



# **Australian Government**

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## **Australian Communications and Media Authority**

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**REQUEST FOR TENDER – RFT  
05/ACMA 007**

REQUEST FOR TENDER IN RELATION TO THE SUPPLY OF INVESTIGATION  
TRAINING AND RELATED SERVICES

File reference: PF2005/227

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**REQUEST FOR TENDER**  
**INVESTIGATION TRAINING AND RELATED SERVICES**

**1. Tender Details**

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<b>Closing Time</b>	2.00 pm Friday 29 September 2006 at Canberra.
<b>Offer Period</b>	<b>Tenders will remain open for acceptance for a period of 90 days after the Closing Time.</b>
<b>Project Officer</b>	Mr Don Thomas Compliance Governance and Planning Section Regulation and Compliance Branch Australian Communications and Media Authority PO Box 78 Belconnen ACT 2616 Phone: (02) 6219 5365 Fax: (02) 6219 5393 Email <a href="mailto:don.thomas@acma.gov.au">don.thomas@acma.gov.au</a>
<b>Tender Details</b>	Standing Offer to establish a preferred supplier of investigation training and related services. Procurement Reference: 05/ACMA007
<b>Tender Box</b>	By mail: Tender Box Australian Communications and Media Authority PO Box 78 Belconnen ACT 2616 By hand: Australian Communications and Media Authority Ground floor, Building 7 (Purple Building) Benjamin Offices Belconnen ACT 2616 By email: <a href="mailto:tbox@acma.gov.au">tbox@acma.gov.au</a>
<b>Contracts Officer</b>	Name: Mark Gairey Title: Senior Purchasing Officer Address: Corporate Governance Australian Communications and Media Authority PO Box 78 Belconnen ACT 2616 Telephone: (02) 6219 5271 Facsimile: (02) 6219 5464 Email: <a href="mailto:mark.gairey@acma.gov.au">mark.gairey@acma.gov.au</a>

## **2. Introduction**

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### **2.1 Invitation to Tender**

2.1.1 The Commonwealth of Australia represented by the Chief Executive Officer of the Australian Communications and Media Authority, a body corporate established under the *Australian Communications and Media Authority Act 2005*, ABN 55 386 169 386, ('the Commonwealth') invites Tenders for the provision of the requirements set out in the Statement of Requirements in accordance with this Request for Tender (RFT). This RFT is made for the benefit of the Australian Communications and Media Authority ('ACMA').

### **2.2 Background**

2.2.1 Among other things, ACMA is responsible for investigating contraventions of the *Radiocommunications Act 1992*, *Telecommunications Act 1997* and the *Spam Act 2003*. The Regulation and Compliance Branch of ACMA employs about seventy inspectors, located at various offices around Australia, to investigate such contraventions. The outcome of investigations may lead to the referral of the matter, by way of brief of evidence, to the Commonwealth Director of Public Prosecutions for consideration of prosecution action.

### **2.3 Summary of Requirements**

2.3.1 ACMA is seeking to enter into a 'Standing Offer' arrangement (refer to 6.1.2(1) for explanation of what constitutes a Standing Offer) with a suitable training provider to deliver 'as required' investigator training and related services. Related services may include the quality assurance of aspects of ACMA conducted investigations, for example, quality assurance of briefs of evidence.

2.3.2 Government investigation standards require that Commonwealth investigators are qualified to at least the Certificate IV level in investigations. Therefore, prospective tenderers must be registered with the National Training Information Service, for the key area of 'Regulatory'.

2.3.3 It is expected that the provision of quality assurance services will be referenced against government investigations standards and best practice.

2.3.4 It is a requirement that investigator training would involve practical scenario segments relevant to the legislation mentioned in subclause 2.2.1. Therefore, the training provider will need to familiarise themselves with investigation techniques and avenues of enquiry that are particular to the evidence gathered by ACMA inspectors. ACMA will assist the successful tenderer to gain the requisite knowledge of ACMA's investigation techniques.

2.3.5 Tenderers must be able to meet the conditions of participation as identified in clause 5.2.

2.3.6 The minimum content and format requirements of this RFT are as identified in clause 5.3.

## **2.4 About ACMA**

The Australian Communications and Media Authority (ACMA) is responsible for the regulation of broadcasting, radiocommunications, telecommunications and online content.

ACMA's responsibilities include:

- promoting self-regulation and competition in the telecommunications industry, while protecting consumers and other users;
- fostering an environment in which electronic media respect community standards and responds to audience and user needs;
- managing access to the radiofrequency spectrum, including the broadcasting services bands;
- representing Australia's communications and broadcasting interests internationally.

