept responsibility as the successful Tenderer subject to the Contract. If it is proposed that other entities are to be used to provide any part of the Services offered by the Tenderer, the Tenderer should nominate the other entities as proposed subcontractors in Part D (Technical Response Schedules).
- 14.3 Where an arrangement outlined in clause 14.2 is proposed, the FCA Entity reserves the following rights:
  - 14.3.1 to require the Tenderer to include in its subcontract with any subcontractor provisions that impose obligations on the subcontractor dealing with certain matters including intellectual property, confidentiality, privacy and security, audits, compliance with Commonwealth policy, and any other provisions required by the FCA Entity to ensure that the subcontractor is bound in the same way as the successful Tenderer is bound;
  - 14.3.2 to require the ability to have a direct agreement with any or all subcontractors to the Tenderer; and
  - 14.3.3 to require that the obligations of the Tenderer be guaranteed by each or a particular subcontractor or by the ultimate parent company of each or a particular subcontractor.

---

## 15. Alternative Tenders

- 15.1 Tenderers who submits a Tender which conforms in all respects with this RFT including the Statement of Requirements and required pricing structure may also submit a Tender containing an alternative approach or solution (an **Alternative Tender**) which:
  - 15.1.1 may not meet all of the requirements in the Statement of Requirements; and/or
  - 15.1.2 proposes to deliver the tendered Services in a different manner, or on the basis of a different pricing structure, to that set out in this RFT but which still satisfies the outcomes and performance requirements sought by this RFT:
- 15.2 An Alternative Tender must:
  - 15.2.1 clearly specify that it is an Alternative Tender;

- 15.2.2 clearly specify every respect in which the Alternative Tender departs from the requirements of this RFT;
  - 15.2.3 clearly states the reasons for each departure; and
  - 15.2.4 show how the alternative approach or solution is more beneficial to the FCA Entity, including the pricing and non-pricing benefits of the Alternative Tender.
- 15.3 The FCA Entity will evaluate any Alternative Tenderers separately from any approaches or solutions proposed by the Tenderer that meet the requirements of this RFT. When assessing value for money of any Alternative Tenderers, the FCA Entity may take into account the additional benefits and risks offered by an Alternative Tender, despite any low scores attributed on any one or more of the Evaluation Criteria.

---

## **16. Scanned or imaged material, including Statutory Declarations**

- 16.1 In the event that clarification of a lodged Tender is required, Tenderers may be required to courier or security post the originals of the signature and/or initialled pages to the FCA Entity addressed to the Contact Officer at the address specified.

---

## **17. The FCA Entity's Rights**

- 17.1 The FCA Entity reserves the right to:
- 17.1.1 vary the timing and processes, if any, referred to in this RFT;
  - 17.1.2 change or suspend the RFT process;
  - 17.1.3 require additional information or clarification from any Tenderer or anyone else;
  - 17.1.4 terminate the RFT process where it is, in the opinion of the FCA Entity, in the public interest to do so;
  - 17.1.5 remove any Tender from consideration where in the opinion of the FCA Entity:
    - (a) it is in the public interest to do so;
    - (b) the Tenderer does not meet a Mandatory Requirement;
    - (c) the Tenderer is not fully capable of undertaking the Contract;
    - (d) this RFT otherwise allows for the exclusion of the Tenderer; or
    - (e) the Tender does not represent value for money;
  - 17.1.6 enter into a contract or other binding relationship outside the RFT process with a person on such terms as the FCA Entity in its absolute discretion accepts without prior notice to any Tenderer where in the opinion of the FCA Entity:
    - (a) it is in the public interest to do so;
    - (b) no Tenderer meets all Mandatory Requirements;
    - (c) no Tenderer is fully capable of undertaking the Contract; or

- (d) no Tender represents value for money;
- 17.1.7 enter into a contract on terms different to that specified in this RFT;
- 17.1.8 add a Tenderer or select and negotiate with a third party who has not submitted a Tender on such terms as the FCA Entity in its absolute discretion accepts without prior notice to any Tenderer where in the opinion of the FCA Entity:
  - (a) it is in the public interest to do so;
  - (b) no Tenderer meets a Mandatory Requirement;
  - (c) no Tenderer is fully capable of undertaking the Contract; or
  - (d) no Tender represents value for money;
- 17.1.9 call for new Tenders;
- 17.1.10 publish or disclose the names of Tenderers (whether successful or unsuccessful);
- 17.1.11 allow or not allow a Related Body Corporate within the meaning of the *Corporations Act 2001* (Cth), or any other entity, to take over a Tender in substitution for the original Tenderer;
- 17.1.12 enter into negotiations with any Tenderer; or
- 17.1.13 cancel, add to or amend the information, requirement, terms, procedures or processes set out in this RFT.
- 17.2 Without limiting any other clause in this RFT, the FCA Entity will not be liable or in any way responsible for any failure to inform a potential Tenderer of a change relating to this RFT or any other matter arising by the FCA Entity exercising any of its rights.

---

## SECTION 3 - INFORMATION TO BE PROVIDED BY TENDERERS

---

### 18. Conditions for Participation

- 18.1 Subject to clause 24, if the FCA Entity considers that a Tenderer does not satisfy all of the following Conditions for Participation, that Tender will be excluded from further consideration under this RFT:

***[Note to Tenderers: Tenderers should apply for a Statement of Tax Record and should ensure that their subcontractors apply for a Statement of Tax Record (where required) within sufficient time to meet these Conditions for Participation.]***

1	The Tenderer exists as a legal entity at the Tender Closing Time.
2	The Tenderer must either:  (a) hold a Valid and Satisfactory Statement of Tax Record by the Tender Closing Time; or  (b) have a receipt demonstrating that a Statement of Tax Record has been requested from the Australian Taxation Office by the Tender Closing Time, and holds a Valid and Satisfactory Statement of Tax Record no later than 4 business days from the Tender Closing Time.
3	The Tenderer must hold a Valid and Satisfactory Statement of Tax Record for any first tier subcontractor that it proposes, as part of its Tender, to engage to deliver goods or services with an estimated value of over \$4 million (GST inclusive).

---

### 19. Minimum Content and Format Requirements

- 19.1 Subject to clause 24, if the FCA Entity considers that a Tender does not satisfy all of the following Minimum Content and Format Requirements, that Tender will be excluded from further consideration under this RFT:

1	The Tender must be in English and be legible.
2	Measurements in the Tender must be expressed in Australian legal units of measurement.
3	The Tender must include a completed, signed and scanned Tenderer Declaration substantially in the form contained in Part D (Technical Response Forms) of this RFT.

4	<p>The Tender must include either:</p> <p>(a) a Valid and Satisfactory Statement of Tax Record for the Tenderer; or</p> <p>(b) a receipt demonstrating that a Statement of Tax Record has been requested from the Australian Taxation Office for the Tenderer and the Tenderer then provides a Valid and Satisfactory Statement of Tax Record within 4 business days from the Tender Closing Time.</p>
---	--

19.2 Notwithstanding the use of the words “must”, “shall”, “minimum”, “required to” or similar language or anything to the contrary in the Statement of Requirements or elsewhere in this RFT, there are no Mandatory Requirements for this RFT (other than the Conditions for Participation and the Minimum Content and Format Requirements).

