

OFFICIAL



**NFSA RFT 2122/P060 – Infrastructure Maintenance**

**Document 1 - Conditions of Tender**

Tender Closing Time:

**2:00 PM AEST, THURSDAY 14 APRIL 2022**

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## Important Dates

15 March 2022	Request For Tender Release Time (2:00PM AEDT)
24 March 2022	10:30AM RFT Briefing and Acton HQ Site Inspection (Mandatory) (section 4.10)
25 March 2022	9:30AM Site Inspection of Mitchell sites commencing from 10-12 Baillieu Court, Mitchell (Non-Mandatory)
7 April 2022	Question and Clarification Request Deadline (sections 3.1 and 4.9) (2:00PM AEST)
14 April 2022	Request For Tender Closing Time (2:00PM AEST)

## 1. Invitation

- 1.1 The National Film and Sound Archive of Australia (NFSA) invites Tender Responses from suitably qualified and experienced organisations for the provision of Infrastructure Maintenance (**Services**) as set out in this RFT Document 1 – Conditions of Tender and RFT Document 2 – Statement of Requirements (Specification No. G21-02-S1, including Appendix 1 and 2) in accordance with NFSA Request for Tender (**RFT**) 2122/P060.
- 1.2 Tenderers may bid for part or all of the separable Services Elements set out in this RFT Process, each of which are described in RFT Document 2 – Statement of Requirements (Specification No. G21-02-S1, including Appendix 1 and 2).

## 2. Minimum Conditions for Participation

- 2.1 The NFSA will exclude from consideration any Tender Response that does not meet the following Mandatory Conditions for Participation:
- 2.1.1 Attendance at the Acton Headquarters Inspection and Briefing (section 4.10) is considered essential to facilitate an understanding of the Services. Attendance will be recorded.

## 3. Definitions and Interpretation

### 3.1 Definitions

In these conditions and the attached Tender Form, the following terms have the same meanings set out below.

<b>AusTender</b>	The Australian Government's procurement information system, accessible at <a href="https://www.tenders.gov.au">https://www.tenders.gov.au</a>
<b>Contact Officer</b>	NFSA Procurement Helpdesk National Film and Sound Archive McCoy Circuit, Acton ACT 2601 Phone: +61 2 6248 2182 Email: <a href="mailto:tenders@nfsa.gov.au">tenders@nfsa.gov.au</a>
<b>Draft Contract</b>	RFT Document 4 - Proposed Draft Contract
<b>Evaluation Criteria</b>	The evaluation criteria to be applied in the assessment of received Tender Responses are set out at section 14.6
<b>Goods and/or Services</b>	Goods and/or Services to be provided under the contract as set out in RFT Document 2 – Statement of Requirements, RFT Document 4 - Proposed Draft Contract and RFT Document 5 – NFSA Contractor Protocols
<b>NFSA</b>	National Film and Sound Archive of Australia
<b>NFSA Website</b>	<a href="https://www.nfsa.gov.au">https://www.nfsa.gov.au</a>
<b>Offer Period</b>	Ninety (90) days after the RFT Closing Time
<b>Question and Clarification Request Deadline</b>	2:00PM AEST, Thursday 7 April 2022

<b>RFT</b>	Request For Tender
<b>RFT Closing Time</b>	2:00PM AEST, Thursday 14 April 2022
<b>RFT Document Pack</b>	<p>The RFT Document Pack comprises of the following:</p> <ul style="list-style-type: none"> <li>• Document 1 – Conditions of Tender (this document)</li> <li>• Document 2 – Statement of Requirements: <ul style="list-style-type: none"> <li>- Specification No. G21-02-S1</li> <li>- Appendix 1: Premises &amp; Plant Summary</li> <li>- Appendix 2: Asset Register</li> </ul> </li> <li>• Document 3 – Tender Offer and Schedules</li> <li>• Document 4 – Proposed Draft Contract</li> <li>• Document 5 – NFSA Contractor Protocols</li> </ul>
<b>Tender Response</b>	Any offer or proposal submitted in response to this RFT, in the form and format set out at RFT Document 3 – Tender Offer and Schedules
<b>Tender Box</b>	<p><b>Tenders must be submitted by email to:</b>  <a href="mailto:tenders@nfsa.gov.au">tenders@nfsa.gov.au</a></p> <p>Subject: NFSA RFT 2122/P060 – [Tenderer Company Name]</p>
<b>Tender Details</b>	The name of this Tender is “NFSA RFT 2122/P060 – Infrastructure Maintenance”.
<b>Tender Offer and Schedules</b>	RFT Document 3 - Tender Offer and Schedules
<b>Tenderer</b>	Any individual or entity which submits a Tender Response as part of this RFT or, where the context requires, is proposing to submit a Tender Response.

## 4. Tender Documents

### 4.1 Request For Tender Document Pack

#### 4.1.1 This RFT Document Pack includes:

- Document 1 – Conditions of Tender (this document);
- Document 2 – Statement of Requirements: Specification No. G21-02-S1, including Appendix 1: Premises & Plant Summary and Appendix 2: Asset Register;
- Document 3 – Tender Offer and Schedules;
- Document 4 – Proposed Draft Contract; and
- Document 5 – NFSA Contractor Protocols

#### 4.1.2 Tenderers may obtain the RFT Document Pack from AusTender or the NFSA Website.

### 4.2 Tenderers to Inform Themselves

#### 4.2.1 Each Tenderer must be aware of the requirements of the RFT and must allow for those requirements when preparing and submitting its Tender Response.