### **3. Conditions of Tender**

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#### **3.1 Lodging of Tenders**

- 3.1.1 Tenders are to be lodged on or before the Closing Time.
- 3.1.2 Tenders may be lodged by mail or by hand at the Tender Box in a sealed envelope clearly marked with the Tender Details or electronically to the ACMA email Tender Box.
- 3.1.3 Tenderers sending Tenders by mail or electronically by email do so at their own risk and no responsibility will be accepted for Tenders delivered to an incorrect location or address.
- 3.1.4 Tenderers may only lodge Tenders electronically to the ACMA email Tender Box when online lodgement is identified as an option for this RFT.
- 3.1.5 The time recorded by the ACMA email Tender Box system for electronic lodgement of Tenders is deemed to be the correct time. The Commonwealth will only accept an official receipt issued by the ACMA email Tender Box system as proof of the electronic lodgement of a Tender.
- 3.1.6 The Commonwealth and ACMA do not guarantee that transmission to the ACMA email Tender Box will be available or will function or perform as expected or required. Tenderers use the ACMA email Tender Box system at their own risk and no responsibility will be accepted for late Tenders.
- 3.1.7 Tenders will only be accepted into evaluation if lodged in accordance with this clause 3.1.

#### **3.2 Packaging and Identification of Tenders**

- 3.2.1 For Tenders lodged by mail or by hand, Tenders should be enclosed in a sealed envelope or other sealed container endorsed with:
  - a. the RFT number and Tender Closing Time; and
  - b. the name of the Tender.
- 3.2.2 Where a Tenderer submits more than one response to this RFT each Tender should be submitted in a separate and appropriately endorsed envelope or container.

### **3.3 Documents to be Lodged**

- 3.3.1 Tenderers should lodge an original (marked “original”) and 2 copies, when lodging their Tender by mail or by hand. If there is a discrepancy between a copy (including any electronic copy) and the original, the original takes precedence.
- 3.3.2 Tenderers should also lodge an electronic copy of their Tender on computer disc compatible with Microsoft Word 2003 or equivalent. Alternatively, Tenderers can send an electronic copy of their Tender to the ACMA email Tender Box.
- 3.3.3 Only material requested or required by this RFT should be lodged. Supporting or marketing material that has not been requested is not to be included. Where such material is included, it may be disregarded.

### **3.4 Electronic Documents**

- 3.4.1 All Tenders in electronic format should be complete and standalone. No material may be incorporated by reference or link into the Tender documentation.
- 3.4.2 Tenderers warrant that they have taken reasonable precautions to ensure that Tender files are free from malicious software such as viruses, worms or other disabling features. Tenders that are found to contain malicious software may be excluded from the evaluation process.
- 3.4.3 If an electronic file is corrupt, illegible, inadequate or incomplete, the Commonwealth may exclude the Tender from evaluation, unless a hardcopy has been lodged.
- 3.4.4 Documents requiring a signature should be scanned and lodged in electronic format. The Commonwealth may request the Tenderer to provide any signed documentation that has been submitted in electronic form. If the Tenderer does not do so, the Commonwealth may exclude the Tender from evaluation.

### **3.5 Late Lodgement Policy**

- 3.5.1 Any Tender will be deemed to be late if it is not lodged in accordance with clause 3.1.
- 3.5.2 Subject to clause 3.5.4, the Commonwealth may admit late Tenders into evaluation where, in its opinion, it would be equitable to all Tenderers. Any such decision will be final.
- 3.5.3 The Commonwealth will admit into evaluation any Tender that was received late solely due to mishandling by ACMA or ACMA staff.

- 3.5.4 In deciding whether to admit or exclude other late Tenders from evaluation, the Commonwealth may take into account any factors it considers relevant, including:
- a. whether the late Tenderer is likely to have had an opportunity to obtain some unfair advantage from the late Tender;
  - b. how late the Tender is, the reasons given for the lateness (and any evidence available to support these reasons);
  - c. whether the Tender was mishandled by an official postal service or by a reputable delivery service; and
  - d. any evidence of unfair or improper practices by the Tenderer.

### **3.6 Registration of Participation in RFT**

- 3.6.1 Tenderers who wish to be kept advised of amendments and clarifications to this RFT process may register their interest by fax or email to the Project Officer. In registering their interest, Tenderers must provide contact details with a suitable electronic means of communication such as fax or email.
- 3.6.2 All alterations, corrections and notices will be made available by the Project Officer and will be placed on a website in the Tenders Section of the ACMA Internet.