---

## **20. Format Of Tenders**

- 20.1 Tenders should be completed in accordance with Part D (Technical Response Forms) and Part E (Pricing Response Forms), noting the following:
- 20.1.1 all applicable information should be provided in response to the information requirements set out in Part D (Technical Response Forms) and Part E (Pricing Response Forms);
  - 20.1.2 where a response to a particular requirement is covered in another section of the Tender, a cross reference to that section should be provided; and
  - 20.1.3 subject to clause 13.5, Tenderers may include additional or support materials (as supplements or attachments to the Tender Response Forms) noting that Tenderers are discouraged from including generic marketing information that does not relate to the information requested in this RFT and/or does not address the Evaluation Criteria.
- 20.2 Tenderers who wish to claim confidentiality in relation to any aspects of their Tender should complete the relevant section in Part D (Technical Response Forms) to this RFT.
- 20.3 Tenderers should indicate any non-compliances or partial compliances with the Draft Contract and Statement of Requirements using the relevant section in Part D (Technical Response Forms) to this RFT. Tenderers will be taken to comply with the Draft Contract unless otherwise set out in their Tender.

---

## SECTION 4 - LODGING A TENDER

---

### 21. Onus on the Tenderer

- 21.1 It is the responsibility of each Tenderer to obtain all information necessary or convenient for the preparation of its Tender.
- 21.2 Tenderers must not rely, and are deemed not to have relied, upon any statement or representation by the FCA Entity, whether before or after the date of this RFT, in connection with this RFT or this RFT process, unless that statement or representation is made in writing by the Contact Officer for this RFT.
- 21.3 Each Tenderer submits its Tender on the basis that it acknowledges and agrees that:
- 21.3.1 it has examined this RFT and all documents referred to in this RFT, and any other information made available by the FCA Entity to Tenderers for the purpose of submitting a Tender;
  - 21.3.2 it has sought and examined all further information which is obtainable by making reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on its Tender;
  - 21.3.3 in lodging its Tender, it does not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the FCA, FCoA and FCC, or their officers, employees, agents or advisers other than any statement, warranty or representation contained in this RFT;
  - 21.3.4 it did not use the improper assistance of the FCA, FCoA or FCC employees or ex-employees or contractors or ex-contractors of the FCA, FCoA and FCC, or any other person, or information unlawfully obtained from them in compiling its Tender;
  - 21.3.5 it does and will comply with all conditions set out in this RFT;
  - 21.3.6 the FCA Entity will rely on the information provided by the Tenderer (and other sources) in its Tender in the evaluation of the Tender;
  - 21.3.7 it has satisfied itself as to the correctness and sufficiency of its Tender including tendered prices;
  - 21.3.8 it has obtained independent advice on the effect of all relevant legislation in relation to the Services to which it has tendered; and
  - 21.3.9 it is responsible for all costs and expenses related to:
    - (a) the preparation and lodgement of its Tender;
    - (b) any subsequent negotiation;
    - (c) any work undertaken by the Tenderer prior to the execution of a Contract; and
    - (d) any other action including any dispute or response in relation to this RFT.

- 21.4 Without limiting clause 21.3, the FCA Entity will not accept responsibility for any misunderstanding arising from the failure by a Tenderer to comply with the requirements set out in this RFT, or arising from any ambiguity, discrepancy, inconsistency, error or omission contained in a Tender.
- 

## **22. Alterations to Tenders**

- 22.1 Any alteration made to a Tender before its lodgement must be clearly legible and initialled by the Tenderer. Tenders containing un-initialled alterations or amendments and Tenders in which information is not legible may be excluded from consideration at the discretion of the FCA Entity. The FCA Entity is not required to give reasons for its decision to admit or exclude that part of the Tender.
- 

## **23. Corrections by a Tenderer after lodgement**

- 23.1 If, after submission of a Tender but before the Tender Closing Time, a Tenderer becomes aware of any discrepancy, error or omission in the Tender and wishes to lodge a correction or additional information, it must resubmit its whole Tender in accordance with this RFT, clearly stating that the Tender is a replacement Tender. Where more than one Tender has been submitted, the FCA Entity will evaluate the last Tender submitted.
- 23.2 The FCA Entity is under no obligation to consider any corrections or additional information provided by Tenderers after the Tender Closing Time. The FCA Entity will consider this material only where it considers it appropriate to do so.
- 

## **24. Unintentional Errors of Form**

- 24.1 An unintentional error of form is an error that the FCA Entity considers represents incorrect or incomplete information that is not consistent with the Tenderer's intentions and, if relevant, capabilities at the time the Tender was lodged.
- 24.2 If the FCA Entity considers that there are unintentional errors of form in a Tender, the FCA Entity may request the Tenderer to correct or clarify the error, but will not permit any material alteration or addition to the Tender where this would result in unfairness in the RFT process.
- 24.3 If the FCA Entity provides any Tenderer with the opportunity to correct unintentional errors of form, it will provide the same opportunity to all other Tenderers that are in the same position.

---

## SECTION 5 - EVALUATION OF TENDERS

---

### 25. Tender Evaluation Process

- 25.1 Tenders will be evaluated against the Evaluation Criteria to determine the Tender that represents the best overall value for money on a whole-of-life basis.
- 25.2 Without limiting clause 27, as part of its evaluation of Tenders, the FCA Entity may, in its sole and absolute discretion:
- 25.2.1 use any material provided in response to one Evaluation Criteria in the evaluation of other criteria;
  - 25.2.2 ask Tenderers to undertake presentations;
  - 25.2.3 ask Tenderers to provide written clarification of various aspects of their Tender in accordance with clause 29;
  - 25.2.4 ask Tenderers to provide further information to confirm its financial viability and commercial stability;
  - 25.2.5 perform such security, probity and financial investigations as the FCA Entity considers necessary in relation to Tenderers or their personnel, subcontractors or related entities (or their subcontractor's or related entities' personnel);
  - 25.2.6 require Tenderers to provide information or documentation that the FCA Entity requires for such investigations;
  - 25.2.7 have discussions or interviews with Tenderers including to seek further clarification of Tenders;
  - 25.2.8 ask referees about any aspect of the Tenderer's performance of Services relevant to this RFT;
  - 25.2.9 ask Tenderers to refine their Tenders, including where necessary to establish a basis for comparing Tenders and determining value for money;
  - 25.2.10 make independent enquiries about any matters that may be relevant to the evaluation of a Tender, including contacting any other persons to whom the Tenderer has provided goods or services who have not been nominated by the Tenderer;
  - 25.2.11 visit Tenderers' sites, or sites of the Tenderer's customers; and
  - 25.2.12 have discussions with or undertake visits to customers of Tenderers and the Tenderers' subcontractors, whether or not those customers or subcontractors are listed as referees in the Tenderers' Tenders.
- 25.3 If any additional or modified Evaluation Criteria are to be applied for the purposes of evaluation, the FCA Entity will notify Tenderers, in accordance with clause 6, and Tenderers will be given an opportunity to provide additional information in relation to those new or modified Evaluation Criteria.

- 25.4 The FCA Entity may undertake the evaluation of the Tenders in conjunction with the representatives of other Commonwealth agencies including the FCA, FCoA and FCC), the FCA Entity's (and other Commonwealth agencies') contractors and advisers, responsible Ministers or Parliamentary Secretaries and their advisers. Subject to this RFT, the FCA Entity may provide Tender information to those other entities.
- 25.5 The FCA Entity may develop a shortlist of Tenders at any time during the process. Shortlisting will be conducted on the basis of an assessment of the Tenders against this RFT. Tenders that are not included on any shortlist may not be considered further. Clause 27.2 below sets out (without limitation) reasons why a Tender might be excluded from a shortlist.
- 25.6 Where the FCA Entity receives additional information regarding a Tender (whether sought by the FCA Entity or not), it is not bound to take that additional information into account and will not do so where this would introduce bias into, or otherwise adversely affect, the evaluation process.

