

PART 3 - CONDITIONS OF REGISTRATION

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1 GENERAL

1.1 General

- 1.1.1 The Commonwealth requires Service Providers to submit an Expression of Interest by completing Part 2 – Response.
- 1.1.2 Following this Expression of Interest (EOI) process, the Commonwealth intends to invite those shortlisted Expression of Interest to submit a comprehensive Response.
- 1.1.3 In conducting this EOI, the Commonwealth is seeking an outcome that will:
- a. identify potential service providers capable of fulfilling Defence's requirements;
 - b. establish if Service Providers have the academic capacity to satisfy the requirements;
 - c. reduce the time spent by Defence in evaluating a large number of very complex and detailed responses.

1.2 Interpretation of Expression of Interest

- 1.2.1 The EOI comprises:
- a. Part 1 – Statement of Requirement
 - b. Part 2 – Response
 - c. Part 3 – Conditions of registration
- 1.2.2 In this EOI, unless the contrary intention appears:
- a. headings are for the purpose of convenient reference only and do not form part of this EOI;
 - b. the singular includes the plural and vice-versa;
 - c. a reference to one gender includes all genders;
 - d. a reference to a person includes a body politic, body corporate or a partnership;
 - e. if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action is to be done no later than the end of the next Working Day;
 - f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
 - g. a reference to a clause includes a reference to a subclause of that clause;
 - h. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication or document, in effect on the date of release of this EOI or alternatively, a reference to a revised version of the document if agreed in writing between the parties;
 - i. the word 'includes' in any form is not a word of limitation;
 - j. a reference to a party includes that party's administrators, successors, and permitted assigns, or its officers, employees, agents or advisers.
- 1.2.3 To the extent permitted by law, no binding contract (including a process contract) or other understanding (including any form of contractual, quasi-contractual or restitutionary rights, or rights based upon similar legal or equitable grounds) will exist between the Commonwealth and a Service Provider unless and until a contract is signed by the Commonwealth and the successful Service Provider following any subsequent procurement process.
- 1.2.4 The Commonwealth will not be responsible for any costs or expenses incurred by any Service Provider in preparation or lodgement of a response or taking part in the EOI process.
- 1.2.5 If there is an inconsistency between any part of this EOI, a descending order of precedence is to be accorded to the:
- a. conditions of registration;

- b. SOR, including annexes (if any); and
 - c. any document incorporated by express reference as part of the EOI,
- so that the provision in the higher ranked document, to the extent of the inconsistency, prevails.

1.3 Amendment of the Expression of Interest

- 1.3.1 The Commonwealth may amend this EOI upon giving Service Providers timely written notice of an amendment.
- 1.3.2 If the Commonwealth amends this EOI under this clause 1.3.1 after responses have been submitted, it may seek amended responses.
- 1.3.3 Service Providers will have no claim against the Commonwealth or its officers, employees or advisers in connection with either the exercise of, or failure to exercise, the Commonwealth's rights under this clause 1.3.

1.4 Termination, Suspension or Deferral of Expression of Interest Process

- 1.4.1 Without limiting its other rights under this EOI or at law or otherwise, the Commonwealth may suspend, defer or terminate this EOI process at any time. The Commonwealth will notify Service Providers to this effect.

1.5 Other Commonwealth Rights

- 1.5.1 Without limiting its other rights under this EOI or at law or otherwise, the Commonwealth may at any time during this EOI process, select one or more Service Providers to conduct any subsequent procurement process.
- 1.5.2 Despite any indication by the Commonwealth as to the conduct of any subsequent procurement process, including that any subsequent procurement process will occur, the Commonwealth may:
 - a. undertake a different procurement process, with or without the Service Provider;
 - b. not complete this EOI process; or
 - c. not conduct any subsequent procurement process.
- 1.5.3 Any time or date in this EOI is for the convenience of the Commonwealth. The establishment of a time or date in this EOI does not create an obligation on the part of the Commonwealth to take any action or exercise any right established in this EOI or otherwise.

1.6 Australian Government Requirements

- 1.6.1 Service Providers should familiarise themselves with the following Commonwealth policies:
 - a. Conflicts of interest; Gifts, hospitality and sponsorship; Notification of post separation employment; Required behaviours in Defence; Incident reporting and management; and ethical relationship policies as detailed in DI(G) PERS 25-6, DI(G) PERS 25-7, DI(G) PERS 25-4, Interim Defence Instruction PERS 35-3, Interim Defence Instruction ADMIN 45-2 and *Defence and the Private Sector – An Ethical Relationship*;
 - b. Public Interest Disclosure policy detailed at:
<https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure>;
 - c. Workplace Gender Equality policy as detailed at:
<https://www.wgea.gov.au/about-us/workplace-gender-equality-procurement-principles>;
 - d. Indigenous Procurement Policy as detailed at:
<https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>
- 1.6.2 Service Providers acknowledge that as a Commonwealth agency, the Department of Defence is subject to legislative and administrative accountability and transparency requirements of the Commonwealth, including disclosures to Ministers and other Government representatives, Parliament and its Committees and the publication of information in respect of this EOI process.

