

Part A - Conditions of Tender

Request for Tender (RFT)

Supply of Fixed Wing Air Charter Services to the NSW Police Force

Request for Tender Number: 001803

Issued

8 January 2019

This Request for Tender closes

10:00am, AEDT

20 February 2019



NSW Police Force

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1 Request for Tender summary

RFT Name	Supply of Fixed Wing Air Charter Services to the NSW Police Force
RFT Number	001803
RFT Closing Time and Date	10:00am AEDT, 20 February 2019
Tender Box	eTendering website https://tenders.nsw.gov.au/
Enquiries / Tender contact person	Shyuan Chin +61 2 8835 9155 procurement@police.nsw.gov.au

2 Overview

2.1 Objective

- a. This Request for Tender (**RFT**) is issued by New South Wales Police Force (**NSWPF**) for the supply of fixed wing air charter services to the NSW Police Force under the Deed of Standing Offer (contained at Part B).
- b. The objective of this RFT is to seek tenders for the provision of the Services, on the terms and conditions of the Deed.

2.2 Structure

- a. This RFT is comprised of the following documents:
 - i. Part A – Conditions of Tender: This is an executive summary of main objectives and expectations for the RFT. Part A also provides the terms and conditions of the RFT.
 - ii. Part B – Deed: This is the draft deed relating to the delivery of the supply of fixed wing air charter services to the NSW Police Force to be entered into between the successful tenderer (if any) and NSWPF.
 - iii. Part C – Specifications: This is a description of the requirements for the Services to be acquired under this RFT, and
 - iv. Part D – Response Template: These are response schedules which tenderers must complete and submit with their response.
 - v. Confidentiality Deed Poll: For completion and submission by tenderers to access Part B, C and D – for submission to:
 - A. Email: procurement@police.nsw.gov.au
 - B. Fax: (02) 8835 9700
- b. This RFT must be downloaded by tenderers electronically from the eTendering website. In order to download an electronic copy of this RFT, tenderers need to register as a site user on the eTendering website.

- c. The initial RFT release provides Part A and the Confidentiality Deed Poll. Access to Part B, C and D will required completion and submission by tenderers of an included Confidentiality Deed Poll. A Confidentiality Deed Poll must also be completed and submitted to NSWPF by any proposed subcontractor of a tenderer requiring access to Part B, C and D.
- d. NSWPF reserves the right to request for more information relating to the purpose of obtaining Part B, C and D if the company does not appear to have the expertise in providing the Services.
- e. NSWPF reserves the right to reject any company's request to access Part B, C and D even though the Confidentiality Deed Poll has been completed and submitted.

2.3 Facts on the NSWPF

- a. General facts
 - i. NSWPF is Australia's oldest and largest police organisation and one of the biggest in the English speaking world.
 - ii. NSWPF has a large and diverse workforce. Please [click here](#) for the most recent information regarding police numbers.
 - iii. NSWPF serves a population of seven million in the state of New South Wales, an 801,600 square kilometre area comparable in size to Texas in the USA and double the combined geographic areas of England, Scotland and Wales.
 - iv. NSWPF operates on land, sea and from the air.
 - v. NSWPF provides community based policing from more than 400 police stations to a wide range of ethnic communities speaking more than 30 languages.
 - vi. NSWPF is a non-profit statutory authority funded by the NSW Government.
- b. The NSWPF aims to protect the community and property by:
 - i. preventing, detecting and investigating crime
 - ii. monitoring and promoting road safety
 - iii. maintaining social order, and
 - iv. performing and coordinating emergency and rescue operations.
- c. Other major services provided by the NSWPF:
 - i. traffic control
 - ii. communications
 - iii. intelligence analysis, and
 - iv. anti-terrorist negotiation.
- d. NSWPF history
 - i. In August 1789, Governor Arthur Phillip established the first civilian police force in Australia.
 - ii. The NSWPF was established by the *Police Regulation Act 1862*, which was replaced by the *Police Regulation Act 1899*.