---

## 26. Evaluation Criteria

- 26.1 The FCA Entity will have regard to the criteria in the following table in assessing what Tender(s) represent best value for money. A Tender which is rated unsuitable/unsatisfactory against one or more of those criteria may be excluded from further consideration.

<b>Criteria</b>	
<b>Technical Evaluation Criteria</b>	
<b>1.</b>	<b>Experience and Capability</b>
1.1	Demonstrated experience in delivering comparable services to comparable organisations.
1.2	Proposed staffing and management model.
1.3	Ability to retain and recruit high quality staff (particularly transcribers).
<b>2.</b>	<b>Service Delivery</b>
2.1	Approach to service delivery and quality management: All Services other than AV Support and Maintenance Services
2.2	Approach to Service delivery and quality management: AV Support and Maintenance Services

Criteria	
2.3	Approach to contract and performance management.
2.4	Approach to ensure and maintain capacity to deliver services.
2.5	Approach to transition management.
2.6	Approach to technology innovation and proposed savings mechanism
<b>3.</b>	<b>Cultural Fit</b>
3.1	Understanding of the FCA Entity's challenges and those of each of the FCA, FCoA and FCC.
3.2	Demonstrated ability to address these challenges.
<b>Financial Evaluation</b>	
<b>4.</b>	<p><b>Price</b> – The extent to which the Tendered prices and pricing structure over the whole of life of the tendered Services (including discount regimes) contribute to value for money for the Commonwealth, considering, but not limited to:</p> <ul style="list-style-type: none"> <li>• the competitiveness of the prices/discounts offered on a risk adjusted basis, the possible impact of any exclusions, carve-outs, or other qualifications or conditions;</li> <li>• the transition-in costs associated with transitioning to the Services; and</li> <li>• any other financial impacts that may arise from engaging the Tenderer to deliver the Services.</li> </ul>
<b>Compliance Risk Evaluation</b>	
<b>5.</b>	<p>Compliance risk – including</p> <ul style="list-style-type: none"> <li>• level of non-compliance with the Draft Contract and requirements;</li> <li>• risks relating to the Tenderer meeting Commonwealth ongoing regulatory requirements and standards, including but not limited to the Tenderer's commitment to practices regarding labour regimes (including ethical employment practices), commitment to indigenous opportunities, work health and safety, and environmental impacts;</li> </ul>

## Criteria

- risks identified during due diligence, including referee checks;
- risks identified relating to the financial viability and insurance of the Tenderer;
- risks raised as a result of services that the Tenderer proposed to be completed offshore;
- risks with the proposed service delivery model should the tender not include AV Support and Maintenance Services in their tender
- risks associated with the proposed subcontracting arrangements
- the economic benefit of the procurement to the Australian economy; and
- any other risks identified.

## 27. Reservation of rights

- 27.1 In addition to, and without limiting any other rights under this RFT, the FCA Entity may do any of the things in this clause 27 at its discretion. The FCA Entity may conduct some or all of the above evaluation stages at the same time or in a different order to that stated or to change its evaluation process at any time if required in order to ensure that an appropriate value for money assessment is undertaken.
- 27.2 The FCA Entity may set aside or reject a Tender at any time or not include the Tender on a shortlist (where a shortlist is developed) where in the FCA Entity's reasonable opinion:
- 27.2.1 the Tender is not compliant with any Conditions for Participation or Minimum Content and Format Requirements (taking in account any permitted clarification, correction or additional information provided by the Tenderer);
  - 27.2.2 the Tender is incomplete or so deficient that the FCA Entity is unable to progress the evaluation of the Tender (e.g. it fails to address technical details, or demonstrate a reasonable understanding of the Services or fails to provide relevant, complete and accurate information);
  - 27.2.3 the Tender does not meet a minimum acceptable level for any aspect of the Evaluation Criteria;
  - 27.2.4 the Tender is clearly unacceptable, including due to any matter which is unscored but which may be taken into account;
  - 27.2.5 the Tender is clearly non-competitive;
  - 27.2.6 the relevant Tenderer is clearly not capable of providing the Services;
  - 27.2.7 the relevant Tenderer does not promptly provide all reasonable assistance to the FCA Entity, including in the FCA Entity's risk assessment, security, probity or financial investigations; or

- 27.2.8 the relevant Tenderer has demonstrated other reasons (including technical, strategic, commercial, financial, legal or risk related reasons) why the Tenderer should not be selected to provide the Services.
- 27.3 The FCA Entity may also exclude a Tender from further consideration if:
- 27.3.1 the Tenderer is bankrupt or insolvent;
- 27.3.2 the Tenderer has not complied with any part of the Tenderer Declaration, or has significant deficiencies in performance of any substantive requirement or obligation under a prior contract; or
- 27.3.3 another provision of this RFT allows for exclusion from further consideration.

---

## **28. Tenderer Engagement**

- 28.1 Without limiting clause 25 at any stage of the RFT process, the FCA Entity may decide to conduct a Tenderer engagement process in respect of:
- 28.1.1 all Registered Tenderers;
- 28.1.2 all potential Tenderers;
- 28.1.3 all shortlisted Tenderers;
- 28.1.4 preferred Tenderer/s only; and/or
- 28.1.5 subcontractors proposed by a Tenderer (including in the circumstances described in clause 14.2).
- 28.2 If the FCA Entity decides to conduct a Tenderer engagement process:
- 28.2.1 affected Tenderers will be informed and given details of what steps are proposed, what involvement is required of the Tenderer, timing involved and the rules that will apply to the Tenderer engagement process (for example, to ensure probity is maintained during the process and confidentiality of information is appropriately protected); and
- 28.2.2 Tenderers who have been invited to participate in the process must prepare the deliverables requested of them and ensure availability to attend workshops or other discussions about Tenders.
- 28.3 For the purpose of clause 28.2:
- 28.3.1 participating Tenderers may be asked to participate in one or more face-to-face session(s) with the FCA Entity; and
- 28.3.2 if the FCA Entity engagement process is undertaken after the initial submission of Tenders, participating Tenderers may be asked to:
- (a) revise or clarify any aspect of Tenders based on further information or feedback on Tenders provided to them; and
- (b) the FCA Entity may use information provided in the Tenderer engagement process in its evaluation of Tenders in accordance with this RFT.

28.4 Any costs incurred by the Tenderer in complying with this clause 28 will be borne by the Tenderer.

---

## **29. Requests for Clarification**

29.1 If the FCA Entity requires clarification of information contained in a Tender, it will request clarification from the Tenderer in writing. The FCA Entity will not accept information provided in response to a request for clarification if that information improves or alters the original Tender in any material respect where this would result in unfairness in the RFT process. If the Tenderer fails to supply clarification to the satisfaction of the FCA Entity, then the FCA Entity may exclude the Tender from further consideration.

29.2 Tenderers should:

29.2.1 respond to any request for clarification within the time period and in the format (if any) specified by the FCA Entity;

29.2.2 ensure that the information provided answers the FCA Entity's enquiry and is consistent with Tenders; and

29.2.3 not seek to improve or materially alter any aspect of Tenders by providing additional information to the FCA Entity.

29.3 The Tenderer should not interpret a request for clarification as being an indication that its organisation will or will not be the preferred Tenderer.

29.4 The Tenderer should treat all communications relating to this RFT with the FCA Entity as strictly confidential and not disclose the details of those communications to third parties. A Tenderer's failure to observe confidentiality may result in the exclusion of its Tender from further consideration.

---

## **30. Tendered Prices**

30.1 The Tenderer agrees to provide access to such information as is determined by the FCA Entity to be necessary in order to evaluate the reasonableness of its Tendered prices.