### **3.7 Requests for Further Information**

- 3.7.1 Requests for further information in relation to this RFT must be directed in writing to the Project Officer.
- 3.7.2 ACMA staff, on behalf of the Commonwealth, may circulate questions and their answers to all other Tenderers without disclosing the source of the questions or revealing the substance of a proposed Tender or other confidential information.
- 3.7.3 ACMA staff, on behalf of the Commonwealth, may decline to provide information to Tenderers that it considers is:
- a. confidential information;
  - b. security classified information or other sensitive information;
  - c. information which may impede current or future competition in the market; or
  - d. information that may provide a Tenderer with an unfair advantage in the RFT process.

### **3.8 Variation and Termination of the RFT**

- 3.8.1 The Commonwealth may amend this RFT, including extending the Closing Time, by giving written notice. Any extension notice or other amendment will be given the same publication and distribution as the original RFT.
- 3.8.2 The Commonwealth and ACMA are not liable to a Tenderer who fails to become aware of any notice or amendment, which has been published and distributed in the same manner as the original RFT.
- 3.8.3 If the RFT is amended, the Commonwealth may request Tenderers to update and re-lodge their Tenders.
- 3.8.4 The Commonwealth may terminate the Tender process at any time.

### **3.9 Errors and Alterations**

- 3.9.1 Tenderers are to initial any alterations made to a Tender. Tenders containing alterations that are not initialled, or pricing or other information that is not stated clearly and legibly, may be excluded from consideration.
- 3.9.2 If the Commonwealth considers that there are unintentional errors of form in a Tender, ACMA staff (on behalf of the Commonwealth) may request the Tenderer to correct or clarify the error, but the Commonwealth will not permit any material alteration or addition to the Tender.
- 3.9.3 Tenderers should immediately notify the Project Officer in writing if a Tenderer reasonably believes there is discrepancy, error, ambiguity, inconsistency or omission in this RFT.

### **3.10 Alternative Tenders**

- 3.10.1 The Commonwealth will consider an alternative approach or solution only if the alternative Tender meets the mandatory and essential requirements as specified in this RFT.
- 3.10.2 Where an alternative Tender is proposed, a Tenderer should:
  - a. separately identify, in detail, the proposed alternative approach or solution;
  - b. specify each instance of change (including effect on the tendered price);
  - c. state the reasons for each instance of change; and
  - d. demonstrate how the proposed alternative approach is beneficial to ACMA.
- 3.10.3 Failure to provide this information may result in the Commonwealth not considering the alternative Tender.

### **3.11 Part Tenders and Joint Tenders**

- 3.11.1 The Commonwealth will not consider a Tender for part of the requirements.
- 3.11.2 The Commonwealth will not consider joint Tenders and will only contract with a single legal entity.

### **3.12 Confidential Information**

- 3.12.1 Tenderers are required to ensure that any of their employees, agents or sub-contractors involved in meeting ACMA's requirements do not either directly or indirectly record, divulge or communicate to any person any confidential information concerning the affairs of ACMA, the Commonwealth or a third party acquired or obtained in the course of preparing a Tender, or any documents, data or information provided by ACMA or the Commonwealth and which ACMA or the Commonwealth indicates to Tenderers is confidential or which Tenderers know or ought reasonably to know is confidential.

### **3.13 Statement of Compliance**

- 3.13.1 Tenderers are to indicate in the Statement of Compliance (in Schedule 3) their level of compliance or otherwise with each clause of the Statement of Requirements and Draft Deed. Responses are to be in the order in which the clauses appear and refer to the relevant clause number or schedule. Non committal terms such as 'noted' should not be used. Responses are to be limited, wherever possible, to the following expressions:
- a. 'complies' – means that the contractual condition, characteristic or performance requirement of the clause is agreed to: and
  - b. 'does not comply' – means that the contractual condition, characteristic or performance requirement of the clause cannot or will not be met by the Tender.
- 3.13.2 Where a Tender does not comply with a particular clause, the manner and extent of non-compliance is to be stated in the Statement of Compliance. The Tenderer is to provide separately a summary list of clauses in respect of which there is non-compliance.

### **3.14 Tenderer's Confidential information**

- 3.14.1 The Commonwealth will treat, and will ensure that ACMA and ACMA staff treat, Tenderer provided information as confidential information.
- 3.14.2 The Commonwealth's and ACMA's obligation to keep confidential Tenderer provided information will not be taken to have been breached to the extent that the Commonwealth or ACMA disclosed the information:
- a. to its advisers, officers, employees or subcontractors solely in order to conduct the RFT process;

- b. to internal management personnel, solely to enable effective management or auditing of the RFT process;
- c. to the responsible Minister;
- d. in response to a request by a House or a Committee of the Parliament of Australia;
- e. to share within ACMA's organisation, or with a Commonwealth agency, where this serves ACMA's legitimate interests;
- f. as authorised or required by law to be disclosed; or
- g. where it is in the public domain otherwise than due to a breach of the relevant obligations of confidentiality.