4.2.2 The Tenderer is considered to have:

- (a) examined the RFT, any documents referenced herein and any other information made available in writing to Tenderers for the purpose of tendering;
- (b) independently verified all information and material included in or relevant to this RFT;
- (c) undertaken any inspection or other due diligence activity that the Tenderer requires or considers desirable to inform itself of any relevant fact, manner or circumstance;
- (d) examined all further information which is obtainable by the making of reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on their Tender Response;
- (e) has sought its own professional advice as appropriate and has not construed the RFT as containing any business, investment, legal, tax or other advice;
- (f) satisfied itself as to the correctness and sufficiency of their Tender Response including tendered prices and associated pricing assumptions (and in relation to Australian and overseas legal requirements);
- (g) in lodging its Tender Response, not relied on any express or implied statement, warranty or representation, whether oral, written or otherwise made by or on behalf of the NFSA, their respective officers, employees, agents or advisers other than any statement, warranty or representation contained in this RFT;
- (h) not used improper assistance or assistance of current or former officers, employees, contractors or agents of NFSA in compiling its Tender Response; and
- (i) not used information improperly obtained or in breach of an obligation of confidentiality in compiling its Tender Response.

4.2.3 Tenderers must familiarise themselves with all relevant Commonwealth legislation and policies relating to the RFT process and the provision of the Goods and/or Services including:

- (a) Division 137.1 of the *Criminal Code Act 1995* (Cth) which makes it an offence to knowingly provide false or misleading information to a Commonwealth entity;
- (b) the *Freedom of Information Act 1982* (Cth) which requires Australian Government departments and agencies to provide access to certain documents in their possession;
- (c) the *Auditor-General Act 1997* (Cth) which allows the Auditor-General to conduct a review or examination, at any time, of any aspect of the operations of Australian Government agencies;
- (d) the *Ombudsman Act 1976* (Cth) which authorises the Ombudsman to investigate the administrative actions of Australian Government departments and agencies and to investigate the actions of certain Australian Government contractors;

- (e) the *Privacy Act 1988* (Cth) which aims to ensure that contractors and their subcontractors do not engage in an act or practice that would breach the requirements of Division 2 of Part III of the Privacy Act;
- (f) the *Work Health and Safety Act 2011* (Cth) which requires a person conducting a business or undertaking to ensure the health and safety of all workers and workplaces;
- (g) the *Public Interest Disclosure Act 2013* (Cth) which aims to promote the integrity and accountability of the Commonwealth public sector; and
- (h) the *Archives Act 1983* (Cth) which makes it an offence to destroy, dispose of, transfer, damage or alter Commonwealth records unless certain exceptions apply.

#### 4.3 **Acknowledgement by Tenderer**

- 4.3.1 The Tenderer acknowledges that before it submitted its Tender Response it obtained a copy of the RFT Document Pack from AusTender and/or the NFSA Website.
- 4.3.2 The Tenderer acknowledges that it was fully advised and informed of any site inspection and RFT briefing that may apply to this RFT process.
- 4.3.3 The Tenderer acknowledges that before it submitted its Tender Responses it viewed AusTender and/or the NFSA Website for any published RFT updates or addenda.

#### 4.4 **Standard Tenderer Exclusions**

- 4.4.1 The NFSA excludes from tendering:
  - (a) Joint Tender Responses; and
  - (b) Tenderers that do not exist as a legal entity at the RFT Closing Time.

#### 4.5 **No Unauthorised Use**

- 4.5.1 All Tender Responses shall become the property of the NFSA on submission, noting any Tenderer intellectual property rights that may exist in a Tender Response will remain the property of the Tenderer.
- 4.5.2 The Tenderer licenses the NFSA and its respective officers, employees, agents, advisers, Ministers and other Government representatives to copy, adapt, modify, disclose or do anything else necessary (in the NFSA's sole opinion) to all material (including that which contains intellectual property rights of the Tenderer or any other person) contained in the Tender Response for the purposes of:
  - (a) evaluating or clarifying the Tender Response or any subsequent offer;
  - (b) negotiating any resultant contract with the Tenderer;
  - (c) managing the resultant contract (if any); and
  - (d) anything else related to the above purposes, including complying with governmental and parliamentary reporting requirements and any administrative or statutory review, audit or inquiry.

- 4.5.3 The NFSA may make such copies of each Tender Response, as it requires for these purposes.

#### 4.6 **AusTender, the Australian Government Tender System**

- 4.6.1 AusTender is the Australian Government's procurement information and tendering system. Access to and use of AusTender is subject to its terms and conditions.
- 4.6.2 The RFT Document Pack is available on the AusTender website at <https://www.tenders.gov.au>.
- 4.6.3 All queries and requests for technical or operational support should be directed to:  
AusTender Help Desk  
Telephone: 1300 651 698 (within Australia) / +61 2 6215 1558 (international)  
Email: [tenders@finance.gov.au](mailto:tenders@finance.gov.au)
- 4.6.4 The AusTender Help Desk is available between 9am and 5pm ACT Local Time, Monday to Friday (excluding ACT and national public holidays).