- 1.6.3 The Service Provider agrees that the Department of Defence may provide any information collected or provided during the course of this process to other Commonwealth agencies or regulatory bodies.

1.7 Defence Procurement Processes

- 1.7.1 Service Providers and their officers, employees, agents and advisers are to, at all times during the EOI process, comply with the Department of Finance Buying for the Australian Government *guides*.

1.8 Procurement Complaints

- 1.8.1 In the event Service Providers wish to lodge a formal complaint regarding this procurement, the complaint is to be directed in writing to: procurement.complaints@defence.gov.au. On the request of the Commonwealth, Service Providers are to cooperate with the Commonwealth in the resolution of any complaint regarding this procurement.

2 RESPONSE PREPARATION

2.1 Service Providers to Inform Themselves

- 2.1.1 The Commonwealth makes no representations or warranties that the information in this EOI or any information communicated or provided to Service Providers during this EOI process is, or will be, accurate, current or complete.
- 2.1.2 Service Providers are responsible for:
- a. examining this EOI, any documents referenced in or attached to this EOI and any other information made available by the Commonwealth to Service Providers in connection with this EOI process;
 - b. obtaining and examining all further information which is obtainable by the making of reasonable inquiries relevant to the risks, contingencies, and other circumstances having an effect on their responses; and
 - c. satisfying themselves as to the accuracy and completeness of their responses.
- 2.1.3 Service Providers prepare and lodge a response based on the Service Providers' acknowledgment and agreement that they:
- a. do not rely on any representation, letter, document or arrangement, whether oral or in writing, or other conduct as adding to or amending these conditions other than as expressly stated by the Commonwealth in writing;
 - b. have relied entirely upon their own inquiries and inspection in respect of the subject of their response; and
 - c. are aware of the Australian Consumer Law (Schedule 2 to the Competition and Consumer Act 2010) and Division 137 of the Criminal Code under which giving false or misleading information is a serious offence; and
 - d. are aware of the impact of the *Auditor-General Act 1997* on its participation in the EOI and any subsequent procurement process.

2.2 Language and Measurement

- 2.2.1 Any response, including all attachments and supporting documentation, is to be written in English.
- 2.2.2 All measurements are to be expressed in Australian legal units of measurement unless otherwise specified in this EOI.

2.3 Response Preparation

- 2.3.1 Unless otherwise agreed, Service Providers are to complete and provide the information requested in the Part 2 - Response.
- 2.3.2 Supporting documentation may be provided to enhance the response. Supporting documentation relevant to a particular annex is to be indicated in that annex.

2.4 Responsibility for Response Costs

- 2.4.1 The Service Provider's participation in any stage of this EOI process, or in relation to any matter concerning this EOI, is at the Service Provider's sole risk, cost and expense. The Commonwealth will not be responsible for any costs or expenses incurred by any Service Provider in preparation or lodgement of a response or taking part in this EOI process.
- 2.4.2 In addition to clause 1.2.3, the Commonwealth is not liable to the Service Provider for any costs on the basis of quantum meruit or any other contractual, quasi contractual or restitutionary grounds whatsoever as a consequence of any matter or thing relating to, or incidental to the Service Provider's participation in this EOI process, including without limitation, instances where:
- a. a Service Provider is not invited to participate in any subsequent procurement process;
 - b. the Commonwealth varies or terminates the evaluation and selection process;
 - c. the Commonwealth decides not to proceed with this EOI process;
 - d. the Commonwealth's defence capability requirements change; or
 - e. the Commonwealth exercises any other right under this EOI or at law.

2.5 Contact Officer for Expression of Interest Inquiries

- 2.5.1 The Contact Officer for this EOI is:
SO1 Governance
army.research@defence.gov.au
- 2.5.2 Service Providers are to direct any questions or concerns regarding this EOI to the Contact Officer in writing.
- 2.5.3 Service Providers may submit questions or concerns to the Contact Officer up until five Working Days prior to the Response Closing Time.
- 2.5.4 Any question or concern submitted by Service Providers is submitted on the basis that the Commonwealth may circulate it and the Commonwealth's response to all other Service Providers without disclosing the source of the question or concern, Confidential Information or the substance of the proposed response.