- iii. In June 1987, the NSWPF (operations) and the NSW Police Department (policy and administrative support) were amalgamated and formalised by the *Police Act 1990*, which, as amended, is the primary legislation governing the organisation.

3 Glossary

In this RFT, all words and expressions will (unless the context otherwise requires) have the meanings set out below.

Addendum means any addenda issued under paragraph 6.4 of Part A to this RFT.

Alternative Tender means an alternative tender submitted in accordance with paragraph 4.6f of Part A of this RFT.

Closing Date and Time means the date and time listed on the cover page of this Part.

Confidentiality Deed Poll means the Confidentiality Deed Poll signed by the tenderer before receipt of Part B, C and D of this RFT".

Conforming Tender means a tender which conforms in all material respects to:

- a. the terms and conditions of this RFT, including paragraph 4.5 of Part A
- b. the terms and conditions of the Deed
- c. other Parts of this RFT, and

is in the prescribed form (Part D).

Contact Officer means the NSWPF officer specified in paragraph 4.3 of Part A of this RFT.

Deed means the draft deed contained in Part B of this RFT, to be entered into between NSWPF and the successful Supplier (if any).

eTendering website means the NSW Government eTendering website or such other address as may be used by the NSW Government for eTendering from time to time.

Evaluation Committee means a committee established by NSWPF to evaluate tenders and make recommendations to NSWPF about the RFT.

Evaluation Criteria means those criteria set out in paragraph 5.4 of Part A of this RFT.

GST means a goods and services tax and has the same meaning as in the GST Law.

GST Free Supplies and **Input Taxed Supplies** have the same meaning as in the GST Law.

GST Law means any law imposing a GST and includes A New Tax System (Goods & Services Tax) Act 1999 (C'th) or if that Act does not exist, means any Act imposing, or relating to a GST and any regulation made under those Acts.

Key Personnel means those employees, secondees, agents, principals and contractors of the tenderer specified in Part D of this RFT as personnel proposed by the tenderer to provide the Services.

Non-Conforming Tender means a tender that NSWPF considers:

- a. does not conform in all material aspects to:
 - i. the terms and conditions of the Deed; or
 - ii. the terms and conditions of this RFT, including paragraph 4.6 of Part A; or
 - iii. other Parts of this RFT,
- b. is not in the prescribed form (Part D); or
- c. is not an Alternative Proposal.

NSWPF means the Crown in right of the State of New South Wales, represented by the New South Wales Police Force, including its officers, employees, servants and agents.

Part means a part of this RFT referred to in paragraph 2.2a of Part A of this RFT.

Probity Adviser means the person (if any) named or advised to Tenderers.

Procurement Policy Framework means the Goods and Services Procurement Policy Framework for NSW Government Agencies, issued by the NSW Procurement Board, on 1 July 2013 (version 2) or any additions, revisions, changes or replacements to that framework that may be issued from time to time.

Response Template means the template at Part D to this RFT.

RFT means this Request for Tender.

Services has the meaning given in Part B.

SME means small and medium enterprise, from New South Wales, other states and territories of Australia or New Zealand, with up to 200 full time equivalent employees.

Specifications means the Specifications set out in Part C of this RFT.

Statement of Compliance means the statement of compliance set out in Part D of this RFT.

Tender Box means the virtual tender box that receives tenders lodged by tenderers at NSW Government eTendering website, referred to in paragraph 4.6 of Part A.

Value for money means the benefits compared to whole-of-life costs and includes an evaluation of both price and non-price factors, as defined by the Procurement Policy Framework.

4 RFT Process

4.1 Timetable for RFT process

The indicative timetable for this RFT is described below. NSWPF may, in its absolute discretion, vary, amend or change the timetable from time to time.