30.2 In the evaluation process, the FCA Entity may, in its sole and absolute discretion, make certain adjustments to the Tendered price, which may need balancing in order to establish a common basis for the comparison of Tenders, including (without limitation):

30.2.1 testing of pricing assumptions;

30.2.2 benchmarking;

30.2.3 seeking refined offers, including if Tendered pricing cannot be easily compared;

30.2.4 adjustments or other testing to reflect or assess:

(a) pricing flexibility;

(b) any other costs or discounts which form part of the Tenderer's offer;

(c) normalised and discounted cash flow;

(d) any alternative proposals or financial incentives offered by the Tenderer;

- (e) implementation costs;
- (f) any risk relating to the Tendered prices;
- (g) transition out costs;
- (h) cost of administering the agreement; and
- (i) whole of life costs and benefits.

---

## **31. Negotiations**

- 31.1 Negotiations may be undertaken with one or more Tenderers in the sole and absolute discretion of the FCA Entity.
- 31.2 During the negotiation phase of this RFT process, the FCA Entity may engage in detailed discussions and negotiations, including parallel negotiations, with the goal of maximising the benefits of the project, as measured using the Evaluation Criteria. As part of this process, those Tenderers participating in the negotiation phase may be asked to improve any or all aspects of Tenders.
- 31.3 The FCA Entity may seek best and final offers from Tenderers participating in the negotiation phase of this RFT process as a part of Tenderer engagement in accordance with clause 28.
- 31.4 Without limiting its other rights under this RFT:
  - 31.4.1 the FCA Entity may discontinue negotiations with a Tenderer at any time, whether or not the Tenderer has been notified that they are a preferred Tenderer;
  - 31.4.2 in the event that the FCA Entity concludes that during negotiations a Tenderer has retracted, or attempts to retract, any part of its tendered offer, the FCA Entity, in its discretion, may:
    - (a) disqualify that Tenderer's Tender;
    - (b) terminate this RFT process;
    - (c) re-enter negotiations or parallel negotiations with other Tenderers; or
    - (d) exercise any other right reserved to the FCA Entity under law or elsewhere in this RFT.

---

## **32. Debriefing**

- 32.1 After the FCA Entity has finalised the Contract with the successful Tenderer(s) (if any), the FCA Entity will notify all unsuccessful Tenderers of the outcome of the RFT process.
- 32.2 All Tenderers will be offered the opportunity for a debriefing on their Tenders.
- 32.3 Tenderers will be debriefed against the Evaluation Criteria contained in this RFT. Tenderers will not be provided with information concerning other Tenders.

---

**33. Complaints Procedure**

33.1 Complaints regarding this RFT process should be submitted to:

ProcurementComplaints@fedcourt.gov.au

33.2 For any complaints arising out of this RFT, the complainant must identify if the complaint is being submitted in accordance with the *Government Procurement (Judicial Review) Act 2018* (Cth) (**GPJR Act**), in which case the complaint:

33.2.1 must contain the information required under the GPJR Act;

33.2.2 will be handled by the FCA Entity in accordance with the GPJR Act; and

33.2.3 must be directed to the email address specified in clause 33.1.

33.3 Complaints will not prejudice a Tenderer's participation in any of the FCA Entity's future procurement processes.

---

## SECTION 6 - TERMS AND CONDITIONS OF TENDERING

---

### 34. Intellectual Property in this RFT

- 34.1 All intellectual property that exists in the information contained in this RFT, or any related or attached material, remains the property of the FCA Entity (or other entity which provided it to the FCA Entity).
- 34.2 Each Tenderer is permitted to use this RFT for the purpose only of compiling its Tender and, in the case of the Tenderer(s) selected through this RFT process, for negotiating the Contract with the FCA Entity.

---

### 35. Small and Medium Enterprises (SMEs)

- 35.1 The Commonwealth is committed to *Public Governance, Performance and Accountability Act 2013* (Cth) non-corporate Commonwealth entities sourcing at least 10 per cent of purchases by value from Small to Medium Enterprises (SMEs). For the purpose of this clause, an SME is an Australian or New Zealand firm with fewer than 200 full-time equivalent employees.
- 35.2 Tenderers are encouraged to include the participation of SMEs in Tenders.

---

### 36. Audit and Access

- 36.1 The *Auditor-General Act 1997* (Cth) provides the Auditor-General or an authorised person with a right to have, at all reasonable times, access to information, documents and records.
- 36.2 In addition to the Auditor-General's powers under the *Auditor-General Act 1997* (Cth), if the Tenderer is chosen to enter into a Contract, the Tenderer will be required to provide the Auditor-General, or an authorised person, access to information, documents, records and the FCA, FCoA and FCC assets, including those on the Tenderer's premises. This will be required at reasonable times on giving reasonable notice for the purpose of carrying out the Auditor-General's functions and will be restricted to information and assets which are in the custody or control of the Tenderer, its employees, agents, subcontractors, and which are related to the Contract. Such access will apply for the Term of the Contract and for a period of 7 years from the date of expiration or termination.
- 36.3 The Tenderer should obtain, and will be deemed to have obtained, its own advice on the impact of the *Auditor-General Act 1997* (Cth) on its participation in the RFT process.

---

### 37. Freedom of Information

- 37.1 The *Freedom of Information Act 1982* (Cth) (**FOI Act**) gives members of the public right of access to documents in possession of the Commonwealth Government and its agencies (which includes the FCA Entity).
- 37.2 The FOI Act extends as far as possible the right of the community to access information (generally documents) in the possession of the Commonwealth, limited only 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 departments and public authorities.

- 37.3 Tenderers should also be aware of the *Australian Information Commissioner Act 2010* (Cth), which established the Office of the Australian Information Commissioner to perform freedom of information, privacy and information policy functions.
- 37.4 Tenderers should obtain, and will be considered to have obtained, its own advice on the impact of this legislation on its participation in this process.

---

### **38. Commonwealth Ombudsman**

- 38.1 The *Ombudsman Act 1976* (Cth) provides the Commonwealth Ombudsman's office with extensive power to require the production of documents or information.
- 38.2 Tenderers should obtain, and will be considered to have obtained, its own advice on the impact of this legislation on its participation in this process.

---

### **39. Privacy**

- 39.1 Tenderers are advised that it is Commonwealth policy to ensure that there is no loss of privacy protection when a Commonwealth entity contracts for the delivery of services.
- 39.2 Without limiting any obligations under the *Privacy Act 1988* (Cth), Tenderers who are selected as a result of this RFT process are required under the Contract to agree not to do an act, or engage in a practice, that would breach an Australian Privacy Principle under the *Privacy Act 1988* (Cth) if done or engaged in by a Commonwealth entity to which the Australian Privacy Principles apply. Tenderers selected as a result of this RFT process will also need to agree to impose those same obligations on any subcontractor engaged by the Tenderer.

---

### **40. Confidentiality**

- 40.1 The FCA Entity operates within a public accountability framework which requires it to ensure openness and transparency of its activities. This requires the FCA Entity to minimise the amount of information that is subject to confidentiality requirements. The overriding principle applied by the FCA Entity is that information should not be protected as confidential unless there is good reason to do so.
- 40.2 Subject to clause 40.1, during the Tender process the FCA Entity will treat as confidential:
- 40.2.1 all Tenders received prior to the award of a Contract;
  - 40.2.2 all unsuccessful Tenders, following the award of a Contract;
  - 40.2.3 all successful Tenders, following the award of a Contract but only to the extent that:
    - (a) the successful Tenderer requests that specific information in that Tender be kept confidential; and
    - (b) the FCA Entity has determined that specific information is to be kept confidential in accordance with the Confidentiality Throughout the Procurement Cycle from the Department of Finance and has agreed, pursuant to the Contract with the successful Tenderer, to keep that information confidential.