2.6 Not Used

2.7 Not Used

2.8 Not Used

3 RESPONSE LODGEMENT

3.1 Lodgement of Responses

- 3.1.1 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 EOI (Approach to Market (ATM)), Service Providers are to comply with those terms and conditions and any applicable instruction, process, procedures and recommendations as advised on AusTender at <https://www.tenders.gov.au/?event=public.termsOfUse>.
- 3.1.2 All queries and requests for AusTender technical or operational support are to be directed to:
AusTender Help Desk
Telephone: 1300 651 698
International: +61 2 6215 1558
Email: tenders@finance.gov.au
The AusTender Helpdesk is available between 9am and 5pm Australian Capital Territory (ACT) local time, Monday to Friday (excluding ACT and national public holidays).

- 3.1.3 Responses are to be lodged electronically via AusTender (<https://www.tenders.gov.au>) by the time and date on the Part 2 - Response (the 'Response Closing Time') in accordance with the response lodgement procedures set out in this EOI and on AusTender.
- 3.1.4 Responses are to be lodged in the MS Word or PDF format (MS Word is preferred). All file names should:
- sufficiently identify the Service Provider by including their name; and
 - Response files should not exceed a combined file size of 500 megabytes per upload.

3.2 Alterations, Erasures or Illegibility

- 3.2.1 Any alterations or erasures made to a response by a Service Provider are to be initialled by that Service Provider. Responses containing alterations or erasures that are not initialled, or pricing or other information that is not stated clearly and legibly, may be excluded from consideration.

3.3 Unintentional Errors of Form

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

4 MATTERS CONCERNING RESPONSES

4.1 Confidential Information

- 4.1.1 The Commonwealth may require a Service Provider to execute a deed of confidentiality before being provided with some or all of the information included in the EOI. Whether or not such a deed is required, and without limiting a Service Provider's obligations under the deed, Service Providers are to:
- treat the EOI and any information provided to Service Providers by or on behalf of the Commonwealth in connection with the EOI process as confidential;
 - not disclose or use that information except as strictly required for the purpose of developing a response in accordance with the EOI; and
 - not disclose that information to another Service Provider unless that Service Provider is a member of a consortium.
- 4.1.2 In accordance with paragraph 7.22 of the Commonwealth Procurement Rules (CPRs), the Commonwealth will treat responses as confidential.

4.2 Collusive Bidding

- 4.2.1 Service Providers and their officers, employees, agents and advisers are not to engage in any collusive bidding, anti-competitive conduct, or any other similar conduct in relation to:
- the preparation or lodgement of responses; and
 - the evaluation and clarification of responses,
- in respect of this EOI or EOI process or any other procurement process being conducted by the Commonwealth in respect of its defence capability requirements.
- 4.2.2 For the purposes of clause 4.2.1, collusive bidding, anti-competitive conduct, or any other similar conduct may include the disclosure, exchange and clarification of information (in any form) whether or not such information is confidential to the Commonwealth or any other Service Provider or any other person or entity.
- 4.2.3 In addition to any other remedies available under any law or any contract, the Commonwealth may immediately reject any response lodged by a Service Provider that, in the Commonwealth's reasonable opinion, has engaged in any collusive bidding, anti-competitive conduct, or any other similar conduct with any other Service Provider or any other person in relation to the preparation or lodgement of responses whether in respect of this EOI or EOI process or any other procurement process being conducted by the Commonwealth in respect of its defence capability requirements.

4.3 Unlawful Inducements

- 4.3.1 Service Providers and Related Bodies Corporate, and their officers, employees, agents and advisers are to, at all times during the EOI process, comply with any applicable laws (including foreign anti-corruption legislation) or Commonwealth policies regarding the offering of unlawful inducements in connection with the preparation of their response. The Commonwealth may exclude a response from further consideration if in the opinion of the Commonwealth, a Service Provider or Related Body Corporate, or their officers, employees, agents or advisers fails to comply with this clause 4.3.1.

4.4 Improper Assistance

- 4.4.1 Responses that, in the opinion of the Commonwealth, have been compiled:
- a. with the utilisation of information unlawfully obtained from the Commonwealth;
 - b. in breach of an obligation of confidentiality to the Commonwealth; or
 - c. contrary to the conditions of registration in this EOI,
- may be excluded from further consideration.