Milestone	Date
RFT issued	8 January 2019
RFT closes (Closing Date and Time)	10:00am AEDT, 20 February 2019
Evaluation of Tenders	February /March 2019

4.2 Briefing Details

- a. Not required

4.3 Contact Officer and enquiries

- a. Tenderers should refer requests for information or advice regarding this RFT to:
Contact: Shyuan Chin
Position: Procurement Manager, Strategic Procurement & Fleet Services
Telephone: +61-2-8835 9155
E-mail: procurement@police.nsw.gov.au
- b. Enquiries received within 7 (seven) business days prior to the Closing Date and Time may not be answered.
- c. NSWPF may, in its absolute discretion, determine whether or not to respond to any enquiries. The tenderer will be notified of any decision not to respond.
- d. NSWPF may make the response to any enquiries available to all tenderers, if in NSWPF's opinion the information could unfairly favour the enquiring tenderer over other tenderers. The NSWPF may decide not to identify the tenderer who made the enquiry.
- e. Any response made available to other tenderers will be distributed as an Addendum to this RFT, in accordance with paragraph 6.4 of Part A of this RFT.

4.4 Clarification sessions and meetings with tenderers

- a. Requests for clarification sessions or meetings by a tenderer must be made in writing and submitted to the Contact Officer.
- b. NSWPF will, in its discretion, determine whether or not to grant a clarification session or meeting. The tenderer will be notified of any decision to not grant a clarification session or meeting.
- c. A written agenda identifying all the issues the tenderer wishes to discuss during the clarification session or meeting must be provided to the Contact Officer at least 48 hours prior to the clarification session or meeting.

- d. A clarification session or meeting will not proceed if in NSWPF's opinion the tenderer has not provided a sufficiently detailed agenda to the Contact Officer.
- e. Time limits will apply to all clarification sessions or meetings. NSWPF may, in its discretion, reschedule or extend a clarification session or meeting.
- f. NSWPF may make any information provided in a clarification session or meeting available to all tenderers, if in NSWPF's opinion the information could unfairly favour a tenderer over other tenderers. The NSWPF may decide not to identify the tenderer who requested the clarification session or meeting.
- g. Any response made available to other tenderers will be distributed as an Addendum to this RFT, in accordance with paragraph 6.4 of Part A of this RFT.

4.5 Probity Adviser

NSWPF will not appoint an independent external Probity Adviser for this RFT.

4.6 Submission of proposals

- a. Closing Date and Time
 - i. Tenders must be lodged before the Closing Date and Time.
- b. Late Tenders
 - i. Late tenders will not be considered, except where NSWPF is satisfied that the integrity and competitiveness of the RFT process has not been compromised.
 - ii. NSWPF will not penalise any tenderer whose tender is received after the Closing Date and Time if the delay is due solely to mishandling on the part of the NSWPF.
 - iii. NSWPF accepts no responsibility for any problems arising from a tenderer's lodgement of their tender.
- c. Extension of Closing Date and Time
 - i. NSWPF may, in its discretion, extend the Closing Date and Time.
 - ii. Tenderers must check the eTendering website to inform themselves if there has been an extension to the Closing Date and Time.
- d. Form of submission
 - i. All tenders must:
 - A. be written in English
 - B. have prices quoted in Australian currency
 - C. Measurements must be in the Metric system which is an internationally agreed decimal system of measurement.
 - D. be in the prescribed form (Part D) – tenderers can add extra documentation or attachments to Part D, subject to paragraph 4.6g of Part A of this RFT
 - E. provide responses to all the questions and schedules in Part D, including the Statement of Compliance