#### 4.7 **Application of the Commonwealth Procurement Rules**

- 4.7.1 As a non-prescribed Corporate Commonwealth Entity, the NFSA is not subject to the requirements of the Commonwealth Procurement Rules. Information on how the RFT process will be conducted is set out in the RFT Document Pack.
- 4.7.2 The results of this RFT process will not be published on AusTender, however they may be reported separately in accordance with the NFSA's obligations under [Department of Finance RMG 403 – Meeting the Senate Order for Entity Contracts](#). Please direct any queries regarding the outcome of this RFT process to the Contact Officer.

#### 4.8 **Amendments**

- 4.8.1 The NFSA may amend the RFT Document Pack (including the issuing of addenda) at any time before the RFT Closing Time. If the RFT Document Pack is amended:
- (a) copies of the amended documents (or the amended pages of the RFT Document Pack) will be published on AusTender and the NFSA Website; and
  - (b) the amendments will become part of the RFT Document Pack.

#### 4.9 **Further information**

- 4.9.1 Should Tenderers have any questions or clarifications regarding the conduct of this RFT process, they must direct these to the Contact Officer in writing by the Question and Clarification Request Deadline (section 3.1).
- 4.9.2 The NFSA will determine what, if any, response should be given to a Tenderers' question or clarification request.
- 4.9.3 The NFSA will publish de-identified Tenderer questions and clarifications, as well as the NFSA's formal response (if any) to all other potential Tenderers. Tenderers should identify in their question or clarification request what, if any, information the Tenderer considers to be confidential.

- 4.9.4 Inappropriate identification of information as confidential will be considered by the NFSA when determining what, if any, formal response will be published.
- 4.9.5 Tenderers must nominate a central contact officer in any Tender Response for the purpose of receiving notification of, and responding to any NFSA enquiries regarding the Tender Response. The name, street, postal and e-mail address, and telephone number of that person must be set out in RFT Document 3 – Tender Offer and Schedules.

#### 4.10 **Site Inspection and RFT Briefing**

- 4.10.1 The NFSA will be conducting a RFT Briefing and Site Inspection of the Acton Headquarters. Details of the briefing and site inspection are:

**Thursday 24 March 2022 at 10:30AM**

NFSA Headquarters, McCoy Circuit, Acton ACT 2601

- 4.10.2 Attendance at the RFT Briefing and Acton Headquarters Site Inspection is **mandatory** and considered essential to facilitate a complete understanding of the RFT.
- 4.10.3 A non-mandatory site inspection of the Mitchell premises will be held starting from Mitchell Annex, 10-12 Baillieu Court, Mitchell ACT 2911 on **Friday 25 March 2022 at 9:30AM**.
- 4.10.4 Tenderers should provide written notice to the Contact Officer **no later than 2:00PM Wednesday 23 March 2022** setting out the names and contact details for all persons who will be attending the briefing and site inspections. Attendees who have not been notified to the Contact Officer by this time may be refused entry to the briefing and site inspections. Attendance will be recorded.

#### 4.11 **Tender evaluation**

- 4.11.1 Tenders Responses will be assessed on the basis of best value for money consistent with NFSA procurement policies and in accordance with the RFT Evaluation Process described in section 14.
- 4.11.2 Should the NFSA consider it necessary to determine a clear value for money outcome, the NFSA may ask some or all Tenderers to submit new or revised pricing on a different basis or 'best and final offers' and further evaluate such responses from Tenderers as part of the RFT Evaluation Process.

## **5. Price tendered**

### 5.1 **Prices**

- 5.1.1 Prices are to be stated in Australian Dollars and should be inclusive of:

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



- (c) all costs associated with doing all things necessary for the due and proper completion of the Goods and/or Services and compliance with the proposed contract set out at RFT Document 4 – Proposed Draft Contract.

## **5.2 Tender Offer**

- 5.2.1 Pricing must be clearly set out in RFT Document 3 – Tender Offer and Schedules as part of any Tender Response.

## **5.3 All Costs and Liabilities**

- 5.3.1 The cost of tendering and contract negotiation shall be borne by the Tenderer.
- 5.3.2 The NFSA shall have no liability of any kind in respect of a Tender Response or any matter related to the RFT process including on the basis of any negligence or breach of tortious duty, promissory estoppel, quantum meruit or on any other contractual, quasi contractual or restitutionary grounds whatsoever as a consequence of any matter or thing relating to a Tenderer's participation in the RFT process, including instances where:
  - (a) a Tenderer is not engaged to undertake the provision of the Goods and/or Services;
  - (b) the NFSA decides not to procure and/or outsource all or any of the Goods and/or Services;
  - (c) the NFSA exercises or fails to exercise any of its rights under or in relation to this RFT process (whether or not the NFSA has informed a Tenderer of its exercise of the rights); or
  - (d) the NFSA makes information available or provides information to a Tenderer relating to its assets, procedures, plans, tenders, existing arrangements for provision of the Goods and/or Services or any possible future arrangements.