- 40.3 The FCA Entity will not be taken to have breached any obligation to keep information provided by Tenderers confidential to the extent that the information:
- 40.3.1 is disclosed by the FCA Entity to its advisers, officers, employees or contractors, or to an officer, employee, contractor or adviser of the FCA, FCoA and FCC or other Commonwealth agencies, in order to:
    - (a) evaluate and clarify Tenders;
    - (b) negotiate a Contract with the Tenderer or any other Tenderer;
    - (c) facilitate use of the Services under the Contract;
    - (d) conduct, review, audit or address a challenge to the RFT process; or
    - (e) prepare, manage and review the performance and implementation of the Contract;
  - 40.3.2 is disclosed by the FCA Entity to the responsible Minister;
  - 40.3.3 is disclosed by the FCA Entity in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - 40.3.4 is authorised or required by law to be disclosed;
  - 40.3.5 is shared by the FCA Entity within the FCA's, FCC's or FCoA's organisation, or with another Commonwealth entity if this serves the Commonwealth's legitimate interests;
  - 40.3.6 is disclosed to meet the FCA Entity's, FCA's, FCC's or FCoA's reporting or accountability requirements, including, without limitation:
    - (a) under the *Public Governance, Performance and Accountability Act 2013* (Cth) or other legislation;
    - (b) to the Australian National Audit Office or any other auditor appointed by the FCA;
    - (c) in accordance with the provisions as further detailed in clause 40.4 below that require notification of Commonwealth contracts on the AusTender website; or
    - (d) to the Commonwealth Ombudsman; or
  - 40.3.7 is in the public domain otherwise than due to a breach of the relevant obligations of confidentiality.
- 40.4 Tenderers should be aware that the FCA Entity, as a non-corporate Commonwealth entity, is subject to specific accountability requirements, which support internal and external scrutiny of its tendering and contracting processes. These include:
- 40.4.1 the policy of the Commonwealth to publish details of relevant entity agreements, contracts and standing offers with an estimated value of \$10,000 or more on the AusTender website;
  - 40.4.2 the requirement to report details of Commonwealth contracts valued at \$100,000 or more in accordance with the *Senate Order on Departmental and Agency Contracts*, including:

- (a) name of the service provider and the subject matter of the Contract;
  - (b) total value of the Contract; and
  - (c) whether the Contract contains clauses that are confidential, and if so, the reasons for confidentiality;
- 40.4.3 the requirement to publish information about certain procurements in FCA, FCC or FCoA annual reports; and
- 40.4.4 the requirement to make available, on request, the names of any subcontractors engaged to perform services in relation to a Commonwealth contract (as such, Tenderers should inform all potential subcontractors that its participation in fulfilling a Commonwealth contract may be publicly disclosed).

## **41. Material Change to Tenderer**

- 41.1 A Tenderer must notify the FCA Entity if, following lodgement of its Tender, any of the following occurs:
- 41.1.1 an event that has the effect of materially altering either the composition or control of the Tenderer or the business of the Tenderer;
  - 41.1.2 any material change to the compliance status of the Tenderer against this RFT; or
  - 41.1.3 any material change to the proposed basis on which the Tenderer will deliver the Services, or have access to the necessary and appropriate skills, resources, nominated key personnel, nominated subcontractors or corporate or financial backing to provide the Services, on the terms of the Draft Contract.
- 41.2 The FCA Entity may allow (on terms it considers appropriate) the substitution of the Tenderer with another legal entity upon receipt of a joint written request from or on behalf of the Tenderer and the other legal entity. If the FCA allows the substitution, it will evaluate the Tender in its original form prior to the event, except that the impact of the event on the information provided in the Tender may be taken into account.
- 41.3 If the FCA Entity receives notice, or becomes aware of an event under clause 41.1.2 or 41.1.3, or the Commonwealth does not allow substitution, or substitution is not requested, under clause 41.1.1, the FCA Entity may either exclude the Tender from consideration or consider the Tender taking into account the impact of the changed circumstances on the information provided in the Tender.

## **42. Conflict of Interest**

- 42.1 Tenderers must disclose in Tender Declarations all actual or perceived Conflicts of Interest (if any) that existed or may arise at any time prior to entering into a Contract in relation to this RFT and Tenders, Tenderer personnel and any Related Body Corporate having made all reasonable enquiries at the time of lodging Tenders.
- 42.2 A Conflict of Interest may exist if:
- 42.2.1 the Tenderer, Tenderer personnel or a Related Body Corporate has a relationship (whether professional, commercial or personal) with the FCA Entity, FCA or FCC or FCoA's personnel or any of the advisers engaged by either the FCA Entity who are involved in the evaluation of Tenders;

- 42.2.2 the Tenderer, Tenderer's personnel or a Related Body Corporate has a relationship with, and obligations to, an organisation which would, or would appear to, affect the ability of the Tenderer to provide the Services or would bring disrepute to or embarrass the FCA Entity, FCA, FCC, FCoA or the Commonwealth; or
  - 42.2.3 the Tenderer, Tenderer's personnel or a Related Body Corporate has a relationship which could affect the FCA Entity, FCA, FCC, FCoA or the Commonwealth's security.
- 42.3 A Conflict of Interest includes a financial or corporate relationship between a Tenderer, Tenderer personnel or a Related Body Corporate which may influence or appear to influence, a decision made by a Tenderer, or its capacity to make independent decisions, in the best interest of the Commonwealth or any Commonwealth entity, in performing the Contract.
- 42.4 If any actual or perceived Conflict of Interest is notified, or the FCA Entity becomes aware of any actual or perceived Conflict of Interest, the FCA Entity may, in its absolute discretion:
- 42.4.1 disregard the Tender submitted by such a Tenderer;
  - 42.4.2 enter into discussions to seek to resolve such conflict of interest; or
  - 42.4.3 take any other action it considers appropriate.

---

### **43. Tenderer Behaviour**

- 43.1 Tenderers must not, and must ensure that its officers, employees, agents and advisors do not, in relation to the preparation, lodgement or assessment of Tenders:
- 43.1.1 make any false or misleading or deceptive claim or statement;
  - 43.1.2 improperly obtain Confidential Information;
  - 43.1.3 receive improper assistance including from any existing or former officer or employee of the FCA Entity, FCA, FCC, or FCoA;
  - 43.1.4 engage in collusive tendering, anti-competitive conduct, unlawful, unethical or other similar conduct with any other Tenderer or other person;
  - 43.1.5 attempt to improperly influence an officer or employee of the FCA Entity, FCA, FCC or FCoA, or violate any applicable laws regarding the offering of inducements; or
  - 43.1.6 approach any officer or employee of the FCA Entity, FCA, FCC or FCoA, other than in the manner set out in this RFT.
- 43.2 The FCA Entity may exclude a Tender from consideration if the Tenderer fails to comply with the requirements set out in this clause 43.

---

### **44. Responsibility for Tender Costs**

- 44.1 Without limiting any other clause in this RFT, participation in any stage of this RFT process, or in relation to any matter concerning this RFT, will be at each Tenderer's sole risk, cost and expense.

- 44.2 Tenderers are responsible for all costs incurred in the preparation and lodgement of Tenders, and in respect of any discussions, negotiations, enquiries or any work undertaken by them after the Tender has been submitted.
- 44.3 The FCA Entity is not liable to Tenderers for any costs or compensation, regardless of whether the FCA terminates, varies or suspends this RFT process or takes any other action under this RFT.

