
HealthShare NSW is a Business Unit of NSW Health

HealthShare NSW invites this tender for and on behalf of the
NSW Health Administration Corporation

Request for Tender
Part 1 – TENDER OVERVIEW, and
TERMS AND CONDITIONS OF TENDER
HSBP_HC15_ 902_S2
Pharmaceuticals Supplementary 2019 Q1

RFT Issue Date:	Monday 11th March 2019
RFT Closing Date:	Friday 5th April 2019
RFT Closing Time:	2:00pm AEST Sydney Time

SAMPLES TO BE DELIVERED WITHIN SIX (6*) DAYS OF CLOSING DATE

Note:	Industry Forum Details
Date:	Friday 22nd March 2019
Time:	2:30pm-3:30pm
Location:	The Zenith, Level 13, Tower B, 821 Pacific Highway, Chatswood
Contact:	Diane Reeves
Phone:	02 8907 1422
Email:	diane.reeves1@health.nsw.gov.au

**Separate instructions apply to Schedule 8 medications, refer Clause 15.9.6*

**Separate instructions apply to Cat IDs 2831, 2832 and 2833, refer Clause 15.9.7*

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For the purposes of this RFT, inquiries should be directed to the Contact Officer nominated in Part 1 of this RFT.

Other matters should be directed to:

Diane Reeves
Category Manager
Strategic Procurement Services
HealthShare NSW
PO Box 1770
Chatswood NSW 2057
Tel: (02) 8907 1422
Email: diane.reeves1@health.nsw.gov.au

**Separate instructions apply to Schedule 8 medications, refer Clause 15.9.6*

**Separate instructions apply to Cat IDs 2831, 2832 and 2833, refer Clause 15.9.7*

902 Pharmaceuticals Supplementary 2 2019 Q1

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REQUEST FOR TENDER - PART 1 - TENDER OVERVIEW, and TERMS AND CONDITIONS OF TENDER

1 Outcome

This Request for Tender (“RFT”) is made by the Health Administration Corporation (the “Principal”) for the supply to Eligible Customers and in particular NSW Health, of the Deliverables defined in the Statement of Requirements of this RFT.

2 Objectives

The objectives of the Proposed Agreement in achieving the desired outcome, include, but are not limited to the following:

- (a) Reduce the total cost of the Deliverables;
- (b) Provide Deliverables which are commercially competitive;
- (c) Establish a sustainable partnership between the Eligible Customers and the successful Tenderer(s) to deliver quality Deliverables;
- (d) Best practice through continual review of delivery methods;
- (e) Effective management of risks;
- (f) Compliance with all applicable laws, standards, codes and policies;
- (g) To drive automation in procurement for greater efficiency and information management and
- (h) To obtain details of Active Pharmaceutical Ingredient (API) sourcing as part of risk mitigation strategy

To achieve these objectives and the pertaining desired outcomes, the Principal will also consider the merits of all the offers that are finally selected providing value in the following ways.

- (a) Multiple suppliers of goods and/or services;
- (b) Price book approach to pricing with additional discounts offered if applicable;
- (c) Provide volume discounts to encourage NSW Health to buy at the lowest price.

3 Required Benefits

The required benefits to be achieved in delivering the objectives of the Proposed Agreement are:

- (a) A sustainable, mutually beneficial supply chain partnership;
- (b) Savings and efficiency gains;
- (c) Reduced costs to NSW Government;
- (d) Increasing the number of Eligible Customers which procure the Deliverables under the Proposed Agreement;
- (e) Transparency of all transactions, including performance measurement, pricing and reporting; and

- (f) Expanded utilisation of electronic procurement across NSW Government to drive efficiency and transparency through systems such as eTendering, National Product Catalogue, etc.

4 Scope of RFT

4.1 Deliverables

- 4.1.1 The purchasing and distribution of the Deliverables outlined in Part 2B Product and Pricing Schedule are covered under the Proposed Agreement.
- 4.1.2 Tenderers are to note items that have specialist clinical applications not covered by all items within a sub-category may be evaluated separately within the sub-category. (e.g.: Products in the context of specific delivery systems may be excluded or evaluated separately).
- 4.1.3 Tenderers are to note that more than one product may be recommended depending on their purpose and suitability.
- 4.1.4 Detailed requirements of the Deliverables are specified in the Statement of Requirements (see definitions and Part 2B Product and Pricing Schedule).
- 4.1.5 Tenderers must be proactive in marketing their Deliverables to Eligible Customers if awarded an Agreement.

4.2 Contract and Duration

- 4.2.1 Panel Contract HSBP_HC15_902 commenced on 1 August 2016 and due to expire on 31 July 2021.
- 4.2.2 Any products awarded resulting from this supplementary, will be co-termed with the existing panel for State Contract HSBP_HC15_902, ("902", "Pharmaceuticals").
- 4.2.2.1 Award of products to a Tenderer who has a current Deed with the Principal for HSBP_HC15_902, will be added as a variation to that Deed.
- 4.2.2.2 Award of products to a Tenderer who does not have a current Deed with the Principal for HSBP_HC15_902, will be in the form of a Deed of Agreement as set out in Part 3 of this RFT, to be co-termed with the remaining panel of contracts.

4.3 Current Scope and Expenditure

The current expenditure incurred by government agencies for the procurement of the Deliverables under HSBP_HC15_902 is approximately \$200 million per annum. This supplementary exercise is anticipated to extend the scope of expenditure by a further \$21 million. This amount is provided for information purposes only and does not constitute a guarantee for future work through the Proposed Agreement.