# **6. Matters Concerning the Tender Response**

## **6.1 Tenderer Information**

- 6.1.1 The Tenderer must complete RFT Document 3 – Tender Offer and Schedules as part of any Tender Response and clearly set out the following information and documentation:
  - (a) sufficient information addressing the RFT Evaluation Criteria to demonstrate to the NFSA the Tenderer's prior experience, expertise, knowledge, qualifications, capacity, and capability to provide the required Goods and/or Services;
  - (b) details of the individual nominated as the Tenderer's Representative, including that individual's name, previous experience, qualifications and character; and
  - (c) other information as requested throughout the RFT Document Pack.

## **6.2 Procedure for Submitting a Tender Response**

- 6.2.1 Tender Responses must be submitted by email to the Tender Box.
- 6.2.2 All electronic submissions of a Tender Response must be:

- (a) correctly addressed;
  - (b) clearly marked with the name of the Tenderer and the words 'NFSA RFT 2122/PO60 – Infrastructure Maintenance' in the subject heading of the email;
  - (c) the Tender Response file name/s should incorporate the Tenderer's company name and should reflect the various parts of the Tender Response they represent, where the Tender Response comprises multiple files;
  - (d) limited in size to approx. 15 MB per email; and
  - (e) completely self-contained, and not include hyperlinked or hosted information.
- 6.2.3 For clarity, Tender Responses must not contain or reference materials hosted on any external file sharing website. Any such Tender Response will be excluded from consideration.
- 6.3 Deadline for Tender Responses**
- 6.3.1 Tender Responses must be received by the [tenders@nfsa.gov.au](mailto:tenders@nfsa.gov.au) email server on or before the Request For Tender Closing Time.
- 6.4 Representative to sign**
- 6.4.1 RFT Document 3 – Tender Form and Schedules of any submitted Tender Response must be signed by a person authorised to make an offer on behalf of the Tenderer ('Tenderer's Representative') before a witness who must also sign and print their name in the space provided.
- 6.5 Alterations, Erasures and Illegibility**
- 6.5.1 Tender Responses containing alterations or erasures to the RFT Document Pack, and Tender Responses in which pricing is not clearly and legibly stated may be excluded from consideration. Any alteration made to a RFT Document Pack must be initialled by the Tenderer.
- 6.5.2 Should the Tenderer become aware of any discrepancy, error or omission in their Tender Response following submission, and being prior to the RFT Closing Time, the Tenderer must immediately advise the Contact Officer in writing of the details regarding these discrepancies, errors and/or omissions.
- 6.5.3 If the NFSA considers that there are unintentional errors or omissions contained within a Tender Response, the NFSA, at its absolute discretion, may request that Tenderer correct or clarify the error in accordance with section 9.1.1.
- 6.6 Terms of Tender Responses not to be varied**
- 6.6.1 A Tender Response must not be varied by the Tenderer following submission to the NFSA. This includes, although is not limited to, withdrawal, variation, alteration, revision, or otherwise compromise of any aspect of the Tender Response.
- 6.6.2 The NFSA may, at its absolute discretion, exclude immediately any Tender Response from consideration that the Tenderer does not intend to fully deliver upon.

## **7. Late Tender Responses**

### **7.1 Late Tender Response Policy**

- 7.1.1 Any Tender Response will be deemed to be late if it is not lodged and received in accordance with section 6.3 by the Request For Tender Closing Time.
- 7.1.2 Subject to section 7.1.3, the NFSA will not accept any late Tender Responses.
- 7.1.3 The NFSA will only consider Tender Responses that are received late solely due to mishandling by the NFSA or malfunction of the NFSA email servers.
- 7.1.4 It is the responsibility of each Tenderer to ensure that a Tender Response is lodged and received in accordance with section 6.3 by the Request For Tender Closing Time.

### **7.2 Extension of Deadline**

- 7.2.1 The Request For Tender Closing Time may be extended at the sole discretion of the NFSA by written notice.
- 7.2.2 Any extension notice will be transmitted and distributed by the NFSA in a manner that is consistent with the publication of the original Request For Tender (e.g. AusTender; NFSA Website).

## **8. Termination of the RFT**

- 8.1 The NFSA may suspend, defer or terminate the RFT process at any time. The NFSA will promptly notify Tenderers of any such suspension, deferral, or termination.
- 8.2 Without limiting its other rights under this RFT, at law or otherwise, the NFSA may suspend, defer or terminate the RFT process at any time if the NFSA determines that:
  - (a) no Tenderer is fully capable of undertaking the Contract, in draft or as negotiated with one or more preferred Tenderers;
  - (b) no Tenderer meets the Mandatory Conditions For Participation at section 2.1;
  - (c) no Tenderer has submitted a compliant RFT Document 3 – Tender Offer and Schedules;
  - (d) no Tenderer represents value for money;
  - (e) awarding a contract would be inconsistent with Commonwealth policy; or
  - (f) it is otherwise in the public interest to do so.

## **9. Further Information to be Supplied by Tenderer**

### **9.1 Requests for Further Information**

- 9.1.1 The NFSA, at its absolute discretion, may request Tenderers to supply further information (e.g. clarification) if the NFSA considers that the information supplied by the Tenderer in its Tender Response is insufficient for the NFSA to evaluate the Tender Response.

## 9.2 Further information to be supplied within 3 Business Days

- 9.2.1 The Tenderer must supply any further information requested by the NFSA within 3 Business Days after receipt of a written request for that information.