### **3.15 Ethical Dealing**

3.15.1 The Commonwealth's policy is to engage in the highest standards of ethical behaviour and fair dealing throughout the Tender process. The Commonwealth requires the same standards from those with whom it deals.

3.15.2 Tenders should be compiled without improper assistance of employees or former employees of ACMA and without the use of information improperly obtained or in breach of an obligation of confidentiality.

3.15.3 Tenderers should not:

- a. engage in misleading or deceptive conduct in relation to 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 RFT process; or
- c. attempt to influence improperly any officer, employee or agent of ACMA, or violate any applicable laws or Commonwealth policies regarding the offering of inducements in connection with the RFT process.

3.15.4 The Commonwealth may exclude from consideration any Tender lodged by a Tenderer which, in the Commonwealth's reasonable opinion, has engaged in any behaviour contrary to clause 3.15.3 in relation to the RFT process.

### **3.16 Conflicts of Interest**

3.16.1 If a Conflict of Interest arises at any time during the RFT process, Tenderers are to immediately notify the Commonwealth in writing. If a Conflict of Interest arises, the Commonwealth may:

- a. enter into discussions to seek to resolve such Conflict of Interest;
- b. reject the Tender lodged by such a Tenderer; or
- c. take any other action it considers appropriate.

### 3.17 Application of Law and Commonwealth Policy

- 3.17.1 Tenderers should familiarise themselves with all relevant Commonwealth legislation and policies relating to the provision of the Statement of Requirements including:
- a. the small and medium enterprises (SME) policy under which the Government is committed to agencies sourcing at least 10% of their purchases by value from SMEs. An SME is an Australian or New Zealand registered firm with fewer than 200 full time equivalent employees;
  - b. *Freedom of Information Act 1982* which gives members of the public rights or access to certain documents of ACMA and the Commonwealth;
  - c. The *Privacy Act 1988* (as amended by the *Privacy Amendment (Private Sector) Act 2000*) which aims to ensure that contractors and their subcontractors do not engage in an act or practice which, if done by ACMA or the Commonwealth, would breach the Information Privacy Principles. The Privacy Act also imposes obligations directly on contractors and subcontractors to comply with the National Privacy Principles; and
  - d. The *Trade Practices Act 1974* which aims to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection. The Act prohibits various trade practices that tend to prevent or lessen competition in an Australian market for goods and services.
- 3.17.2 Where the Tenderer is currently named as not complying with the *Equal Opportunity for Women in the Workplace Act 1999*, the Commonwealth may exclude its Tender from further consideration.
- 3.17.3 The attention of Tenderers is drawn to the *Auditor-General Act 1997* that provides the Auditor-General or an authorised person with a right to have, at all reasonable times, access to information, documents and records (see sections 32 and 33 of the *Auditor-General Act 1997*).
- 3.17.4 In addition to the Auditor-General's statutory powers, and in recognition of the need for the Auditor-General's functions to be conducted in an efficient and cooperative manner, if a Tenderer is chosen to enter into a Deed, that Tenderer may be required to provide to the Auditor-General, or a delegate of the Auditor-General, access to information, documents, records and Commonwealth assets, including those on the Tenderer's premises. This access 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 or subcontractors, and which is directly related to the Deed. Such access will apply for the term of any Deed entered into and for a period of five years from the date of expiration or termination.

3.17.5 Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Auditor-General Act 1997* on their participation in the RFT.

### **3.18 Tenderers to Inform Themselves**

3.18.1 Tenderers are considered to have:

- a. examined this RFT, any documents referenced in this RFT and any other information made available by the Commonwealth or ACMA to Tenderers for the purpose of submitting a Tender;
- b. examined 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 Tender;
- c. satisfied themselves as to the correctness and sufficiency of their Tenders including tendered prices; and
- d. satisfied themselves as to the terms and conditions of the Draft Deed and their ability to comply with the Draft Deed.