- F. be submitted electronically (in accordance with paragraph 4.6e of Part A of this RFT), and
 - G. if they are copies or variations of a tender or Alternative Tenders, clearly indicate what type of tender it is (as set out in paragraph 4.6f of Part A of this RFT).
 - ii. A tender that is not lodged via the eTendering website, as set out below, may be excluded from the RFT process without further consideration.
 - iii. Non-Conforming Tenders (and any related Alternative Tenders) may be excluded from the RFT process without further consideration.
- e. Electronic tenders
 - i. A tender must be submitted electronically on the eTendering website.
 - ii. Lodgement can only be made by a registered system user of the NSW Government eTendering system.
 - iii. A tenderer must follow the following directions for lodgement:
 - A. Select the “Lodge a Response” button on the web page for the RFT;
 - B. To lodge a tender electronically, the files containing the tender must be up-loaded through the eTendering website. Access to the up-loading process is through the blue “Lodge a Response” button, then follow the steps and instructions on the NSW Government eTendering website.
 - iv. Tenderers will receive an e-mail receipt after successfully lodging a tender on the eTendering website.
 - v. A tenderer must observe the following format requirements for tenders lodged on the eTendering website:
 - A. The tender must be in a file format which can be read, formatted, displayed and printed by Microsoft Office 2007
 - B. If the tenderer compresses files, it must be possible to decompress them using WinZip. The tenderer must not submit self-extracting (*.exe) zip files, and
 - C. The tenderer must not change pre-existing text or formats in Part D of this RFT other than to insert the required information.
 - vi. Electronically submitted tenders may be made corrupt or incomplete, for example by computer viruses. NSWPF may decline to consider for acceptance and exclude from further evaluation a tender that cannot be effectively evaluated because it is incomplete or corrupt. Tenderers should note that:
 - A. To reduce the likelihood of viruses, a tenderer must not include any macros, applets, or executable code or files in a tender, and

- B. A tenderer must ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.
 - vii. NSWPF will not be responsible in any way for any loss, damage or corruption of electronically submitted proposals.
 - viii. If a tenderer experiences any persistent difficulty with the eTendering website, the tenderer should contact the Contact Officer promptly in writing.
 - ix. If there is an extended defect or failure of the eTendering website and NSWPF is advised by the custodian of the eTendering website, the Closing Date and Time may be extended provided that, in the view of NSWPF, the RFT process will not be compromised by such an extension of time.
 - x. Tenderers are advised that it is a requirement of the eTendering website that tenderers accept the rules on the eTendering website for the electronic submission of tenders.
 - xi. A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW).
 - xii. Signatures are not required for a tender submitted on the eTendering website. A tenderer must ensure that a tender is authorised by the person or persons who may do so on behalf of the tenderer. Tenders must appropriately identify the person and indicate the person's approval of the information communicated.
- f. Multiple Tenders (including any Alternative Tender)
- i. In addition to submitting a tender that complies with the terms of this RFT, tenderers may also lodge a tender with an alternative offer in the form of an Alternative Tender.
 - ii. Alternative Tenders may be considered at the sole discretion of the Evaluation Committee.
 - iii. If a tenderer lodges more than one tender for the RFT (including an Alternative Tender), the tenderer should clearly state on the front page of the tender whether it is:
 - A. a 'copy' - a copy must be identical to an earlier or simultaneous tender in every respect;
 - B. a 'variation' - a variation of an earlier tender will be deemed as superseding a prior submission; or
 - C. an 'Alternative Tender' - an alternative offer submitted in accordance with paragraph 4.6f of Part A of this RFT.
 - iv. In the event a tenderer fails to identify whether a tender is a copy or variation of a tender or an Alternative Tender, the latest tender received will be deemed as the tender for the purposes of evaluation.
- g. Supporting documentation and attachments to the tender

- i. Any supporting documentation and attachments to the tender form part of the tender and must be submitted by Closing Date and Time in accordance with the requirements for tenders as outlined in paragraphs 4.6d and 4.6e of Part A of this RFT.

4.7 Eligibility to submit a tender

- a. Legal entity of tenderer
 - i. A tender must be submitted by a legal entity or, if a joint tenderer, by legal entities, with the capacity to contract. The NSWPF will only enter into the Deed with such legal entity or legal entities.
 - ii. The NSWPF may ask a tenderer to provide evidence of its legal status or capacity to contract. If entities propose to contract in their capacity as trustees, such evidence may include copies of the relevant trust deeds. Any evidence requested is to be provided within three (3) working days of the request.
- b. Financial capability of tenderer
 - i. The NSWPF may submit any financial information provided by the tenderer for independent financial assessment of the tenderer's business.
 - ii. The NSWPF may reject any tenderer if NSWPF, in its absolute discretion, considers the tenderer not to have appropriate financial assets to provide the Deliverables.
- c. ABN requirements
 - i. The NSWPF will not enter into the Deed with a company that does not have an ABN and/or is not registered for GST. Tenderers must be registered for GST and state their ABN in their tender.
 - ii. Proposals from tenderers that do not have an ABN and/or are not registered for GST, such as tenderers commencing business in Australia, may be considered at NSWPF's discretion if the tenderer demonstrates that it will obtain an ABN and GST registration before entering into the Deed (if successful). Such tenderers must state how and when they intend to obtain an ABN and register for GST in their tender.