## 9.3 Tenderer's Financial Capacity

- 9.3.1 It may be necessary for the preferred Tenderer to demonstrate its financial viability and commercial stability. For this purpose Tenderers must, within 5 Business Days of being requested to do so by the NFSA, provide details of relevant financial data concerning the Tenderer's organisation. Such information may include:

- (a) copies of audited trading and profit and loss accounts and balance sheets for the preceding three (3) financial years;
- (b) annual reports; and
- (c) particulars of any petition, claim, action, judgement or decision which is likely to adversely affect the Tenderer's performance of the Contract.

- 9.3.2 If the information provided pursuant to this requirement is not considered adequate, a financial investigation of the preferred Tenderer may be required.

- 9.3.3 The NFSA reserves the right to request similar information from other Tenderers if required as part of the RFT Evaluation Process.

## 9.4 Interview

- 9.4.1 The NFSA may request the Tenderer to attend an on-site or remotely hosted interview to formally present their offer.

## 9.5 Further information to form part of Tender Response

- 9.5.1 Any information supplied by the Tenderer:

- (a) in response to a request for further information; and
- (b) at any on-site or remote interview

may be deemed by the NFSA to form part of the Tender Response.

# 10. Matters Concerning Acceptance of Tenders

## 10.1 Non-Complying Tender Responses may not be accepted

- 10.1.1 The NFSA may exclude from consideration any Tender Response that:

- (a) Does not comply with the conditions and requirements set out in RFT Document 1 – Conditions of Tender or RFT Document 2 – Statement of Requirements (Specification No. G21-02-S1, including Appendix 1: Premises & Plant Summary and Appendix 2: Asset Register);
- (b) does not include a completed RFT Document 3 – Tender Offer and Schedules; or
- (c) is not lodged and received by [tenders@nfsa.gov.au](mailto:tenders@nfsa.gov.au) by the RFT Closing Time.

## 10.2 Acceptance

- 10.2.1 Neither the lowest priced, nor any Tender Response, will necessarily be accepted. Acceptance of one or more successful Tender Responses (if any) will be subject to negotiation and execution of a Contract, materially in the form of RFT Document 4 – Proposed Draft Contract.
- 10.2.2 Tenderers must not furnish any information, make any statement or issue any document or other written or printed material concerning the negotiation or execution of any Contract resulting from this RFT for publication by an external party, including the media, without the prior written approval of the NFSA.

## 11. Acceptance of Tender Response and Offer Period

### 11.1 Acceptance of Tender Responses

- 11.1.1 The NFSA may accept a Tender Response, subject to negotiation of any non-compliance with the RFT Documents as set out in any Tender Response:

- (a) at any time during the Offer Period; and
- (b) by serving written notification to a Tenderer at the physical and/or electronic contact address(es) set out in their Tender Response.

### 11.2 Offer Validity

- 11.2.1 By submitting a Tender Response as part of this RFT process, the Tenderer agrees to provide the Goods and/or Services on the terms and conditions set out in their Tender Response, and in accordance with the RFT Document Pack for a period not less than the Offer Period.
- 11.2.2 The NFSA is not required to negotiate, in good faith or at its absolute discretion, terms and conditions as part of any resultant contract where the Tenderer's non-compliance with RFT Documents 1-4 was not set out in their Tender Response, with specific regard for their response set out at RFT Document 3 – Tender Offer and Schedules.

## 12. Other Alternative Solutions

- 12.1 Tenderers may, at their discretion, include alternative solutions and proposals to those requested in RFT Document 2 – Statement of Requirements for consideration by the NFSA as part of any Tender Response.
- 12.2 Alternative solutions and proposals must be included in a formal Tender Response and should set out relevant delivery methodology, timing, pricing, and resource allocation.

## 13. Execution of Contract

- 13.1 The successful Tenderer will be required to enter into a contract with the NFSA substantially in the form of RFT Document 4 – Proposed Draft Contract.
- 13.2 Tenderers must set out any non-compliance with the RFT Document Pack in RFT Document 3 – Tender Response and Schedules, with specific regard for RFT Document 2 – Statement of Requirements and RFT Document 4 – Proposed Draft Contract.

- 13.3 Unless and until a binding contract is entered into with the NFSA, the NFSA will have no legal duties or obligations to any person in respect of this RFT process. Any conduct or statement, whether prior to or subsequent to, the issuance of this RFT is not, and this RFT is not, and must not be deemed to be an offer to contract or a binding undertaking of any kind by the NFSA (including, being or creating, without limitation, quasi-contractual rights, promissory estoppel, or rights with a similar legal basis).
- 13.4 The NFSA will not enter into a contract with Tenderers:
- (a) that have been named in Parliament as not complying with the Workplace Gender Equality Act 2012 (Cth);
  - (b) who are subject to a judicial decision against them relating to employee entitlements, not including decisions under appeal, and have not paid the claim; or
  - (c) who are listed as a designated entity by the Minister for Foreign Affairs by notice in the Gazette under s 15 of the Charter of the United Nations Act 1945 (Cth) or who intend to engage subcontractors who are listed as a designated entity by the Minister for Foreign Affairs by notice in the Gazette under s 15 of the Charter of the United Nations Act 1945 (Cth).