4.4 Engagement of Additional Suppliers

- 4.4.1 The Principal reserves the right to appoint more than one Supplier under the Proposed Agreement.
- 4.4.2 The Principal further reserves the right to conduct a supplementary tender for the purpose of increasing the number of Contractors for Categories covered by the Request for Tender, but not included in this Agreement. Evaluation criteria for such supplementary tenders will be similar to those used to evaluate this Request for Tender.
- 4.4.3 The Principal reserves the right to an additional intake of New Generation Products being considered and accepted from additional Tenderers regardless of Category covered by those Tenderers as long as the Deliverables meets the wider requirements of the Proposed Agreement.

4.5 NSW Government requirements.

The successful Tenderer must comply with NSW Government procurement policy, and Standards listed in the Statement of Requirements.

5 RFT Structure

This RFT comprises 4 Parts as follows:

Tender Overview, and Terms and Conditions of Tender – Part 1

An executive summary of main outcome, objectives, requirements, scope and expectations for this Agreement as described in detail in the Proposed Agreement and the Statement of Requirements. It provides the Tenderer(s) with the essential information to make an informed decision on whether to tender or not. It also provides the terms, conditions and processes governing the tender phase of the RFT.

Tender Response – Part 2A and Part 2B

These are response and pricing schedules which are required by the Principal to evaluate the Tenderers' offers. Tender responses are to be completed and submitted by the Tenderer in an electronic format in accordance with this RFT.

Deed of Agreement – Part 3

This section contains the terms and conditions of the contract to be executed between a successful Tenderer(s) and the Principal, for Tenderers without a current Deed with the Principal.

Tenderers without a current Deed for HSBP_HC15_902 are to submit any intended Departures from the Proposed Agreement, in the Departures Form supplied with this RFT.

Tenderers with an existing Deed are not required to submit Departures in relation to Part 3. (see Section 16.1 – Acceptance for anticipated process in the event of award).

SME Opportunities Statement – Part 4

The Small and Medium Enterprises Opportunities Statement identifies the suitability of opportunities of the procurement to support Australian and New Zealand (ANZ) Small and Medium Enterprises.

Attachment 1 – Estimated Usage Data

6 Best Prices

6.1 Tenderers are required to provide their best prices, rates or fees with their Tender. Failure by a Tenderer to provide its best prices, rates or fees at the Closing Date and Time may result in the Tender not being successful. Unsuccessful Tenderers who request to have products put on contract at a later date at a price lower than what was tendered are likely to have their request rejected.

6.2 Transparency

With respect to Contract Prices and Contract Price Variations for this RFT, the Principal requires transparency in the Tenderer's pricing in Part 2B (Product & Pricing Schedule), if an element of their price variation methodology.

6.3 Contract Price Reduction

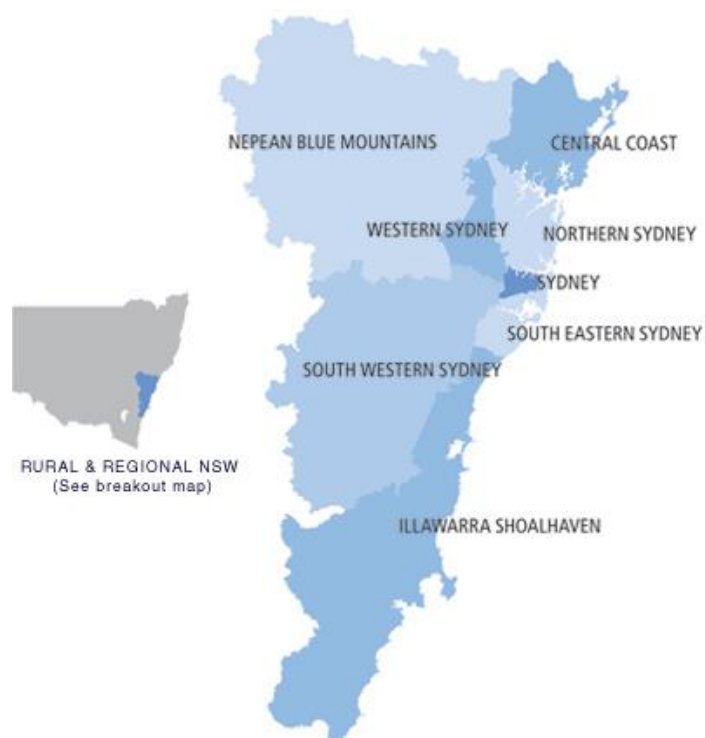
The Principal expects the Supplier to continue to reduce its Contract Prices during the term of the Deed by:

6.3.1 Continually improving delivery processes to improve efficiency;

- 6.3.2 Meeting savings challenges identified during the Term of the Deed;
- 6.3.3 Contract Price matching as identified by the Principal;
- 6.3.4 Presenting and adopting the NSW government electronic procurement system or any other electronic procurement systems to reduce the cost of doing business with the Principal; and
- 6.3.5 Providing discounts for large/bulk purchases.

7 Local Health Districts

- 7.1 NSW Health is comprised largely of Local Health Districts (LHD's). Details of the boundaries can be viewed on this link: <http://www.health.nsw.gov.au/lhd/>**





7.2 Warehousing – Stock Items – not used

NOTE: Items are expected to be ordered in the majority of cases by individual customers across the NSW public health system rather than the warehouse at this point in time, as is currently the case.