3.18.2 Tenders are submitted on the basis that Tenderers acknowledge that:

- a. they 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 amendments in accordance with clause 3.8;
- b. they do not rely upon any warranty or representation made by or on behalf of the Commonwealth or ACMA, except as are expressly provided for in this RFT, but they have relied entirely upon their own inquiries and inspection in respect of the subject of their Tender;
- c. the Commonwealth and ACMA will not be responsible for any costs or expenses incurred by Tenderers in complying with the requirements of this RFT; and
- d. neither this RFT nor the Tender give rise to contractual obligations between the Commonwealth and the Tenderer.

### **3.19 Disclaimer**

3.19.1 The Commonwealth and ACMA will not be liable to any Tenderer on the basis of any promissory estoppel, quantum meruit or other contractual, quasi contractual or restitutionary grounds whatsoever or in negligence as a consequence of any matter relating or incidental to a Tenderer's participation in this RFT process including instances where:

- a. a Tenderer is not invited to participate in any subsequent process following completion of this RFT process;
- b. the Commonwealth varies or terminates the RFT process;
- c. the Commonwealth decides not to contract for all or any of the requirements; or

- d. the Commonwealth exercises or fails to exercise any of its other rights under or in relation to this RFT.

### **3.20 Use of Tender Documents**

- 3.20.1 All Tender documents submitted in response to this RFT will become the property of the Commonwealth and be in the custody of ACMA.
- 3.20.2 Intellectual property owned by the Tenderer or third parties in material contained in the Tender does not pass to the Commonwealth with physical property in the Tender documents. However, the Commonwealth is granted an irrevocable, royalty free licence to use, reproduce and circulate any copyright material contained in the Tender, or provided by the Tenderer in response to this RFT, to the extent necessary to conduct the Tender process and in the preparation of any resultant contract.

### **3.21 Offers and Acceptance of Offer**

- 3.21.1 Lodging a Tender will constitute an offer in accordance with this RFT by the Tenderer for a period of not less than the Offer Period.
- 3.21.2 A Tender is not taken to have been accepted until a formal Deed has been executed by the Tenderer and the Commonwealth on the basis of the Draft Deed, and notice by the Commonwealth to any Tenderer that it is, or is not, a preferred or successful Tenderer does not constitute an acceptance or rejection of any Tender.

### **3.22 Reporting and Disclosure Obligations**

- 3.22.1 Following the evaluation of Tenders and signature of the Deed with the preferred Tenderer, the Commonwealth will promptly inform all other Tenderers of the outcome of the Tender process.
- 3.22.2 On request, the Commonwealth will provide an unsuccessful Tenderer with reasons that its Tender was not successful. The Commonwealth may choose to provide these reasons in writing or orally.
- 3.22.3 In addition, the Commonwealth is obliged to:
  - a. list any contract for the benefit of ACMA arising out of this RFT with a consideration of \$100,000 or more, on the ACMA Internet website; and
  - b. publish agreements with an estimated contract value of \$10,000 or more on a website of the DOFA Internet website.

## **4. Matters Concerning Tender Response**

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### **4.1 Tender Response**

4.1.1 Tenderers are referred to the Statement of Requirements and the evaluation criteria for information on the requirements sought by the Commonwealth in this RFT. Tenderers should submit with their Tender:

- a. Tenderer's details (including full name, any trading or business name, address, company details, ABN (if applicable) and contact for notices) as set out in the Response Cover Sheet in Schedule 5 and the Profile of Tenderer in Schedule 6;
- b. Tenderer's response to the Statement of Requirements (in Schedule 1) must be consistent with the Draft Deed.
- c. detailed pricing;
- d. details of any specified personnel or subcontractors with particular experience or expertise who will assist in carrying out the requirements of the Draft Deed;
- e. details of past performance in providing the type of requirements;
- f. a list of, and contact details for, at least three recent clients of the Tenderer who are prepared to act as referees and a description of the goods and/or services supplied by the Tenderer to the referee;
- g. details of the Tenderer's insurance;
- h. Tenderer's Declaration (in Schedule 6); and
- i. details of the Tenderer's level of compliance (in Schedule 3).

4.1.2 The Draft Deed will form the basis of the final agreement between the Commonwealth and the successful Tenderer. Tenderers are advised to examine its terms and conditions when framing their offer.

### **4.2 Complaints**

4.2.1 A Tenderer may lodge a complaint if dissatisfied with any aspect of this RFT process and is unable to resolve the issue with the Project Officer. Complaints should be directed in writing to the Contracts Officer.