## **14. Request For Tender Evaluation Process**

- 14.1 Following receipt of Tender Responses to the Tender Box by the RFT Closing Time, the NFSA will conduct a thorough assessment of all received Tender Responses.
- 14.2 The objective of the RFT Evaluation Process is to select a Tender Response (or in some cases, multiple Tender Responses) that best represent value for money to the Commonwealth. Value for money is defined as the comprehensive assessment of relevant financial and non-financial costs and benefits across the life of a procurement.
- 14.3 The RFT Evaluation Process is conducted by the NFSA on the basis of the Tenderer's response to the Evaluation Criteria set out in section 14.6, as articulated in their submission of a completed RFT Document 3 – Tender Offer and Schedules of any Tender Response, and having consideration for information obtained from any provided references.
- 14.4 The NFSA may take into account information provided by a Tenderer in response to one criterion in its evaluation of another criterion, however Tenderers must not rely upon this occurring and are encouraged to ensure all relevant schedules within RFT Document 3 – Tender Offer and Schedules sufficiently address each criterion.
- 14.5 The Evaluation Criteria may or may not be weighted and are not specified in any order of importance. If any additional criteria are intended to be applied in evaluating Tender Responses, Tenderers will be notified and provided an opportunity to respond.
- 14.6 Tenderers must address each of the evaluation criterion, collectively defined as the Evaluation Criteria, specified in the table below by completing RFT Document 3 - Tender Offer and Schedules.

Item	Evaluation Criterion	Required Information
<b>Weighted</b>		
1	Understanding and experience with service delivery	Tenderers should detail their relevant experience in similar or related works and their demonstrated understanding of the maintenance requirements as detailed in the RFT.
2	Management capability and capacity	Tenderers should detail their capability and capacity to undertake, resource and successfully deliver the Services.
3	Key personnel	Tenderers should detail the skills and experience of key personnel who will support and deliver the Services.
4	WHS systems and processes	Tenderers should demonstrate that they have effective WHS systems in operation to safely deliver the Services and a robust safety record.
5	Pricing information	Tenderers must complete the price schedules set out in RFT Document 3 – Tender Offer and Schedules.
<b>Unweighted</b>		
6	Insurances	Insurances held.
7	Compliance with Proposed Draft Contract	Tenderers must indicate their compliance with the RFT Document Pack, specifically RFT Document 2 – Statement of Requirements and RFT Document 4 – Proposed Draft Contract
8	Other advantages or opportunities	Any distinct advantages or opportunities that the Tenderer can offer and/or has identified that might be considered to be of merit in relation to the delivery of the Services.

- 14.7 Tenderers may include additional information in their Tender Responses, however RFT Document 3 – Tender Offer and Schedules will form the basis of the evaluation.
- 14.8 Tenderers are advised that a minimum of three (3) references are required to assist in demonstrating and/or substantiating claims made against the Evaluation Criteria.
- 14.9 **Completeness of Tender Response**
- 14.10 The NFSA may exclude a Tender Response from consideration if the NFSA considers that the Tender Response is incomplete. The NFSA may consider such Tender Responses and seek clarification or additional information from a Tenderer for the purposes of the RFT Evaluation Process, however Tenderers are responsible for confirming completeness of their Tender Response prior to submission.
- 14.11 Tenderers who are unable to fully demonstrate their capacity and capability to meet one or more of the Evaluation Criteria may, at the NFSA's absolute discretion, be excluded from further evaluation.



## 15. Sub-contracting

- 15.1 Tenderers should provide a full explanation of any part of the Goods and/or Services which the Tenderer intends to sub-contract to another entity, including the entity it intends to sub-contract with, the Goods and/or Services to be sub-contracted, the relationship of the Tenderer to the sub-contractor, and any particular expertise or experience of the sub-contractor.
- 15.2 Tenderers are advised to set out any sub-contracting amounts in their Tender Response in RFT Document 3 – Tender Offer and Schedules.
- 15.3 Tenderers must ensure that any sub-contracting entity and its proposed personnel meet all minimum requirements set out in the RFT Document Pack, including without limitation, experience, expertise, knowledge, qualifications, capacity, capability, registration, and/or membership.

## 16. Goods and Services Tax

- 16.1 All Tenderers should be aware that under the New Tax System (Goods and Services Tax) Act 1999 (GST ACT), the NFSA is treated as a taxable enterprise. GST will be applied to all Goods and/or Services acquired by the successful Tenderer in respect of the performance of the Goods and/or Services.
- 16.2 Tenderers should take appropriate GST advice in relation to the performance of the Goods and/or Services and the implications for them of the GST Act, including:
  - (a) all contracts that the successful Tenderer enters into in relation to the performance of the Goods and/or Services must identify the GST exclusive price, the amount of GST and the GST inclusive price; and
  - (b) invoices for Goods and/or Services provided by the successful Tenderer must comply with the ATO requirements for “Tax Invoice” in order to obtain payment from the Commonwealth.

Note to Tenderers: this is provided for information purposes only and does not constitute tax advice. Tenderers must seek their own tax advice in relation to this RFT and GST in general.