7.3 Non Stock / Non Inventory Ordering

- 7.3.1 Except as indicated in clause 7.3.2 of this section, no discounts, rebates or any form of incentive through secondary arrangements are to be offered at a hospital level without consent of the Principal's Representative identified in the Proposed Agreement.
- 7.3.2 Clause 8.9 of Part 3 (Deed) facilitates the seeking of quotes for a designated client base. These may be for one off bulk purchases, commitments to purchases over a period of time or other situations as advised. It is anticipated that as systems for NSW Health improve in their ability to measure and quantify our requirements that you may be invited at annual reviews or at other times to participate in RFQ for bulk commitments under terms of this agreement.
- 7.3.3 It is anticipated that this HAC contract might be enabled to be accessed by Not-for-Profit, Charity organisations, Local Government and other State Government organisations, so pricing should not only provide innovative ways for NSW Health to achieve discounts but core prices should also reflect the aggregate volume business opportunity that this tender offer represents.
- 7.3.4 If you require clarification, please contact the Contract Officer for this RFT.

8 Performance Framework

- 8.1 The Principal is committed to engaging Suppliers that are able and willing to continually improve their performance during the Term of the Proposed Agreement.
- 8.2 The performance framework within the Proposed Agreement provides both incentives for good performance and sanctions for poor performance.
- 8.3 Performance incentives and sanctions are based on the Supplier's performance as measured by an Overall Performance Indicator (OPI). Both HealthShare NSW (that monitors the Key

Performance Indicators – KPI) and Customers (that monitor the Agency Performance Indicators – API) will provide data to establish the OPI. Schedule 4 (RFT, Part 3 (Deed)) describes a draft performance framework.

8.4 Typical incentives and sanctions that may be used by the Principal include, but are not limited to:

8.4.1 Additional or reduced performance reporting requirements;

8.4.2 Temporary suspension of all or parts of a Proposed Agreement for a period not exceeding 12 months;

8.4.3 Scope variation i.e. Inclusion of additional Goods or Services or their reduction;

8.4.4 Extensions of the Proposed Agreement (if available); and

8.4.5 Rejection or delay in processing of product or price variations.

8.5 The successful Tenderers will be required to provide to the Principal “usage data” (as defined in the Proposed Agreement of all sales made by or on behalf of the Supplier to Eligible Customers on a quarterly basis and consent to the analysis and use of that data by the Principal.

9 Customer Contract Formation

9.1 Eligible Customers will place Orders against the Proposed Agreement based on the contracted pricing and the Statement of Requirements. Each time an Eligible Customer places an Order, a separate Customer Contract will be formed.

9.2 Eligible Customers will provide feedback to the Principal on the performance of all Suppliers.

10 Electronic Business

10.1 The use of electronic commerce is a mandatory requirement under this Agreement.

10.2 The use of NSW Government electronic procurement systems (eTendering) is a mandatory requirement under this Agreement. Tenderers are encouraged to present similar electronic solutions that can further support expanding adoption of electronic procurement by NSW government agencies and their suppliers.

11 RFT Process

This RFT process is being undertaken by HealthShare NSW for the Principal, with the intention being that a contract will be made under which NSW Health facilities and other NSW government agencies and Eligible Customers can purchase Goods or Services at competitive pricing.

12 Tender Preparation

12.1 Tenderer to inform itself

Before submitting its tender, a Tenderer must:

12.1.1 Examine all information relevant to the risks, contingencies and other circumstances having an effect on its Tender; and

12.1.2 Satisfy itself:

(a) That the Tender, including the tender price is correct; and

(b) That it is financially and practically viable for it to enter into and perform the Proposed Agreement.

12.2 Assumptions made by Tenderer

Where a Tenderer has made assumptions in preparing its Tender, such assumptions must be set out in a supporting statement and submitted with the Tender.

12.3 Information Supplied

The information contained in this RFT has been provided with due care for the Tenderer's guidance, but is not guaranteed as being completely accurate. The Principal shall not be held liable for any errors or omissions contained in Statement of Requirements, Attachment 1 – Estimated Usage Data or any other information supplied in accordance with this RFT.

13 Eligibility to Tender

13.1 Legal Entity of Tenderer

13.1.1 Tenders must be submitted by a legal entity or, if a joint tender, by legal entities, with the capacity to contract. The Principal will only enter into an Agreement with such legal entity or entities.

13.1.2 The HAC may ask a Tenderer to provide evidence of its legal status or capacity to contract. If tenders from 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 3 working days of the request.

13.2 Financial Capability of Tenderer

13.2.1 The Principal reserves the right to reject any Tender if the Principal judges the Tenderer not to have appropriate financial capability.

13.2.2 Where the Principal forms the view that the Tenderer does not have the appropriate financial capability the Principal reserves the right to make acceptance of any tender conditional upon the Tenderer entering into a bank, parent company or personal guarantee, or an unconditional performance bond in a form satisfactory to the Principal.

13.3 ABN Requirements

13.3.1 The Principal will not enter into an Agreement with a supplier that does not have an Australian Business Number and is not registered for GST. Tenderers must be registered for GST and state their ABN in their Tender.

13.3.2 Tenders from Tenderers that do not have an ABN or are not registered for GST, such as Tenderers commencing business in Australia, may be considered at the Principal's discretion if the Tenderer demonstrates that it will obtain an ABN and GST registration before entering into an Agreement with the Principal. Such Tenderers must state how and when they intend to obtain an ABN and register to GST in their tender response.

13.4 National Product Catalogue Requirements

13.4.1 The HAC prefers to enter into an Agreement with a legal entity that will load, prior to the commencement of this Agreement, all product information and prices for products that will be supplied under this contract, onto the National Product Catalogue (NPC).

13.4.2 For more details please review the NPC Supplier User Guide available at http://www.gs1au.org/services/gs1net/industry/npc/user_guides.asp.

Note: This preference supports the required internal NSW Health system set up that will enable access to and the raising of purchase orders for contract items within the NSW Health procurement system.