4.2.2 The Contracts Officer, in assessing the complaint, is independent of the RFT process.

4.2.3 Complaints will not prejudice a Tenderer's participation in any of ACMA's future procurement processes

### 4.3 General Matters

- 4.3.1 The Tender must be written in English and measurements are to be expressed in Australian legal units of measurement. Prices are to be in Australian dollars, unless otherwise stated.
- 4.3.2 A Tenderer may be required to demonstrate that it has the financial capacity to provide the requirements set out in the Statement of Requirements.
- 4.3.3 Prices are to be inclusive of:
- a. GST (as defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*);
  - b. all costs of complying with this RFT; and
  - c. all costs associated with doing all things necessary for the due and proper completion of work under the proposed Deed.
- 4.3.4 The Tenderer must specify any discount (such as early payment terms) and incentives offered.
- 4.3.5 Where work under the Deed will be priced using hourly rates, the Tenderer must specify in its response to the RFT hourly rates for the term of the Deed for each of the specified personnel.

## **5. Evaluation of Tenders**

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### **5.1 Evaluation Methodology**

- 5.1.1 The objective of the evaluation is to identify the Tenderer which meets ACMA's requirements and represents the best value for money. The Commonwealth's decision on the parameters and methodology for evaluation will be final.

### **5.2 Conditions of Participation**

- 5.2.1 The Commonwealth will exclude a Tender from further consideration if the Commonwealth considers that the Tenderer does not meet the following requirement:

Demonstrated registration to the National Training Information Service. Registration must include endorsement to the key area of 'Regulatory' in the Public Sector Training Package PSP04.

### **5.3 Minimum Content and Format Requirements**

Subject to clause 5.6, the Commonwealth will exclude a Tender from further consideration if the Commonwealth considers that the Tender does not provide the information outlined in Clause 4.1.1.

### **5.4 Essential Requirements**

- 5.4.1 The Commonwealth will exclude a Tender from further consideration if the Commonwealth considers that the Tender does not comply with an essential requirement identified in the Statement of Requirements.

### **5.5 Tender Evaluation**

- 5.5.1 Subject to clause 5.5.3, the criteria to be applied for the purposes of evaluation are:
- a. the extent to which Tenders meet the Statement of Requirements;
  - b. the degree of overall compliance with the RFT including the Draft Deed;
  - c. demonstrated ability to deliver investigations training;
  - d. the extent to which the tenderer has provided relevant services in the past, including quality assurance of investigation practices and procedures;
  - e. experience and past performance of the Tenderer;
  - f. the skills, qualifications and experience of the Tenderer's key training personnel, including the proposed Client Relationship Manager;

- g. the cost of providing training for:
  - i. short courses of one or two days duration (example: an introductory investigations course);
  - ii. medium courses of three to five days duration (example: a skills based maintenance course); and
  - iii. long courses of more than five days duration (example: Certificate IV in Government (Investigations));
- h. the geographical range in which the tenderer meets ACMA's venue requirements;
- i. ability to manage risk;
- j. the Tenderer's capability to meet ACMA's requirements; and
- k. financial viability of the tenderer.

5.5.2 The list of evaluation criteria is not in any order of importance.

5.5.3 If additional criteria are intended to be applied for the purposes of evaluation, the Commonwealth will notify Tenderers who will be given an opportunity to respond.

5.5.4 The Commonwealth may exclude from consideration Tenders that in the Commonwealth's opinion are incomplete or clearly not competitive. However, the Commonwealth may consider such Tenders and seek clarification in accordance with clause 5.6.

## **5.6 Clarification, Shortlisting and Negotiations**

5.6.1 The Commonwealth may:

- a. use any relevant information obtained in relation to a Tender (through this RFT or by independent inquiry of the Tenderer's referees or references) in the evaluation of Tenders;
- b. enter into negotiations or discussions with any one or more Tenderers with conforming Tenders; and
- c. seek clarification of any omissions, ambiguities or anomalies from any Tenderer.

5.6.2 The Commonwealth may shortlist Tenderers at any time during the evaluation process. If it does so, Tenderers will be advised accordingly, and short listed Tenderers may be invited to provide further information on their Tender to the Commonwealth.

5.6.3 The Commonwealth may exclude from further consideration, Tenders that in the Commonwealth's opinion are incomplete, or clearly not competitive.

## **6. Interpretation of RFT**

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### **6.1 Definitions and Interpretation**

6.1.1 Unless a contrary intention is indicated, this RFT is interpreted in the same manner, and its terms have the same meaning, as in the Draft Deed in Schedule 2.