## 17. Ethical Dealing

- 17.1 Tenderers must not:
  - (a) engage in misleading or deceptive conduct in relation to their Tender Response, any proposed sub-contracting arrangements, or the RFT process;
  - (b) engage in any collusive tendering, anti-competitive conduct, or any other unlawful or unethical conduct with any other Tenderer, or any other person in connection with the preparation of their Tender Response or the RFT process;
  - (c) attempt to solicit information from or influence improperly any current or former officer, employee, contractor or agent of the NFSA, or violate any applicable laws or Commonwealth policies regarding the offering of inducements in connection with the RFT process;



- (d) engage in, or procure or encourage others to engage in, activity that would result in a breach of the Lobbying Code of Conduct and the Australian Public Service Commission Circular 2008/4 Requirements relating to the Lobbying Code of Conduct and post separation contact with Government;
  - (e) make false or misleading statements in their Tender Responses; or
  - (f) otherwise act in an unethical or improper manner or contrary to any law.
- 17.2 The NFSA may, at its absolute discretion, immediately exclude from consideration any Tenderer that is found to have engaged in any of the behaviours, practices or conduct set out in section 17.1.

## **18. Conflict of Interest**

- 18.1 Tenderers must represent and declare in RFT Document 3 – Tender Offer and Schedules whether, at the time of lodging their Tender Response, a conflict of interest concerning itself, or a related entity, exists or might arise during the term of any resulting contract or in relation to the RFT process.
- 18.2 A conflict of interest means any matter, circumstance, interest or activity affecting the Tenderer (including the officers, employees, agents and sub-contractors of the Tenderer) which may or may be perceived to impair the ability of the Tenderer to deliver the Goods and/or Services diligently, ethically and independently.
- 18.3 A conflict of interest may exist if:
- (a) Tenderers or any of their personnel have a relationship (whether professional, commercial or personal) with the NFSA's personnel involved in, or likely to be involved in the RFT Evaluation Process; or
  - (b) Tenderers have a relationship with, and obligations to, an organisation which would affect the delivery of the Goods and/or Services or would bring disrepute to or embarrass the NFSA.
- 18.4 If at any time prior to entering into a contract with the NFSA, an actual or perceived conflict of interest concerning the Tenderer or a related entity arises or may arise, that Tenderer should immediately notify the Contact Officer.
- 18.5 If a conflict of interest arises, the NFSA may, at its absolute discretion:
- (a) exclude the Tender Response from further consideration;
  - (b) enter into discussions to seek to resolve the conflict of interest; or
  - (c) take any other action it considers to be appropriate.

## **19. Workplace Gender Equality Act 2012 (Cth)**

- 19.1 Commonwealth policy prevents the NFSA from entering into contracts with entities or individuals who are non-compliant under the Workplace Gender Equality Act 2012 (Cth) (the WGE Act). In performing any contract, the successful Tenderer will be required to:
- (a) comply with its obligations, if any, under the WGE Act; and

- (b) if the term of the contract exceeds 18 months, provide a current letter of compliance within 18 months from the commencement date of the contract and following this, annually to the NFSA.
- 19.2 Tenderers should note that, if they are a successful Tenderer and during the term of any contract with the NFSA, they become non-compliant with the WGE Act, they must immediately notify the NFSA.
- 19.3 Tenderers must indicate in RFT Document 3 – Tender Offer and Schedules whether or not they are a ‘relevant employer’ under the WGE Act and, if applicable, provide a current letter of compliance as part of their Tender Response, or if selected as a preferred or successful Tenderer, upon request from the NFSA and prior to entering into any contract.

## **20. Work Health and Safety**

- 20.1 It is a requirement for the Tenderer to express compliance with all relevant State/Territory laws and where applicable or desirable, Commonwealth WHS Acts or regulations.
- 20.2 Tenderers must take all reasonable steps to ensure that the Goods and/or Services are not supplied in such a manner that is unsafe or constitutes a risk to health, including those risks that may urgently arise in connection with a pandemic or natural disaster.

## **21. Payment of Wages and Allowances**

- 21.1 Any successful Tenderer must ensure that all its employees used to perform the Goods and/or Services are paid wages and allowances of every kind required to be paid for under any relevant award, determination or order of the State or Territory in which the Goods and/or Services are provided and that all such persons are employed under the conditions contained in any such award, judgement, order or industrial contract.
- 21.2 Any successful Tenderer must pay all employee ‘on costs’ such as, but not limited to, wages, salaries, holiday pay or allowances, superannuation, sick pay, workers compensation, PAYE tax, payroll tax, fringe benefits tax or any other tax or levy voluntarily undertaken by or imposed (either by statute or otherwise) on the Tenderer.
- 21.3 Any successful Tenderer must ensure that its sub-contractors also meet the above requirements.

## **22. Insurances**

- 22.1 The successful Tenderer must take out and maintain at all times during the Term of any contract with the NFSA adequate insurance.
- 22.2 The minimum level of insurance cover provided by the successful Tenderer shall comprise:
  - (a) Workers Compensation cover for all employees in accordance with the requirements of the ACT *Workers Compensation Act 1951*.
  - (b) Public Liability cover to the value of at least \$20 million per claim.
  - (c) Professional indemnity insurance, Contractor's All Risk or equivalent cover to the value of at least \$20 million per claim.

- (d) Motor vehicle insurance for third party property damage liability to the value of \$30 million for claims arising from the one accident or series of accidents resulting from the one original cause.

22.3 Tenderer non-compliance with the minimum insurance levels described in section 22.2 must be set out in RFT Document 3 – Tender Offer and Schedules.