Goods & Services Request for Tender, Part 1 – Tender Overview, and Terms and Conditions of Tender

- 13.4.3 Tender responses from Tenderers that are unable to satisfy the above preference may be considered at the HAC's discretion. The Tenderer will be required to submit a proposed timeline for loading contract product information and prices onto the NPC. This proposal may be subject to limited negotiations with the HAC.

14 Tender Process

14.1 Provisional RFT Program

Given below is the Principal's provisional RFT program. The Principal may, at its absolute discretion amend the provisional RFT program.

Milestone	Date
RFT Issue	Monday 11 th March 2019
Confirmation of attendance at briefing	Wednesday 20 th March 2019
Tenderer briefing	Friday 22 nd March 2019
RFT Close Date	Friday 5 th April 2019
Delivery of Samples (Due Date for Samples)	Thursday 11 th April 2019*

*Separate instructions apply to Schedule 8 medications, refer Clause 15.9.6

14.2 Tenderer Briefing

- 14.2.1 A Tenderer briefing will be held on the date, time, and place indicated below. The Contact Officer/s will be available at that time to answer any queries regarding this RFT and the tender process generally.
- 14.2.2 Tenderer can choose to attend the meeting in person or dial in through teleconference and/or Webex. The number of in person attendees will be limited to two representatives per Tenderer.
- 14.2.3 Please confirm your attendance with the Contact Officer via email by no later than **Wednesday 20th March** 2019. Details for the teleconference will be provided on receipt of your attendance. Names and email contacts of persons attending the tenderer briefing must also be provided.

Date:	Friday 22 nd March 2019
Time:	3.30pm, AEST
Location:	Reception Tower B Level 13, 821 Pacific Highway, Chatswood NSW 2067
Contact:	Diane Reeves or Deborah Endean
Phone:	02 8907 1422 or 02 8644 2209
Email:	diane.reeves1@health.nsw.gov.au or deborah.endean@health.nsw.gov.au

14.3 Contact Officer

- 14.3.1 Tenderers should refer requests for information or advice regarding this RFT to:

Diane Reeves
Category Manager
HealthShare NSW
Email: diane.reeves1@health.nsw.gov.au
Telephone:
(02) 8907 1422

Alternate Contact Officer

(please copy any correspondence to the following person)
Deborah Endean

Senior Category Officer
HealthShare NSW
Email: deborah.endean@health.nsw.gov.au
Telephone: (02) 8644 2209

- 14.3.2 Any information given to a Tenderer to clarify any aspect of this RFT will also be given to all other Tenderers if in the Principal's opinion the information would unfairly favour the inquiring Tenderer over other Tenderers

14.4 Conformity of Tenders

- 14.4.1 The Principal seeks Conforming Tenders for this RFT.
- 14.4.2 At the Principal's sole discretion, Non-Conforming Tenders may be excluded from the RFT process without further consideration.

14.5 Alternative Tenders

- 14.5.1 Tenderers may, if they choose, submit an Alternative Tender. Alternative Tenders will only be considered if submitted in conjunction with a Conforming Tender. An Alternative Tender must be clearly marked "Alternative Tender".

14.6 Submission of Tenders

- 14.6.1 All prices, rates, fees, responses and other information provided in the Tender are to be in writing and in the English language.
- 14.6.2 Tenderers are to read all instructions and complete both Part 2A (Tender Response), Part 2B (Product and Pricing Schedule), and any other response schedule(s) specified as part of this RFT accordingly. Tenderers are not allowed to amend any of the questions provided in Part 2. Failure to submit a completed tender response in compliance with the instructions stipulated in Part 2 will result in the tender being non-conforming as per clause 14.4 of this Part 1.
- 14.6.3 Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in the RFT.
- 14.6.4 All Tenders must be provided in an electronic format. Tenderers must ensure that all files can be viewed by Microsoft Office 2007 or above. Other formats for the attachments (such as PDF, JPG files) are to be submitted as supporting items in accordance with clause 14.6.5 ("Supporting Items").
- 14.6.5 When a Tenderer is submitting an electronic Tender with Supporting Items:
- (a) The complete Tender, including the Supporting Items must be submitted by the Closing Date and Time,
 - (b) Supporting Items should be clearly designated as "Supporting Items" to the RFT to which they relate and be submitted via the electronic tender box, and
 - (c) "Supporting Items" should not be relied upon by the Tenderer to augment or explain requirement in a Response document.
- 14.6.6 Tenderers must ensure that all Excel and Word files can be opened and viewed by Microsoft Office 2007 or above. Supporting documentation must be in PDF and/or JPG formats, other formats for the attachments are only to be submitted if an arrangement has first been made with the Contact Officer prior to the lodgement of the Tender.
- 14.6.7 It is recommended that electronically lodged Tender response files be kept as small as practical and below an optimum size of 7MB, as the limitations of the internet and communications may affect the successful transmittal and receipt of large files. If submitting large files that require compression, Tenderers must ensure that such files can be opened and viewed using WinZip.

14.7 Tender Lodgement

Tenders must be fully received by the Closing Date and Closing Time. Each Tender must be submitted electronically to the electronic tender box via the NSW Health tenders website at: <https://tenders.nsw.gov.au/health> (The Tenderer is to login as a system user, locate the web page for this RFT, and follow the on screen instructions to lodge the Tender).

14.8 Electronic Tenders

14.8.1 A Tender submitted electronically will be treated in accordance with the Electronic Transactions Act 2000 (NSW), and given no lesser level of confidentiality, probity and attention than Tenders lodged by other means.