---

## 45. Acceptance

- 45.1 Acceptance of the preferred Tender will be subject to the execution of a Contract between the Commonwealth and the successful Tenderer, which the FCA Entity intends will be substantially in the form of the Draft Contract at Part C of this RFT.
- 45.2 Neither the lowest priced Tender, nor any Tender, will necessarily be accepted by the FCA Entity.

---

## 46. Workplace Gender Equality

- 46.1 Commonwealth policy prevents the FCA Entity from entering into contracts with Tenderers who are non-compliant under the *Workplace Gender Equality Act 2012* (Cth) (the **WGE Act**).
- 46.2 The Draft Contract requires that, if the Tenderer is a “relevant employer” within meaning of the WGE Act, a successful Tenderer must:
- 46.2.1 comply with its obligations, if any, under the WGE Act; and
  - 46.2.2 if the term of the Contract exceeds 18 months, the successful Tenderer must provide a current letter of compliance within 18 months from the Contract Commencement Date and following this, annually to the FCA Entity.
- 46.3 Successful Tenderers should note that if during the term of the Contract, the successful Tenderer becomes non-compliant with the WGE Act, the successful Tenderer must notify the Contract Manager.
- 46.4 For further information about coverage of the WGE Act, contact the Workplace Gender Equality Agency on (02) 9432 7000 or refer to the agency’s website at [www.wgea.gov.au](http://www.wgea.gov.au) .
- 46.5 Tenderers must indicate as part of the Tenderer Declaration, whether or not the Tenderer’s organisation is a “relevant employer” within the meaning of the WGE Act and, if applicable, provide a current letter of compliance as part of Tenders, or prior to entering into a Contract (if successful).

---

## 47. Australian Industry Participation

**[Note to Tenderers: This clause will apply if the successful Tenderer is required to implement an AIP Plan under the Draft Contract. The Department is seeking advice from the Department of Industry, Innovation and Science on the application of the Australian Government’s Australian Industry Participation policy, and will issue an addendum with further information when it is available.]**

- 47.1 Tenderers should note that the Australian Government Australian Industry Participation National Framework principles apply to this RFT process and any resultant Contract. More information on AIP Plan requirements and the associated AIP Plans: User Guide can be

found at:  
<https://industry.gov.au/industry/IndustryInitiatives/AustralianIndustryParticipation/Pages/default.aspx>.

47.2 The successful Tenderer will be required to have an executive summary of their AIP Plan published at:  
<https://industry.gov.au/industry/IndustryInitiatives/AustralianIndustryParticipation/Pages/default.aspx>.

47.3 In this clause 47:

47.3.1 AIP Plan means an Australian Industry Participation Plan that covers this RFT process and has been approved by the Department of Industry, Innovation and Science in accordance with the AIP Plans: User Guide; and

47.3.2 “AIP Plans: User Guide” means the Australian Industry Participation Plans: User Guide for developing an AIP Plan published by the Department of Industry, Innovation and Science as at the date of release of this RFT, a copy of which can be found at:  
<https://industry.gov.au/industry/IndustryInitiatives/AustralianIndustryParticipation/Pages/default.aspx>.

---

## **48. Illegal Workers**

48.1 It is Commonwealth policy not to contract with providers engaging Illegal Workers.

48.2 The Tenderer's Declaration in Part D to the RFT contains a statement from the Tenderer confirming that it meets this obligation.

---

## **49. Indigenous Procurement Policy**

49.1 Tenderers should note that the Indigenous Procurement Policy may apply to this procurement. More information on the Indigenous Procurement Policy can be found at the **Indigenous Procurement Policy website**. The Commonwealth is committed to complying with the Indigenous Procurement Policy.

---

## **50. Economic Benefit to the Australian Economy**

50.1 Commonwealth policy requires the FCA Entity to consider the economic benefit of the procurement to the Australian economy as part of its value for money assessment.

50.2 Tenderers should ensure that it has completed the information requested in Part D (Technical Response Schedules).

50.3 Further information about this requirement is available in the Department of Finance guidance titled ‘Consideration of broader economic benefits in procurement’ available at:  
<https://www.finance.gov.au/sites/default/files/guidance-new-rules-10-30-and-10-31-16.pdf>.

---

## **51. Unpaid Employee Entitlements**

The FCA Entity will not enter into a Contract with a Tenderer who has a judicial decision against it relating to employee entitlements (not including decisions which are under appeal),

in respect of which the Tenderer has not paid the claim. Tenderers are required to declare that it has no such unsettled judgments (see the Tenderer Declaration in Part D of this RFT).

---

## **52. Competitive Neutrality**

- 52.1 Competitive Neutrality requires that Government business activities should not enjoy net competitive advantages over private sector competitors simply by virtue of public sector ownership.
- 52.2 Tenderers from the public sector should demonstrate in the pricing of Tenders 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 the FCA Entity.

---

## **53. Compliance with legislation**

- 53.1 Any successful Tenderer, including subcontractors, to the Commonwealth must comply with all applicable legislation, and in particular the:
- 53.1.1 *Age Discrimination Act 2004* (Cth);
  - 53.1.2 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth);
  - 53.1.3 *Charter of the United Nations (Terrorism and Dealing with Assets) Regulations 2008* (Cth);
  - 53.1.4 *Competition and Consumer Act 2010* (Cth);
  - 53.1.5 *Copyright Act 1968* (Cth);
  - 53.1.6 *Crimes Act 1914* (Cth);
  - 53.1.7 *Criminal Code Act 1995* (Cth);
  - 53.1.8 *Disability Discrimination Act 1992* (Cth);
  - 53.1.9 *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
  - 53.1.10 *Fair Work Act 2009* (Cth);
  - 53.1.11 Part 4 of the *Charter of the United Nations Act 1945* (Cth);
  - 53.1.12 *Privacy Act 1988* (Cth);
  - 53.1.13 *Race Discrimination Act 1975* (Cth);
  - 53.1.14 *Safety, Rehabilitation and Compensation Act 1988* (Cth);
  - 53.1.15 *Sex Discrimination Act 1984* (Cth); and
  - 53.1.16 *Work Health and Safety Act 2011* (Cth).
- 53.2 The Tenderer's attention is drawn to section 121 of the *Family Law Act 1975* (Cth). Under section 121(1) of the *Family Law Act 1975* (Cth), it is an offence punishable by imprisonment

for up to one year to provide an account of family law proceedings to the public or a section of the public that identifies parties or other persons involved in family law proceedings, other than in the limited circumstances outlined in section 121(9).

---

## 54. Standards

- 54.1 The Tenderer must ensure that any goods and services proposed comply with all applicable Australian standards (or in its absence an international standard) including any requirements or standards specified in the Statement of Requirements. The Tenderer should note that it may be required to enable the FCA Entity, FCA, FCC, FCoA, or an independent assessor, to conduct periodic audits to confirm compliance with all applicable Australian or international standards.
- 54.2 Where a Tenderer has described compliance with an internationally or industry recognised standard or accreditation, including ISO 9001:2015, the FCA Entity requires formal evidence of the Tenderer meeting the standard or holding current accreditation. This may be in the form of a certificate of currency from the standard or accreditation body, which clearly identifies the validity of the Tenderer's claims, or similar authenticable evidence. Tenderers are required to provide this evidence as attachments to their Tender. Tenderers should strictly limit attachments to documentation that identifies the current nature of the standard or accreditation.