4.5 Not used

4.6 Conflict of Interest

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

4.7 Use of Response Documents

- 4.7.1 All response documents submitted in response to this EOI become the property of the Commonwealth and the Commonwealth may use, retain and copy the information contained in those documents for the purposes of:
- a. evaluation of any response to this EOI and the preparation and conduct of any procurement process subsequent to this EOI;
 - b. verifying the currency, consistency and adequacy of information provided under any other procurement process conducted by the Commonwealth; and
 - c. the development of any other procurement process conducted by the Commonwealth.
- 4.7.2 The Commonwealth may disclose all or part of the response documents to a third party for the purposes of assisting the Commonwealth in the conduct of this EOI process and for the purposes contained in clause 4.7.1. The Commonwealth may obtain appropriate confidentiality undertakings from the third party prior to disclosure.
- 4.7.3 Nothing in this clause 4.7 changes or affects the ownership of IP in the information contained in the response documents.

4.8 Not Used

5 COMPETITIVE SELECTION PROCESS

5.1 Response Presentations

- 5.1.1 The Commonwealth may, after the Response Closing Time and having provided Service Providers with reasonable notice, require any or all Service Providers to provide a virtual presentation on their respective responses.

5.2 Response Evaluation

- 5.2.1 Responses will be evaluated utilising the response evaluation criteria at clause 6. No response will necessarily be shortlisted by the Commonwealth.
- 5.2.2 The Commonwealth may:
- a. consider additional information related to any evaluation criteria;
 - b. use material provided in response to one evaluation criterion in the evaluation of other criteria; or
 - c. subject to its IP and confidentiality obligations, use material provided by the Service Provider in other procurement processes conducted by the Commonwealth for purposes consistent with the Commonwealth's procurement objectives.
- 5.2.3 If additional criteria are intended to be applied for the purposes of evaluation, the Commonwealth will notify Service Providers in accordance with clause 1.3 who will be given an opportunity to respond.
- 5.2.4 The Commonwealth may exclude responses which are incomplete or clearly non-competitive from consideration at any time during the evaluation process, or may consider such responses and seek clarification under clause 5.6.
- 5.2.5 If a Service Provider is found to have made a false, misleading or deceptive claim or statement, the Commonwealth may exclude the response from further consideration at any time.

5.3 Minimum Content and Format Requirements

- 5.3.1 Subject to clause 3.3, the Commonwealth may exclude a response from further consideration if the Commonwealth considers that the response does not meet the requirements set out in clause 2.2.

5.4 Not used**5.5 Essential Requirements**

- 5.5.1 The Commonwealth may exclude a response from further consideration if the Commonwealth considers that the Service Provider does not comply with a requirement identified as essential in the SOR.

5.6 Clarification

- 5.6.1 The Commonwealth may, at any time during this EOI process, seek clarification from and enter into discussions with any or all of the Service Providers in relation to their response.
- 5.6.2 The Commonwealth may seek additional information in respect of any aspect of a response at any time. The Commonwealth may use such information in interpreting the response and in evaluating the risk to the Commonwealth of inviting the Service Provider to participate in any subsequent procurement process.
- 5.6.3 The Commonwealth is not under any obligation to take into account additional information provided by a Service Provider in response to a request.

5.7 Shortlisting

- 5.7.1 The Commonwealth may develop a shortlist of one or more Service Providers at any time during the evaluation process. Shortlisting will be conducted on the basis of an assessment of the responses against the requirements of this EOI.
- 5.7.2 The Commonwealth intends that only shortlisted Service Providers will be requested to participate in any subsequent procurement process. However, the Commonwealth may invite additional service providers to participate in any subsequent procurement process, irrespective of whether or not such additional service providers submitted a response to this EOI.

5.8 Debriefing of Service Providers

- 5.8.1 Service Providers will be notified whether they have been successful or unsuccessful and may request a debriefing. Service Providers requiring a debriefing should contact the Contact Officer specified in clause 2.5.
- 5.8.2 Service Providers will be debriefed against the evaluation criteria contained in clause 6.

6 RESPONSE EVALUATION CRITERIA**6.1 Response Evaluation Criteria**

- 6.1.1 Subject to clause 5.2, the criteria to be applied for the purposes of evaluation are as follows, not in any order of importance:
- a. The extent to which the potential Service Provider's Response would inform Army's ability to address the nominated question (refer to Part 1 – Statement of Requirement);
 - b. Extent that potential Supplier's background and experience can support the conduct of the research.

6.2 Subsequent Procurement Process Evaluation Criteria

- 6.2.1 The evaluation criteria for the Response process (also known as the Approach to Market) are as follows, not in any order of importance:
- a. Extant to which the potential Service Provider's Response meets the Customer Requirement set out in the Approach to Market package
 - b. Potential Service Provider's demonstrate capability and capacity to provide the Requirement
 - c. Whole of life cost be incurred by the customer. Considerations will include both the quoted price and any cost the Customer will incur as a result of the accepting the potential Service Provider's Response.

The Commonwealth may develop a shortlist of one or more Service Providers to proceed to the next stage.