5 Evaluation Process

5.1 Methodology

- a. Tenders will be evaluated against the Evaluation Criteria set out in paragraph 5.4 of Part A of this RFT.
- b. Information provided by the tenderer in their response to Part D will be the basis of the evaluation of each criterion. Tenderers are advised to respond clearly to all the Evaluation Criteria listed in this RFT.
- c. The quality and the format of the tender will be taken into account in evaluating the tender.
- d. Tenders that do not include a fully completed Part D, in particular those tenders which do not contain sufficient information to permit a proper

evaluation to be conducted, or electronic tenders that cannot be effectively evaluated because the file has become corrupt, may be excluded from the RFT process without further consideration at the NSWPF's discretion.

- e. NSWPF may, in its sole discretion, seek clarification from any tenderer regarding information contained in their tender and may do so without notification to any other tenderer.
- f. A tenderer may be invited to a one-on-one evaluation conference in order to review and clarify the tender and to enable NSWPF to interview key personnel identified in the tender.
- g. An overall value for money assessment will be undertaken in respect of each Conforming Tender.

5.2 Mandatory criteria

- a. A tender must comply with all of the Evaluation Criteria designated as mandatory.
- b. A tender that fails to fully comply with all mandatory criteria (and any related Alternative Tender) will be deemed a Non-Conforming Tender and may be excluded from the RFT process without further consideration at the NSWPF's discretion.

5.3 Desirable criteria

- a. Evaluation criteria designated as desirable are Evaluation Criteria which will be taken into account by the Evaluation Committee when conducting an overall value for money assessment of the tender.
- b. A tender that does not comply with all desirable criteria may reduce the tenderer's overall score but will not result in the exclusion of the tender from further consideration.

5.4 Evaluation Criteria

No.	Designation	Evaluation Criteria
1	MANDATORY	Tenderer's proposed Pilots must meet the specified requirement of the RFT.
2	MANDATORY	Compliance with the Specifications for the quality of aircraft and equipment.
3	MANDATORY	Compliance with the specifications for the base facilities location requirements.
4	DESIRABLE	Capability and capacity to meet the specifications for the base facilities
5	DESIRABLE	Tenderer's past performance in the industry, particularly performance of contracts of a similar nature to the Principal's requirements, including referee reports.

6	DESIRABLE	Capacity and ability of the tenderer to provide appropriate management structure and business acumen to perform the Services safely and efficiently.
7	DESIRABLE	The tenderer's Safety, Risk Management and Quality Management systems and practices.
8	DESIRABLE	The tenderer's commercial viability, financial risk rating and capacity to finance service delivery over the life of the Contract.

6 Terms and Conditions

6.1 Non-Conforming Tenders

Non-Conforming Tenders (and any related Alternative Tenders) may be excluded from the RFT process without further consideration.

6.2 Variations to tenders

- a. At any time after the Closing Date and Time and before NSWPF accepts any tender received in response to this RFT, a tenderer may, subject to paragraph 6.2b, vary its tender by:
 - i. providing NSWPF with further information by way of explanation or clarification, or
 - ii. correcting a mistake or anomaly.
- b. Such a variation may only be made either:
 - i. at the request of NSWPF, or
 - ii. with the consent of NSWPF at the request of the tenderer, but only if:
 - A. in the case of variation requested by the tenderer under paragraph 6.2a.i, it appears to NSWPF reasonable in the circumstances to allow the tenderer to provide the information or correct the mistake or anomaly.
- c. If a tender is varied in accordance with paragraph 6.2a.i or 6.2a.ii, NSWPF will provide all other tenderers whose tenders have similar characteristics with the opportunity of varying their tenders in a similar way.
- d. A variation of a tender under paragraph 6.2a will not be permitted if in NSWPF's view:
 - i. it would substantially alter the original tender, or
 - ii. it would result in the revising or expanding of a tender in a way that would give a tenderer an unfair advantage over other tenderers.