6.1.2 In this RFT, unless the contrary intention appears:

- a. Closing Time means the date and time set out in clause 1;
- b. Conflict of Interest means any matter, circumstance, interest, or activity affecting the Tenderer (including the officers, employees, agents and subcontractors of the Tenderer) which may or may appear to impair the ability of the Tenderer to provide the requirements for the benefit of ACMA diligently and independently;
- c. Contracts Officer means the person set out in clause 1;
- d. Draft Deed means the document set out in Schedule 2;
- e. Offer Period means the period set out in clause 1;
- f. Project Officer means the person set out in clause 1;
- g. Statement of Compliance means the statement of compliance set out in Schedule 3;
- h. Statement of Requirements means the statement of requirements set out in Schedule 1;
- i. Tender Box means the tender box set out in clause 1;
- j. Tender Details means the tender details set out in clause 1; and
- k. Tenders Section of the ACMA Internet means that part of the ACMA's website for business opportunities, located at [www.acma.gov.au](http://www.acma.gov.au).
- l. A 'Standing Offer' means a Deed entered into by both parties, ACMA and the successful tenderer, setting out the terms and conditions for provision of investigator training services, but containing no obligation for purchase of any particular quantity. Furthermore:
  - (a) there is no guarantee that ACMA will take up a service after receiving a quotation;
  - (b) the successful tenderer is under no obligation to submit a quotation for a service in response to a request seeking a quotation;
  - (c) that unless and until ACMA accepts a quotation and raises a Purchase Order for a particular service no contractual relationship exists between the Commonwealth and the successful tenderer; and
  - (d) that ACMA, at its sole discretion, may seek investigator training related services from other organisations and individuals.

## **6.2 Governing Law**

- 6.2.1 The governing law of the Australian Capital Territory applies to the RFT. The courts of the Australian Capital Territory have non-exclusive jurisdiction to decide any matter arising out of this RFT.

## **Schedule 1: Statement of Requirements**

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### **A.1 Scope**

- A.1.1. ACMA employs about seventy inspectors to investigate contraventions of: the *Radiocommunications Act 1992*; certain provisions of the *Telecommunications Act 1997*; and the *Spam Act 2003*. The majority of inspectors are located within the Regulation and Compliance Branch, which has offices situated at various locations around Australia.
- A.1.2. ACMA is seeking to enter into a ‘Standing Offer’ (refer to 6.1.2 (l) for further information on Standing Offers) with a suitable organisation for the provision of investigation training and related services. The target group for training will be current and potential inspectors and the life of the offer is an initial three year period, and if agreed to during the life of the tender by both ACMA and the successful tenderer, an extension to that period of up to two, one year periods.

### **A.2 Services to be performed/ goods to be supplied**

- A.2.1. The successful tenderer will be able to supply a range of investigator training services on an ‘as required’ basis.
- A.2.2. The minimum investigator training requirement for this tender is the provision of, and certification to, the Certificate level IV in Government (Investigations) or equivalent qualification.
- A.2.3. Building upon the minimum requirement the successful tenderer should also be able to provide other investigator training related services including, but not limited to,:
1. Articulation of the Certificate IV course, mentioned previously, into relevant certified Diploma courses;
  2. Introductory investigator courses;
  3. Investigator skills maintenance courses (practical in nature to maintain appropriate investigator skill levels); and
  4. Quality assurance, as requested, of aspects of investigations conducted by ACMA staff, including the quality assurance of briefs of evidence.
- A.2.4. For all services provided, ACMA will require a post-service, written and/or verbal briefing. Where requested, ACMA may also require the briefing to include assessments on individual participants.
- A.2.5. All services provided should be traceable to relevant government standards and government investigation best practice.

A.2.6 The successful tenderer should be capable of developing an ongoing training partnership with ACMA, such that the training provided will address ACMA specific needs and incorporate realistic scenarios that relate to ACMA based investigations.

A.2.7 The successful tenderer should have the capability of delivering training programs in Canberra, Melbourne, Sydney and Brisbane.

### **A.3 Time frame**

A.3.1 The resultant Deed is expected to commence in the month of January 2007 and to conclude in the month of December 2009, unless there is agreement during the life of the Deed by both parties to extend the Deed.

### **A.4 Contract management**

A.4.1 The Commonwealth expects the successful Tenderer to manage the relationship pro-actively and to provide a Client Manager at a senior level in addition to the specified personnel or subcontractors delivering the requirements. The Commonwealth expects that ACMA will hold regular meetings with the Client Manager as part of the performance assessment cycle.

## **Schedule 2: Draft Deed**

The Draft Deed is provided as a separate file accompanying this RFT document.

### **Schedule 3: Statement of Compliance**

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**STATEMENT OF COMPLIANCE**

To be read in conjunction with clause 3.13 of the RFT. A response including any requested information, must be provided against each of the relevant clauses or schedules in the Statement of Requirements and Draft Deed listed below. If appropriate, compliance may be indicated against groups of clauses, e.g. clauses 2.1 to 2.5 inclusive – “complies”. A summary list of clauses in respect of which there is non-compliance should also be provided.