14.8.2 A Tenderer, by electronically lodging a Tender, is taken to have accepted conditions shown in the conditions and rules on the NSW government eTendering website, under the NSW Health banner located at:

<https://tenders.nsw.gov.au/health/?event=public.rulesOfTendering>

14.8.3 A Tenderer must follow the following directions:

- (a) An RFT for which electronic lodgement is available through the website can be identified by the blue “Lodge a Response” link on the web pages for the RFT.
- (b) To lodge a Tender electronically, the files containing the Tenderer’s response must be uploaded through the website to the NSW Government eTendering system. Access to the uploading process is through the blue “Lodge a Response” link. The Tenderer is to follow the steps and instructions on the NSW government eTendering website and any instructions which may have been supplied with the RFT documents, advertisement or invitation.

14.8.4 A Tender must observe the following format for lodgements:

- (a) An electronically lodged Tender must be lodged in a file format required by the RFT.
- (b) All spreadsheets must be free of formulae and contain values only.
- (c) If a Tenderer compresses files, it must be possible to decompress them using WinZip. A Tenderer **must not submit self-extracting (*exe) zip files.**
- (d) A Tenderer must not change pre-existing text in the RFT other than to insert the required information.
- (e) The file/s name/s must have an extension and not have invalid characters or file names/loading path names too long for the system, as detailed on the NSW government eTendering website under the NSW health banner located at: <https://tenders.nsw.gov.au/health>

14.8.5 Signatures are not required for an electronic Tender. A Tenderer must ensure that a tender response is authorised by the person or persons who may do so on behalf of the Tenderer and appropriately identify the person and indicate the person’s approval of the information communicated.

14.8.6 Electronically submitted Tenders may be made corrupt or incomplete, for example by computer viruses. The Principal may decline to consider for acceptance a Tender that cannot be effectively evaluated because it is incomplete or corrupt. Tenderers must 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 response.

- (b) A Tenderer should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.

The Principal will not be responsible in any way for any loss, damage or corruption of electronically submitted Tenders.

14.8.7 If a Tenderer experiences any persistent difficulty with the NSW Government eTendering website in submitting a Tender or otherwise, the Tenderer is encouraged to inform the Contact Officer promptly in writing.

- (a) If there is an extended defect or failure of the NSW government eTendering website or eTendering system and the HAC is advised, the tender Closing Date and Closing Time may be extended provided that, in the view of the HAC, the RFT process will not be compromised by such an extension.

- (b) Tenders must be fully received by the Closing Date and Closing Time.

14.8.8 Tenderers may break down the lodgement of large Tenders into smaller packages if clearly identified e.g. Package 1 of 3, 2 of 3, 3 of 3.

14.8.9 If a Tenderer provides multiple lodgements, the latest Tender received will be the Tender to be evaluated unless the Tenderer provides clear written directions to the contrary. In the case of multiple lodgements, the Tenderer must state whether the lodgement is:

- (a) an Alternative Tender;
- (b) Supporting Items or other supporting information; or
- (c) Otherwise an addition to a Tender that has been previously lodged in accordance with this RFT.

14.9 Tender Validity Period

14.9.1 The Tender will remain open for acceptance by the Principal for a period of nine months from the Closing Date and Time for Tenders.

14.10 Late Tenders

14.10.1 Notwithstanding clause 14.7 of this Part 1 (Tender Overview, and Tender Terms and Conditions) the Principal may at its sole discretion consider Tenders received after the Closing Date and Time where the Principal is satisfied that the integrity and competitiveness of the RFT has not been compromised.

14.11 Extension of Closing Date and time

14.11.1 The Principal may, in its sole discretion, extend the RFT Closing Date and Time.

14.12 Corrupt, Collusive or Unethical Conduct

14.12.1 By lodgement of its Tender with the Principal, the Tenderer affirms that it has not given, offered to give, nor intends to give at any time thereafter any inducement or reward including any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favour or service to any public servant, or any employee, agent, family member, friend, associate, contractor or Subcontractor of the Principal or of the Government of New South Wales in connection with the submitted Tender.

14.12.2 Note: Tenderers should note that any offer of an inducement or reward to any employee, agent or like person of the Government of New South Wales in connection with this RFT or a submitted Tender may constitute an offence under the Crimes Act 1900 (NSW) or amount to Corrupt, Collusive or Unethical Conduct.

14.12.3 Tenderers must comply with the Business Ethics Statement requirements of the NSW Health, which is available at the link below in clause 14.12.4 (d) and must disclose any Conflicts of Interests in Part 2 (Tender Response).

14.12.4 If a Tenderer, or any of its officers, employees, agents, contractors, distributors, subcontractors or suppliers is found to have:

- (a) offered any inducement or reward to any public servant or employee, agent, contractor or Subcontractor of the Principal or the NSW Government in connection with this RFT or the submitted Tender;
- (b) committed corrupt conduct as that term is understood under the Independent Commission Against Corruption Act 1988 (NSW);
- (c) a record or alleged record of unethical behaviour; or
- (d) not complied with the requirements of NSW Health Business Ethics Statement available at: www.healthshare.nsw.gov.au/services/procurement

Then such action or conduct under this clause 14.12.4 or breaches under clause 14.12.1 (collectively "**Corrupt, Collusive or Unethical Conduct**") may result in the Principal, in its sole discretion, excluding the Tenderer from this RFT.

14.12.5 The Tenderer promises, as fundamental conditions of its Tender, that:

- (a) it has no knowledge of the tender prices, rates or fees submitted by any other Tenderer under this RFT; and
- (b) in relation to this RFT, this RFT process or any contractual arrangements relating to this RFT:
 - (i) the Tenderer has not entered into any contract, arrangement or understanding to:
 - A. pay or allow any money directly or indirectly to a trade or industry association other than the published standard fee;
 - B. pay or allow any money directly or indirectly to or on behalf of any other Tenderer;
 - C. receive any money directly or indirectly from or on behalf of any other Tenderer;
 - (ii) the Tenderer has not paid or allowed any money directly or indirectly to or on behalf of any other Tenderer, nor will it do so; and
 - (iii) the Tenderer has not received any money or allowance directly or indirectly from or on behalf of any other Tenderer, except as disclosed in its Tender.