6.3 Tender validity period

Tenders must remain open for acceptance by NSWPF for at least 12 months from the Closing Date and Time.

6.4 Addenda to RFT

- a. NSWPF may, in its sole discretion, during the RFT process and any time before the Closing Date and Time, issue an Addendum to this RFT.
- b. In each case, an Addendum becomes part of this RFT.
- c. Any such Addendum will be issued on the eTendering website.
- d. A tenderer should make its own enquiries to verify if any Addenda have been issued prior to the Closing Date and Time, even if a tenderer has submitted a tender prior to the Closing Date and Time.
- e. Any tenderer who has downloaded the RFT using the eTendering website (in accordance with paragraph 2.2 of Part A of this RFT) will automatically receive an e-mail notification advising them of any Addenda issued.

6.5 Tenderer to inform itself

- a. A tenderer must:
 - i. Examine the RFT documents, any Addenda and all other information made available on the eTendering website by NSWPF, or any other person on NSWPF's behalf, to the tenderer
 - ii. Examine all information relevant to the risk, contingencies and other circumstances having an effect on its tender and which is obtainable by the making of reasonable enquiries
 - iii. Satisfy itself as to the correctness and sufficiency of its tender and that its tender price covers the costs of complying with all the obligations of the Deed (if successful) and of all matters and things necessary for the due and proper performance of the Deed and supporting services, and
 - iv. Take such professional advice as is appropriate for a project of this type.

6.6 Discrepancies, errors or omissions

If the tenderer finds any discrepancy, error or omission in the RFT, the tenderer must notify the Contact Officer in writing as soon as it becomes aware of the discrepancy, error or omission.

6.7 Confidentiality

A tenderer must not disclose or provide to any person, other than to persons engaged in the preparation of its tender, any particulars concerning its tender or any other information it has been provided by NSWPF or any other person on behalf of NSWPF, without the prior consent in writing of NSWPF.

6.8 Intellectual property rights

- a. All intellectual property rights in the RFT remain the property of NSWPF. Tenderers are permitted to use the RFT, for the purpose of preparing a tender response only. Tenderers must not use the RFT or any information contained in the RFT for any other purpose.
- b. Tenders submitted in response to this RFT become the property of NSWPF on submission.

- c. Without limiting this section, NSWPF may make copies and reproduce tenders for any purpose related to this RFT. In addition, NSWPF will retain (electronic) copies of all tender responses.

6.9 Procurement Policy Framework

- a. The tenderer must comply with the Procurement Policy Framework (or such other publications as may be in force from time to time).
- b. Failure to comply with the Procurement Policy Framework may be taken into account by NSWPF when considering the tender or any subsequent tender and may result in the tender being excluded from further participation in the RFT process.

6.10 Conflicts of Interest

- a. Tenderers and their respective officers, employees, agents and advisers must not be in a position which may, or does, give rise to an actual, potential or perceived conflict of interest between the interests of NSWPF and the interests of any other entity during the RFT process.
- b. Tenders must disclose any circumstances, arrangements, understandings or relationships which constitute, or may reasonably be considered to constitute, an actual or potential conflict of interest which a tenderer could have as a result of participating in this RFT process or as a result of any contract which may be negotiated or executed between the tenderer and NSWPF.

6.11 Collusive arrangements

- a. Tenderers and their officers, employees, agents and advisers must not engage in any collusion, anti-competitive conduct or any other similar conduct with any other tenderer or any other person in relation to the preparation or lodgement of a tender.
- b. If NSWPF considers that a tenderer, or any of its officers, employees, agents or subcontractors, has engaged in the conduct specified in paragraph 6.11a, this may result in the tenderer's tender being excluded from further participation in the RFT process and may also result in the tenderer being excluded from subsequent market processes conducted by NSWPF.
- c. NSWPF may pursue other remedies available against a tenderer who has engaged in the conduct specified in paragraph 6.11a under any law.