---

## 55. Work Health and Safety Act 2011

- 55.1 Tenderers should note its obligation to comply, and as far as practicable ensure subcontractors will comply with all relevant requirements of the *Work Health and Safety Act 2011* (Cth) (**WHS Act**), including:
- 55.1.1 complying with all applicable work health and safety laws;
  - 55.1.2 consulting, co-operating and co-ordinating with the FCA Entity, FCA, FCC or FCoA as applicable on workplace health and safety activities so far as it is practicable;
  - 55.1.3 providing the FCA Entity, FCA, FCC or FCoA as applicable any information the FCA Entity, FCA, FCC or FCoA reasonably requires to confirm that the Service Provider (and any subcontractor) is complying with the WHS Act; and
  - 55.1.4 participating in all compliance activities associated with its legal obligations, including those arising under the WHS Act. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.
- 55.2 Compliance with the WHS Act will not relieve the successful Tenderer/s from its responsibilities to comply with its other obligations under the Contract.
- 55.3 The Tenderer will:
- (a) not use a subcontractor in relation to the Contract where the subcontractor would be precluded from contracting directly with the FCA Entity, FCA, FCC or FCoA under the requirements of the WHS Act; and
  - (a) ensure that all subcontractors impose obligations on subcontractors equivalent to the obligation under clauses 55.1 to 55.3.

---

## **56. Proceedings**

- 56.1 Each Tenderer should disclose in its Tender in the Tenderer Declaration in Part D Tender Response Schedule of this RFT any litigation, arbitration, mediation, conciliation or proceeding, including any investigations and any insolvency proceedings (Proceedings), that are taking place, pending or threatened, against the Tenderer (either in Australia or overseas) if such proceedings will or have the potential to impact adversely upon either:
- 56.1.1 the Tenderer's capacity to perform and fulfil its obligations if contracted as a result of this RFT process; or
  - 56.1.2 the Tenderer's reputation.
- 56.2 In circumstances in which there are no proceedings as detailed in clause 56.1, a Tenderer should make a statement to this effect in its Tender in the Tenderer Declaration in Tender Response Schedule Part D of this RFT.
- 56.3 Any Tenderer that fails to disclose proceedings in accordance with clause 56.1 or fails to make a statement in accordance with clause 56.1 (as applicable) and are subsequently found to have proceedings that the FCA considers should have been disclosed, may be excluded from further consideration in this RFT process. If it is found that a successful Tenderer/s is involved in proceedings as detailed in clause 56.1 after it is engaged under a Contract, it may be grounds for immediate termination of the Contract.

---

## **57. Ethical Dealing**

- 57.1 The FCA Entity policy is to engage in the highest standards of ethical behaviour and fair dealing throughout this RFT process. The FCA Entity requires the same standards from those with whom it deals. Tenderers should not act in an unethical or improper manner or contrary to any law.
- 57.2 The FCA Entity may exclude from consideration any Tenderer that, in the FCA Entity's reasonable opinion, has engaged in any behaviour in an unethical or improper manner or contrary to any law. The FCA Entity may refer the matter to the relevant Commonwealth, state or territory authorities. This right is in addition to any other remedies the FCA Entity may have at law, or under or in relation to any Contract entered into with a successful Tenderer.
- 57.3 Tenderers and the Tenderer's officers, employees, agents or advisers should not violate any applicable laws or Commonwealth or state or territory policies regarding offering inducements in connection with the preparation of Tenders or this RFT process.
- 57.4 In addition to any other remedies available under this RFT or under any law, the FCA Entity may at any time, immediately reject any Tender lodged by a Tenderer that is violating or has violated any applicable laws or Commonwealth or state or territory policies regarding the offering of inducements in connection with the preparation or lodgement of a Tender.
- 57.5 Tenderers should not engage in, or procure or encourage others to engage in, activity that would result in a breach of the Lobbying Code of Conduct and APSC Circular 2008/4: Requirements relating to the Lobbying Code of Conduct and post separation contact with Government (available at: <https://www.apsc.gov.au/circular-20084-requirements-relating-lobbying-code-conduct-and-post-separation-contact-government>).

---

## **58. Competition and Consumer Act 2010**

- 58.1 The FCA Entity's obligation to keep Tenderer information confidential will not be breached if the information is disclosed by the FCA Entity to a regulatory authority because of suspected collusive or anti-competitive tendering behaviour.
- 58.2 The Tenderer acknowledges that if the FCA Entity accepts the Tenderer's offer and completes any contract the FCA Entity will do so in reliance of this warranty.
- 58.3 Tenderers must indicate in the Tenderer Declaration in Part D of this RFT if it, or any corporation or person associated with Tenders, including directors and senior management, are or have ever been subject to proceedings related to anti-competitive conduct in Australia or overseas. The information must include the:
- 58.3.1 names of the parties to the proceedings;
  - 58.3.2 case number;
  - 58.3.3 general nature of the proceedings; and
  - 58.3.4 outcome or current status of the proceedings.
- 58.4 The FCA Entity reserves the right, at its discretion, to exclude any Tenderer from the procurement process if the Tenderer, or any corporation or person, including directors or senior managers associated with its Tender, have ever contravened the anti-competitive provisions of the *Competition and Consumer Act 2010* (Cth) or equivalent laws in Australia or overseas.
- 58.5 The FCA Entity reserves the right, at its discretion, to exclude any Tenderer from the procurement process if full disclosure of any or all contraventions of the anti-competitive provisions of the *Competition and Consumer Act 2010* (Cth) or equivalent laws in Australia or overseas has not been made.

---

## **59. Anti-Terrorism Measures**

- 59.1 Tenderers' attention is drawn to the obligations under Part 4 of the *Charter of United Nations Act 1945* (Cth) and the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002* (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. It is an offence to make any funds or assets available to a person or organisation on the list. The list and more information is available at: [http://www.dfat.gov.au/icat/UNSC\\_financial\\_sanctions.html](http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html).
- 59.2 The FCA Entity will not enter into a Contract with a person or organisation on the list.

---

## **60. Security Requirements**

- 60.1 The FCA Entity places significant importance on security. The Tenderer's attention is drawn to the Draft Contract, which requires compliance with the latest published requirements of:
- 60.1.1 the Commonwealth Protective Security Policy Framework (**PSPF**); and

- 60.1.2 the Australian Government Information Security Manual (currently known as **ISM** but which may in the future be known by another name such as the 'Cyber Security Manual' or 'CSM').

---

## **61. Subcontractors**

- 61.1 Tenderers should indicate in Part D (Technical Response Schedules) if it intends to use subcontractors to perform the obligations of the Contract and must provide the names and addresses of those subcontractors. Details should be provided for any organisation or person who will work on the Services and who is not an employee of the Service Provider.
- 61.2 The FCA Entity may require a Tenderer to submit similar information (including, without limitation, the giving of similar undertakings, warranties and indemnities) to that required to be furnished by the Tenderer under this RFT, in respect of any of the subcontractors to whom the Tenderer proposes to subcontract.
- 61.3 The Draft Contract requires the FCA Entity's approval in writing before any changes are made to agreed sub-contracting arrangements, and the FCA Entity is not obliged to accept any changes to sub-contracting arrangements. Tenderers will take full responsibility for ensuring the suitability of the subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of the Contract.

---

## **62. Public Statements**

- 62.1 Tenderers should not, at any time during this RFT process or subsequently, publish or make any public statement (including by means of advertisement or otherwise) in relation to this RFT process without prior written permission of the FCA Entity.
- 62.2 For the avoidance of doubt, participation in this RFT process does not limit a Tenderer's rights to enter into public debate or criticism of the Commonwealth or Commonwealth entities, including the FCA Entity.