14.12.6 The Principal may, in its sole discretion, invite a Tenderer alleged to have been involved in Corrupt, Collusive or Unethical Conduct to provide written comments within a specified time before the Principal considers excluding the Tenderer under clause 14.12.4.

14.12.7 If the Principal becomes aware of Corrupt, Collusive or Unethical Conduct by a Supplier after a Deed has been executed, then the Principal may terminate the Deed on the basis that there is a Conflict of Interest.

14.13 Codes of Practice, and Policies

14.13.1 In submitting its Tender, the Tenderer signifies agreement to comply with any applicable NSW Codes or NSW government policies, including any current policies of practice for procurement and NSW Government procurement policies, including the NSW Goods and Services Procurement Policy Framework which can be viewed and downloaded at:

http://www.procurepoint.nsw.gov.au/sites/default/files/documents/procurement_policy_framework_october_2014.docx

14.13.2 A Tenderer's failure to comply with NSW Government procurement policies may be taken into account by the Principal when considering the Tenderer's Tender or any subsequent Tender, and may result in the Tender being passed over or otherwise excluded from further consideration by the Principal.

14.14 Prescribed Form of Tender

14.14.1 The Tender, including any Alternative Tender, must comprise a completed Part 2 (Tender Response) and any attachments to Part 2 (Tender Response), as may be necessary. Any attachments should be labelled to identify those clauses of the RFT to which they relate.

14.15 Addenda to RFT

14.15.1 If, for any reason the Principal, at its sole discretion, requires the RFT to be amended before the Closing Date and Time, an Addendum will be issued.

14.15.2 In each case, the Addendum becomes part of the RFT.

14.15.3 The Principal, during the tender period may issue Addenda altering the RFT. In such cases, it is the obligation of each Tenderer to verify if any Addenda were issued prior to the Closing Date and Time, even if a Tender has already been submitted.

14.15.4 Tenderers must check the web site address, <https://tenders.nsw.gov.au/health> and download all Addenda.

14.16 Tenderer's Costs

14.16.1 The Tenderer acknowledges and agrees that the Principal will not be liable to the Tenderer for any costs or expenses incurred by the Tenderer as a result of its participation in this RFT, including where the RFT has been discontinued.

14.17 Custody of Tenders after Receipt

14.17.1 Tenders lodged electronically to the NSW Government eTendering website will be treated in accordance with the *Electronic Transactions Act 2000 (NSW)*.

14.17.2 Tenders lodged electronically to the government eTendering website are encrypted and stored in a secure 'electronic tender box'.

14.17.3 The automatically generated e-mail receipt that is sent to the Tenderer after successfully lodging the Tender electronically to the Government eTendering website is the only evidence of tender lodgement provided.

14.18 Ownership and Intellectual Property Rights of Tenders

14.18.1 All Tenders become the property of the Principal on submission.

14.18.2 Notwithstanding clause 14.18.1, all intellectual property rights in a Tender belong to the relevant Tenderer or its licensors. Each Tenderer, by submission of its Tender, warrants that it owns, or is entitled to use, all intellectual property rights in the Tender.

14.18.3 Each Tenderer grants to the Principal a non-exclusive, royalty-free, perpetual and irrevocable licence to use, copy, adapt and modify any Tender submitted by the Tenderer for any of the following purposes:

- (a) the evaluation of the Tenderer;
- (b) the evaluation of the Tender;
- (c) reviewing the RFT process; and

- (d) enabling the Principal to develop contractual arrangements in relation to this RFT.

14.19 Discontinuance of Tender Process

14.19.1 Where the Principal determines that awarding a contract would not be in the public interest, the Principal reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of Tenders.

14.20 Variations to Tenders

14.20.1 At any time after the Closing Date and Time of Tenders and before the Principal accepts any Tender received in response to this RFT, a Tenderer may, subject to clause 14.20.2, vary its Tender:

- (a) by providing the Principal with further information by way of explanation or clarification;
- (b) by correcting a mistake or anomaly; or
- (c) by documenting agreed changes to the Tender negotiated under clause 15.6 of this Part 1.

14.20.2 Such a variation may be made either:

- (a) at the request of the Principal, or
- (b) with the consent of the Principal at the request of the Tenderer, but only if,
 - (i) In the case of variation requested by the Tenderer under clause 14.20.1(a)-(b), it appears to the Principal to be reasonable in the circumstances to allow the Tenderer to provide the information or correct the mistake or anomaly; or
 - (ii) In the case of variation requested by the Tenderer.

14.20.3 If a Tender is varied in accordance with clause 14.20.1(a) or (b), the Principal will provide all other Tenderers (whose Tenders have similar characteristics) with the opportunity of varying their Tenders in a similar way.

14.20.4 A variation of a Tender under clause 14.20.1 will not be permitted if in the Principal's view:

- (a) it would substantially alter the original Tender; or
- (b) in the case of variation under clause 14.20.1(a) or (b), 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.

14.21 Tenderer Questions

14.21.1 The Tenderer may submit questions or clarification requests regarding this RFT to the Contact Officer up to five (5) business days prior to the Tender Closing Date and Time. For any questions lodged after this time, it will be at the Principal's absolute discretion as to whether these questions are responded to.

14.21.2 The Contact Officer will endeavour to provide a response to any question within two (2) business days.

14.21.3 Questions and answers of broad impact of significance will be communicated to all potential Tenderers by issue of Addenda through the eTendering website.