6.12 Corruption or unethical conduct

- a. Tenderers must not solicit information from NSWPF personnel or agents via unauthorised means, including by the provision of gifts or other inducements to NSWPF personnel or agents during the RFT process.
- b. If NSWPF considers that a tenderer, or any of its officers, employees, agents or subcontractors has:
 - i. offered any inducement or reward to any public servant or employee, agent or subcontractor of NSWPF or the NSW Government, contrary to any applicable laws or NSWPF policies, in connection with their tender or RFT process

- ii. been involved in corrupt conduct within the meaning of *the Independent Commission Against Corruption Act 1988* (NSW)
 - iii. compiled their tender with the improper assistance of employees of NSWPF, ex-employees of NSWPF and/or contractors or ex-contractors of NSWPF
 - iv. compiled their tender with the utilisation of information unlawfully obtained from NSWPF, or
 - v. a record or alleged record of unethical behaviour,
- this may result in the tender not receiving further consideration and the tenderer being excluded from the RFT process.

6.13 Tender's acknowledgements

- a. In submitting a tender, each tenderer acknowledges that:
 - i. neither NSWPF nor any of its employees, agents, contractors or advisers is responsible for, and make no representation or warranty (express or implied) as to the accuracy, adequacy, suitability or completeness of any information contained or referred to in the RFT documents or of any other information provided to or received by the tenderer from any person in connection with the RFT process
 - ii. neither NSWPF nor any of its employees, agents, contractors or advisers has carried out or will carry out an independent audit or verification exercise in relation to any part of this RFT
 - iii. neither NSWPF nor the NSW Government accept or owe a duty of care to tenderers in connection with the RFT documents, the information contained in the RFT or the RFT process
 - iv. it will make its own independent investigations and evaluations and will conduct its own due diligence about any information contained or referred to in this RFT or other information provided or received by the tenderer from any person, including the obtaining of appropriate legal, financial and other expert advice in relation to such information, and
 - v. neither the Contact Officer nor NSWPF nor the NSW Government, will be liable to any tenderer for any claim arising out of, or in any way connected with, any errors or omissions in this RFT or other information provided to or received by the tenderer from any person in connection with the RFT process.

6.14 No contract

- a. This RFT is an invitation to treat. It is not an offer. Nothing in this RFT should be construed to give rise to any contractual obligations or rights, express or implied, by the issue of this RFT or the submission of a tender in response to it.
- b. Acceptance of a tender will be subject to the execution of the Deed. Unless and until NSWPF and the successful tenderer (if any) execute the

Deed, there will be no legally enforceable Deed concluded between them.

- c. The NSWPF will not be liable to tenderers for any expenses or costs incurred by the tenderers as a result of participation in this RFT, including where the RFT has been discontinued.

6.15 No liability

- a. Without limiting this Part, and to the fullest extent permitted by law, by submitting a tender each tenderer acknowledges that neither NSWPF nor the NSW Government will be liable for any claim by any tenderer arising out of, or in any way in connection with this RFT including, without limitation, any costs or expenses incurred by a tenderer in:
 - i. preparing and submitting a tender;
 - ii. participating in any discussions, negotiations, briefing sessions or site inspections; or
 - iii. undertaking any other tasks in relation to this RFT.

6.16 No obligation to proceed

- a. Without limiting paragraph 6.17, nothing in the RFT documents will oblige the NSWPF or the NSW Government to proceed with the Deed as contemplated by this RFT.