---

## **63. Coordinated Procurement**

- 63.1 The Commonwealth has agreed to establish a coordinated procurement contracting framework to deliver efficiencies and savings from goods and services in common use by non-corporate Commonwealth entities who are subject to the *Public Governance, Performance and Accountability Act 2013* (Cth) or other legislation.
- 63.2 It is therefore possible that the Commonwealth may approve the procurement by the FCA Entity of some or all of the same goods or services as the Services under a coordinated process:
- 63.2.1 before the Tender Closing Time; or
  - 63.2.2 after the Tender Closing Time but before an agreement is signed with the successful Tenderer(s); or
  - 63.2.3 during the period of any Contract entered into as a result of this RFT.
- 63.3 If clause 63.2.1 applies, the FCA Entity reserves the right to discontinue this RFT process.

63.4 If clause 63.2.2 applies, the FCA Entity reserves the right to discontinue the Tender process and not proceed to enter any Contract as a result of this RFT.

63.5 If clause 63.2.3 applies, the FCA Entity may terminate the Contract for convenience, without compensation for loss of potential profits.

---

**64. Applicable Law**

64.1 The laws of the Australian Capital Territory apply to this RFT process.

## SECTION 7 - INTERPRETATION OF TERMS

### 65. Definitions

65.1 Unless a contrary interpretation appears, terms used in this RFT have the same meaning as those given in the Draft Contract.

Term	Definition
<b>ACT</b>	means the Australian Capital Territory.
<b>Administrative Services</b>	means the administrative services described in clause 3.1.4 of this Part A and further described in the Statement of Requirements.
<b>Alternative Tender</b>	means a Tender which meets the requirements described in clause 15.
<b>Auditor-General</b>	means the Auditor-General for the Commonwealth or an equivalent State or Territory office holder with jurisdiction over the FCA Entity.
<b>AusTender</b>	means the Commonwealth's business opportunities website, AusTender, located at <a href="http://www.tenders.gov.au">http://www.tenders.gov.au</a> .
<b>AusTender Terms of Use</b>	means the terms of use set out on AusTender and any applicable instructions, processes, procedures and recommendations as advised on AusTender.
<b>AV Support and Maintenance Services</b>	means the support and maintenance services for the Recording and audio visual equipment provided by the Service Provider and owned by the FCA Entity, FCA, FCoA or FCC, which are described in the Statement of Requirements.
<b>Black Economy Procurement Connected Policy</b>	means the <i>Black economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019</i> available at <a href="https://treasury.gov.au/publication/p2019-t369466">https://treasury.gov.au/publication/p2019-t369466</a> .
<b>Commonwealth</b>	means the Commonwealth of Australia.
<b>Conditions for Participation</b>	means the conditions for participation described in clause 18.1 of this RFT.
<b>Conflict of Interest</b>	<p>means a conflict of interest, duty, or interest and duty, or risk of a conflict of any of these kinds, or an apparent conflict of any of these kinds:</p> <ul style="list-style-type: none"> <li>(a) arising as a result of a Tenderer or any of its personnel or subcontractors engaging in any activity, having any interest or holding any office; or</li> <li>(b) which affects or is likely to affect the Tenderer's or any of its personnel's or subcontractor's ability to provide the Services at all times fairly and independently, and free from bias.</li> </ul>

<b>Contact Officer</b>	means the central point of contact for all enquiries or requests regarding this information as specified in clause 8 of this RFT.
<b>Contract</b>	means the contract(s) which may be executed by successful Tenderer/s (if any) and the FCA Entity, resulting from this RFT, substantially in the form of the Draft Contract.
<b>Draft Contract</b>	means the draft contract in Part C to this RFT.
<b>Evaluation Criteria</b>	means the Evaluation Criteria specified in clause 26 of this RFT.
<b>Family Court of Australia or FCoA</b>	means the Family Court of Australia created by subsection 21(1) of the <i>Family Law Act 1975</i> (Cth).
<b>Federal Circuit Court of Australia or FCC</b>	means the Federal Circuit Court of Australia the Court continued in existence by subsection 8(1) of the <i>Federal Circuit Court of Australia Act 1999</i> (Cth).
<b>Federal Court of Australia or FCA</b>	means the Federal Court of Australia created by subsection 5(1) of the <i>Federal Court of Australia Act 1976</i> (Cth).
<b>Federal Court Entity or FCA Entity</b>	means the non-corporate Commonwealth entity known as the Federal Court of Australia listed in paragraph 18ZB(b) of the <i>Federal Court of Australia Act 1976</i> (Cth) which provides corporate services (including information technology) to the Federal Court of Australia, Family Court of Australia, Federal Circuit Court of Australia and National Native Title Tribunal.
<b>GPJR Act</b>	means the <i>Government Procurement (Judicial Review) Act 2018</i> (Cth).
<b>GST</b>	has the meaning defined in the GST Act.
<b>GST Act</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Illegal Worker</b>	<p>means a person who:</p> <ul style="list-style-type: none"> <li>(a) has unlawfully entered and remains in Australia;</li> <li>(b) has lawfully entered Australia, but remains in Australia after his/her visa has expired; or</li> <li>(c) is working in breach of his/her visa conditions.</li> </ul> <p><b>[Note to Tenderers: For more information refer to ‘Australian Immigration Guide to Work Entitlements’ available at <a href="http://www.border.gov.au/Busi/Empl/Empl/employing-legal-workers/legal-workers-a-guide-for-employers.">http://www.border.gov.au/Busi/Empl/Empl/employing-legal-workers/legal-workers-a-guide-for-employers.</a>]</b></p>

<b>Mandatory Requirement</b>	means the mandatory requirements described in clauses 18 and 19 of this RFT.
<b>Minimum Content and Format Requirements</b>	means the minimum content and format requirements described in clause 19.1 of this RFT.
<b>PSPF</b>	means the Protective Security Policy Framework.
<b>Registered Tenderer</b>	means a Tenderer who has properly completed the user registration process of AusTender and used its user registration to download this RFT from AusTender.
<b>Related Body Corporate</b>	has the meaning given in sections 9 and 50 of the <i>Corporations Act 2001</i> (Cth).
<b>Request for Tender or RFT</b>	means this Request for Tender conducted by the FCA Entity for the provision of the Services.
<b>Satisfactory</b>	means meets the conditions set out in Part 6.b of the Black Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Black Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Black Economy Procurement Connected Policy.
<b>Services</b>	means the services required to be delivered by the successful Tenderer (if any) as set out in the Statement of Requirements.
<b>Statement of Requirements</b>	means the description of the Services at Part B of this RFT.
<b>Statement of Tax Record</b>	means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at <a href="https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR">https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR</a> .
<b>Tender</b>	means any tender submitted in response to this RFT.
<b>Tender Closing Time</b>	means the time and date for submission specified in clause 11 of this RFT.
<b>Tender Response Forms</b>	means Parts D and E to this RFT that sets out some of the questions to be addressed by Tenderers as part of Tenders.
<b>Tenderer</b>	means any entity which submits a Tender in response to this RFT, or where the context requires, is proposing to submit a Tender.
<b>Tenderer Declaration</b>	means the deed poll contained in Part D of this RFT.
<b>Transcription and Recording Services</b>	means the services for the FCA Entity, FCA, FCoA or FCC, which include the Recording Services, In-Court Monitoring Services, Transcription Services, and Transition Services as further described in the Statement of Requirements.
<b>User</b>	means a person or entity that is approved by the FCA Entity to access and/or use the Services.
<b>Valid</b>	means valid in accordance with Part 7.e of the Black Economy Procurement Connected Policy.
<b>WHS</b>	means the <i>Work Health and Safety Act 2011</i> (Cth).