15 Evaluation

15.1 Evaluation Process

- 15.1.1 Tenders will be assessed against the evaluation criteria listed below which are not indicated in order of significance or equal weight.
- 15.1.2 The Tender with the lowest Contract Price will not necessarily be accepted.
- 15.1.3 There are price and non-price evaluation criteria for this RFT. The evaluation of Tenders will be carried out in stages. In the first stage, Tenders will be assessed against any mandatory, non-price based criteria. The Tenders which do not meet such mandatory non-price based criteria will be excluded from any further consideration. Those Tenders that do meet the mandatory non-price based criteria will be assessed against price criteria (and any other non-price based criteria) and ranked accordingly.
- 15.1.4 Information supplied by the Tenderer in Part 2 (Tender Response) will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the evaluation criteria listed in this RFT.
- 15.1.5 Tenders that do not include a fully completed Part 2 (Tender Response), 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 at the Principal's discretion be excluded from the tender process without further consideration.
- 15.1.6 The Principal may assess an Alternative Tender against the evaluation criteria if the Alternative Tender is submitted with a Conforming Tender in accordance with clause 15.4 (Acceptance or Rejection of Tenders).

15.2 Evaluation Criteria

- 15.2.1 The evaluation criteria for this RFT are:
- (a) Fitness for purpose including quality, range of products, innovative aspects, product design, performance and warranties;
 - (b) Approval of product for pharmacy dispensing within Australia
 - (c) Price;
 - (d) Clarity and suitability of Packaging
 - (e) Delivery requirements;
 - (f) Capacity to perform the Agreement including;
 - (i) Production/technical capacity;
 - (ii) Human resource capacity, qualifications, skills and experience;
 - (iii) Financial capacity and stability (including security considerations);
 - (iv) Technical, warehousing, inventory and distribution systems;
 - (v) Maintenance and support service levels including availability of Help Desk for repair and help calls;
 - (vi) Quality assurance systems;
 - (vii) Suitability of subcontractors;
 - (viii) Previous experience and performance on similar agreements for the Goods and Services covered in this RFT or other products and services, as applicable;
 - (ix) Record of ethical behaviour in service delivery;

- (x) Compliance with other requirements of the Principal (including ability to market the Proposed Agreement).
- (g) Compliance with the proposed conditions of the Proposed Agreement.
- (h) Compliance with NSW Government procurement policy and other applicable NSW Government policies.
 - (i) Compliance with WH&S requirements;
 - (ii) Compliance with NSW Government Environmental Management Systems guidelines (as applicable);
 - (iii) Compliance with relevant legislation and standards.
 - (iv) Capacity and capability to facilitate electronic commerce through NSW Buy or NPC.
 - (v) Compliance with the Statement of Requirements (Schedule 2 of Part 3[Deed]).
 - (vi) Compliance with the National Product Catalogue (NPC) requirements, as applicable.
 - (vii) Where possible Tenderers are to include offers that cover entire category(s), ranges and groupings of products where assessed as relevant and appropriate.
 - (viii) Efficiency and cost improvements to invoicing and payment processes, e.g.: consolidated invoice payment.
 - (ix) Value-add propositions, where assessed as relevant and appropriate, including capacities to work with NSW Health's evolving warehousing operations across NSW and aggregate delivery where appropriate.

15.2.2 Other criteria to consider including:

- (a) Corporate Credibility and Experience
 - (i) Corporate resources.
 - (ii) The effectiveness of the organisation, structure and lines of responsibility in terms of the implementation and ongoing management of the service.
 - (iii) Tenderer's qualifications, demonstrated experience and performance management record for goods or services of a like nature, size, complexity and sensitivity as the Goods or Services.
 - (iv) Tenderer's demonstrated capacity to deliver the Goods or perform the Services (of the specified range, quality and output) that are suitable for the Site or Delivery Location.
- (b) Financial Capability/Ability to Carry Risk
 - (i) Corporate and financial standing, suitability of financial structures and resources available.
 - (ii) The financing and funding for the project, including the certainty of the arrangements and assurances to proceed.
 - (iii) Willingness and capacity to carry the financial, operational and other risks.
- (c) Service Provision
 - (i) Service objectives, range and level of services in order to provide an integrated service delivery model.

- (ii) Proposed operational plan and strength of commitment.
- (iii) Demonstrated service delivery capacity to manage the provision of the Goods or Services.
- (iv) Principal's resources required to be used by the Tenderer.
- (v) Proposed use of Subcontractors.
- (vi) Industrial relations policy.
- (vii) Workforce strategies.
- (viii) Record and proposal for work health & safety.
- (ix) Conflicts of Interest.
- (x) Ability to expand/alter range of services provided in accordance with the changing needs of the Principal.
- (d) Quality Management and Best Practices
 - (i) Acknowledgement of compliance with all relevant standards, codes of practice and statutory requirements.
 - (ii) Commitment to quality management and improvement programs, including compliance with accreditation standards.
 - A. Proposal for best practice standards.
 - B. Benefits of any value added services or facilities.

15.3 Presentations by Tenderer

- 15.3.1 The Principal may in its sole discretion, and as part of the evaluation process, invite any or some of the Tenderers to make personal presentations regarding their Tender. Tenderers must bear their own costs and expenses for any such presentation.
- 15.3.2 Receiving a presentation by a Tenderer in no way represents a commitment by the Principal to accept any aspect or all of the Tender.
- 15.3.3 All information obtained during the course of the presentation or site inspection may be taken into consideration in the evaluation of Tenders.