6.17 NSWPF's rights

- a. NSWPF may, in its absolute discretion, and without limiting any other right which NSWPF may have whether under this RFT or otherwise, do all or any of the following at any time without giving notice or reasons:
 - i. require additional information or further offers from any tenderer
 - ii. change the scope of the Specifications or other requirements of this RFT
 - iii. alter or vary any process, procedure or timing related to the RFT, including any process, procedure or timing regarding the consideration or the evaluation of any tender or all tenders
 - iv. suspend or terminate the RFT process
 - v. negotiate with one or more preferred tenderers without prior notice to any other tenderer
 - vi. terminate any negotiations being conducted with any tenderer
 - vii. enter into a best and final offer process with one or more tenderer
 - viii. readvertise for new tenders
 - ix. consider any Non-Conforming tender
 - x. terminate further participation in the RFT process by any tenderer for any reason (including if NSWPF reasonably considers the tenderer's tender to contain any false or misleading claims or statements), regardless of whether the tender submitted conforms with the requirements in this RFT
 - xi. not proceed with the Deed or any part of the Deed, or

- xii. proceed with the Deed or any part of the Deed in ways not contemplated in this RFT.
- b. NSWPF may, in its absolute discretion, elect to notify affected tenderers if it does any of the above action specified in paragraph 6.17a.
- c. NSWPF may also give consideration to and may exclude tenderers on the basis of their performance or the performance of related parties on recent agreements with NSWPF or other government bodies. To assist with this process, NSWPF may make reference to performance reports prepared either by NSWPF or other government agencies.

6.18 Method of acceptance

- a. Acceptance of a tender will be subject to the execution of the Deed by both NSWPF and the successful tenderer (if any).
- b. NSWPF may accept a tender that does not conform strictly to the requirements of the RFT documents. NSWPF is not bound to accept the lowest price or any tender.
- c. NSWPF will notify tenderers as soon as practicable about the outcome of the evaluation of their tender and the RFT process, including if the tender has been excluded or rejected.
- d. NSWPF is not obliged to provide any reasons for any decision to exclude or reject a tender.

6.19 Debrief

- a. An unsuccessful tenderer may request in writing an opportunity to be debriefed.
- b. Any debrief will be oral and the content and format will be subject to the absolute discretion of NSWPF.

6.20 Probity Checks / Security Clearance

- a. If a tenderer is selected as a preferred tenderer, members of the tenderer's team will be required to undertake security clearances required by NSWPF.
- b. The preferred tenderer must provide to NSWPF consents for probity and security checks from each of its officers, principals and/or employees who would be engaged in the provision of the Deliverables.
- c. If the preferred tenderer fails to provide the consents to probity checks or if the results of the probity checks are unacceptable to NSWPF, NSWPF may terminate the preferred tenderer's involvement in the RFT process, at NSWPF's absolute discretion and without providing reasons.
- d. Selection as a preferred tenderer does not give rise to any obligation on the part of NSWPF to proceed to an Deed with the preferred tenderer.

6.21 Consent to Due Diligence Requirements

- a. In submitting a tender, each tenderer consents to NSWPF or its nominee, in its absolute discretion, undertaking a due diligence audit of the tenderer's premises and records.
- b. Tenderers must allow NSWPF to carry out due diligence on their existing environment.

6.22 No implied terms

- a. The tenderer acknowledges and agrees that, to the fullest extent permitted by law, no term or condition will be implied in the RFT documents.

6.23 Disclosure of tender information

- a. The tenderer's attention is drawn to the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) and the Premier's Memorandum 2007-01, which requires NSWPF to disclose certain information and contract documents resulting from a tender process and may confer rights, subject to the terms of the GIPA Act, to access such information and require amendment to such information.
- b. Details of tenderers and the outcome of the RFT process will be disclosed in accordance with the GIPA Act and the Premier's Memorandum 2007-01 (available by [clicking here](#)).
- c. A tender may also be disclosed by NSWPF:
 - i. for the purposes of conducting the RFT process, or
 - ii. as otherwise required to any State Government department, agency, Minister, Parliament or Parliamentary Officer or Committee for the proper performance of NSWPF's statutory or governmental responsibilities.
- d. A tenderer may request in writing that NSWPF not disclose particular information included in its tender and must give the reasons for any such request.