<b>Clause/Schedule</b>	<b>Compliance Statement</b>	<b>Cross Reference</b>	<b>Remarks</b>

**Schedule 4: Response Cover Sheet**

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**RESPONSE COVER SHEET**

**REQUEST FOR TENDER FOR THE PROVISION OF  
INVESTIGATION TRAINING AND RELATED SERVICES  
FOR THE  
AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY**

**RFT No. 05/ACMA 007**

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**TENDER CLOSING TIME: 2.00 pm Friday 29 September 2006**

**NAME OF TENDERING ENTITY:**

.....

**ACN, ABN or ARBN NUMBERS:** .....

**NAME OF CONTACT PERSON:**

.....

**ADDRESS:** .....

.....

**TELEPHONE:** .....

**FACSIMILE:** .....

**MOBILE:** .....

**EMAIL ADDRESS:** .....

## Schedule 5: Profile of Tenderer

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### PROFILE OF TENDERER

**The Tenderer must provide the following information:**

1. Tenderer's full name:

.....

2. Any trading or business name:

.....

3. If a company:

- the registered office:

.....

- the principal place of business:

.....

- the date and place of incorporation:

.....

4. If an Australian company, the ACN:

.....

and ABN:

.....

5. Individual shareholders holding 20 percent or more of any issued share capital:

.....

.....

6. Related bodies corporate within the meaning of the *Corporations Act 2001*:

.....  
.....  
.....

7. For a foreign firm or company, details of the place of business in Australia and the name of any Australian representative:

.....  
.....  
.....

8. Particulars of any petition, claim, action, judgment or decision which is likely to adversely affect your capacity to provide the requirements (goods and/or services):

.....  
.....

9. The Tenderer must state the postal address, telephone number, fax number and email address of the office that will provide the service to ACMA.

.....  
.....  
.....

**Financial Information**

Provide copies of Annual Balance Sheets and Profit and Loss Statements with the appropriate accompanying notes for the previous 3 financial years. Where the Tenderer is part of a group of companies, provide those documents or the equivalent information relating to the Tenderer as a single entity. This information must be provided whether the organisation is a registered company (including non reporting entities), partnership or sole trader.

For the avoidance of doubt where the Tenderer is a subsidiary, the Tenderer is to provide full details of the legal and financial relationship between the tendering party and the parent entity.

Provide details of any other matters relating to the commercial, technical or financial capacity of the Tenderer which may materially affect the Tenderer's ability to perform any of the obligations under the Draft Deed, including any significant events, matters or circumstances which have arisen since the end of the last financial year.

## **Schedule 6: Tenderer's Declaration**

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### **A.1 Offer**

- A.1.1 The Tenderer undertakes to participate in the RFT process in accordance with the RFT, subject to the Statement of Compliance in Schedule 3 and on the basis of the Tender.
- A.1.2 The Tender constitutes a complete offer (the Offer) relating to all matters required for the completion of the Deed, and accordingly is capable of immediate acceptance by the Commonwealth so as to form a Deed.
- A.1.3 Where the Tender includes alternative proposals each feasible combination of alternatives shall be deemed a separate, valid Offer, and the succeeding provisions of this declaration apply accordingly.
- A.1.4 An Offer shall remain open for acceptance by the Commonwealth for the Offer Period.
- A.1.5 In the event of acceptance of the Offer, the Commonwealth may require the Tenderer to execute a Deed without entering into further negotiation.
- A.1.6 To the extent that the Tender does not constitute complete information relating to matters required for the completion of the Draft Deed, the Commonwealth may complete the Deed at its reasonable discretion for the purposes of a Deed, and the Tenderer shall execute the Deed.
- A.1.7 In this RFT, terms not otherwise defined shall have the meaning ascribed to them in the RFT.

**EXECUTED AS A DEED POLL** for the benefit of the Commonwealth

Dated this **^insert day^** of **^insert month^** 20**^insert year^**

SIGNED SEALED AND )  
DELIVERED by **^insert name of** )  
Tenderer<sup>^</sup> by its duly authorised )  
representative: )  
)

\_\_\_\_\_

**^Insert name of signatory^**

\_\_\_\_\_

\_\_\_\_\_

**^Insert position of signatory^**

*Signature*

In the presence of: )  
 )  
\_\_\_\_\_ )

**^Insert name of witness^**

\_\_\_\_\_

*Signature*