## **23. Other Rights of the NFSA**

23.1 Without limiting its rights at law or otherwise, the NFSA reserve the right at its absolute discretion and at any stage during the RFT process to exercise any of the rights set out in this section 23 and the Tenderer will have no claim against the NFSA with respect to the exercise of, or failure to exercise, such a right.

23.2 Without limiting sections 23.3 and 23.4 below, the rights referred to in section 23.1 are the right to:

- (a) alter its approach during negotiations;
- (b) add to, or remove parties from, any short list of Tenderers;
- (c) require additional information or clarification from any Tenderer or provide additional information or clarification to all Tenderers;
- (d) call for new Tender Responses;
- (e) accept a Tender Response which is not the lowest priced Tender Response;
- (f) negotiate with one or more Tenderers without prior notice to any other Tenderers and allow any Tenderer to change its Tender Response;
- (g) waive or vary any obligation of any Tenderer under the Contract;
- (h) negotiate with any person who is not a Tenderer and enter into a Contract in relation to this exercise with that person on such terms as NFSA in its absolute discretion accepts without prior notice to any other Tenderer; or
- (i) publish or disclose the names of successful Tenderer(s) as a result of the evaluation of Tender Responses to this RFT process.

23.3 Any time or date in this RFT process is for the sole convenience of the NFSA. The establishment of a time or date in this RFT process does not create an obligation on the part of the NFSA to take any action or any right in any Tenderer that any action be taken on the date established. The NFSA may notify affected Tenderers if it does any of the above but shall not be obliged to provide any reasons for its actions.

23.4 In contract negotiations, the NFSA may seek variations to an offer or may seek supplementary offers in respect of any changes to the originally stated requirements. The NFSA reserves the right to enter into any such discussions and negotiations at its absolute discretion (which includes dealing with any Tenderer as it deems fit without the need to correspond with other Tenderers during this period).

## **24. Confidential Information**

### **24.1 NFSA's Confidential Information**

- 24.1.1 Tenderers must not, and must ensure that their employees, agents or sub-contractors do not, either directly or indirectly record, divulge or communicate to any person any confidential information concerning the affairs of the NFSA, the Commonwealth or a third party acquired or obtained in the course of preparing a Tender Response, or any documents, data or information provided by the NFSA and which the NFSA indicates to Tenderers is confidential or which Tenderers know or ought reasonably to know is confidential.
- 24.1.2 The NFSA may require that all written information (whether confidential or otherwise and without regard to the type of media on which such information was provided to Tenderers) provided to Tenderers (and all copies of such information made by Tenderers) be:
- (a) returned to the NFSA, in which case Tenderers will be required to promptly return all such information to the address identified by the NFSA; or
  - (b) destroyed by Tenderers, in which case Tenderers will be required to promptly destroy all such information and provide the NFSA with written certification that the information has been destroyed.
- 24.1.3 The NFSA may exclude from further consideration any Tender Response lodged by a Tenderer who has engaged in any behaviour contrary to section 24.1.

### **24.2 Tenderer's Confidential Information**

- 24.2.1 Subject to sections 24.2.2 and 24.2.3, the NFSA undertakes to keep confidential any Confidential Information provided to the Commonwealth by Tenderers prior to the award of contract and, in respect of unsuccessful Tenderers, after contract award.
- 24.2.2 The obligation of confidentiality in section 24.2.1 does not apply if the Confidential Information:
- (c) is disclosed by the NFSA to its Advisers or employees solely in order to consider the Tender Responses, to conduct the RFT process or to prepare and manage any resultant contract;
  - (d) is disclosed by the NFSA to the responsible Minister;
  - (e) is disclosed by the NFSA, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - (f) is authorised or required by law to be disclosed;
  - (g) is in the public domain otherwise than due to a breach of the Privacy Act 1988 (Cth); or
  - (h) is disclosed to the NFSA's internal management personnel, solely to enable effective management or auditing of the RFT process.

- 24.2.3 The NFSA will only keep information contained in, or obtained or generated in performing, any contract entered into with a successful Tenderer, including any information sourced from a successful Tenderer's Tender Response, confidential in accordance with the terms of the contract.
- 24.2.4 To enable the NFSA to consider whether it agrees to keep specific information confidential, Tenderers must set out in RFT Document 3 – Tender Offer and Schedules any request that information is to be treated as confidential following the award of a contract to it, specifying the information and giving reasons why it is necessary to keep the information confidential.
- 24.2.5 Further information about the Commonwealth's confidentiality policy is available at <https://www.finance.gov.au/government/procurement/buying-australian-government/confidentiality-throughout-procurement-cycle>.
- 24.2.6 The NFSA will consider any request made under section 24.2.4 and will inform the Tenderer whether or not the NFSA, at its absolute discretion, agrees to the request and the terms under which it agrees.
- 24.2.7 The terms of any agreement will form part of a resultant contract to be awarded at the completion of the RFT process should the Tenderer be identified as successful.
- 24.2.8 The NFSA cannot provide an absolute guarantee of confidentiality because certain confidential information may be required to be disclosed by law or to the Parliament or the Auditor-General.

## **25. Governing Law**

- 25.1 This RFT process is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory. The courts of that Territory have non-exclusive jurisdiction to decide any matter related to this RFT process.

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