15.4 Acceptance or Rejection of Tenders

- 15.4.1 The Principal may assess an Alternative Tender against the evaluation criteria when submitted with a Conforming Tender.
- 15.4.2 The Principal expressly reserves the right to accept, in its discretion, either or both of the following:
- (a) Any Alternative Tender or part of an Alternative Tender, when submitted with a Conforming Tender; and
 - (b) Any other Non-Conforming Tender or part of a Non-Conforming Tender (not, in either case, being an Alternative Tender or part of an Alternative Tender) that, in the Principal's opinion, is substantially a Conforming Tender.
- 15.4.3 The Principal is not bound to accept the lowest or any Tender.
- 15.4.4 If the Principal rejects all the Tenders received, it may invite fresh tenders based on the same or different criteria. Specifications and details contained in Alternative Tenders will not be used as the basis for the calling of new tenders, but the Principal expressly reserves the right,

at its sole discretion, to use all or parts of those specifications or details in the calling of new tenders.

- 15.4.5 If the Principal deems it necessary the Principal may elect to run a Best and Final Offer (“BAFO”) process as part of this RFT.

15.5 Clarifications

- 15.5.1 At any time after the Closing Date and Time and before the Principal accepts any Tenders, the Principal may ask the Tenderers to clarify any aspect of their Tenders and consider Tenderers’ responses as part of their Tenders. Any instruction resulting from such requests may, at the Principal’s sole discretion, be issued in writing to all Tenderers in the form of an Addendum, which shall then become part of the RFT. Tenderers must not use clarification requests as an opportunity to gain an advantage over other Tenderers by reviewing or enhancing their Tenders.

15.6 Post Tender Negotiations

- 15.6.1 Before making any determination as to acceptance or rejection of Tenders, the Principal may, at its sole discretion, elect to conduct limited negotiations with preferred Tenderers, including those who have submitted Alternative Tenders or who have submitted Conforming Tenders, to mutually improve outcomes.
- 15.6.2 The Principal will generally not enter into negotiations to amend standard conditions of contract contained in Part 3 (Deed). Any departures for consideration must be provided in the form required on the Departures Form and submitted no later than the Closing Date of the RFT.
- 15.6.3 If the Principal considers that none of the Tenders are fully acceptable either due to the level of non-conformance or because they do not represent sufficient value for money, but considers that full conformity is achievable, negotiations may be conducted with the Tenderer that submitted the most conforming Tender based on the evaluation criteria. The purpose of the negotiations will be advised by the Principal and made clear to the participants before the commencement of negotiations. The Principal will usually exhaust negotiations with the Tenderer that submitted the most acceptable Tender before negotiating with the next most acceptable Tenderer.
- 15.7 The Principal may at its sole discretion elect to conduct post-close of tender negotiations under clause 15.6.3 with more than one (1) Tenderer in the event that it decides that the closeness of the Tenders or timing constraints warrants doing so.

15.8 Exchange of Information between Government Agencies

- 15.8.1 Lodgement of a Tender will itself be an authorisation by the Tenderer to the Principal to make available, on request, to any NSW Government agency all information, including but not limited to, information dealing with the Tenderer’s performance on any contract that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of a contract.
- 15.8.2 The provision of the information by the Principal to any other NSW Government agency is agreed by the Tenderer to be a communication falling within section 30 of the Defamation Act 2005 (NSW), and the Tenderer shall have no claim against the Principal or the State of New

South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the Tenderer arising out of the communication.

15.8.3 In the evaluation of Tenders, the Principal may take into account any information about the Tenderer that the Principal receives from any source.

15.8.4 To avoid doubt, information that may be collected, exchanged and used in accordance with this provision includes “personal information” about the Tenderer for the purposes of the Privacy and Personal Information Protection Act 1998 (NSW). Lodgement of a Tender will be an authorisation by the Tenderer to the Principal to collect such information from third parties, and to use and exchange such information in accordance with this clause 15.7.

15.9 Samples

15.9.1 The HAC may conduct examination of samples of the Deliverables or conduct clinical trials of the Deliverables either as a part of the evaluation of the tender.

15.9.2 In the event that samples of Deliverables are required to assist in determining the outcome of the tender process, then Tenderers will be contacted and specifically asked to provide samples and this may be at any time prior to the award of contract. The samples must be supplied as detailed in Part 2A – Tender Response Spreadsheet – Samples for Evaluation.

15.9.2.1 For the purpose of this activity, Tenderers are to provide samples within six (6) days of closure of the RFT, for all products offered for consideration. Exception are S8 products, see 15.9.6 for details.

15.9.3 Where a product is to be tendered by an agent, the product sponsor will send samples to one tenderer only and the product sponsor will advise HealthShare in writing of all agents tendering on their behalf.

15.9.4 All costs associated with such exercises shall be borne by the Tenderer.

15.9.5 Failure to supply samples as required may result in the tender being given no further consideration.

15.9.6 Schedule 8 medication samples must be delivered to the Pharmacy at Royal North Shore Hospital within ten (10) days of closure of the RFT. Given the documentation and audit trail rigour required for this group of products, HealthShare will contact all sponsors offering Schedule 8 medications and provide specific instructions at a later date.

15.9.7 No samples are required for Categories 2831, 2832 and 2833.

15.10 Provisional Deliverables

15.10.1 The Principal may defer examination of the Deliverables beyond the designated period for sample evaluation or identify certain conditions to be met by the supplier to progress to full award (“Provisional Deliverables”). Such Provisional Deliverables may only be supplied after notice is provided by HealthShare for further evaluation.

15.10.2 The request to provide samples of Provisional Deliverables may be made after award of contract as part of a suitability assessment of the Provisional Deliverables and for the purpose of removing the provisional status of them.

15.10.3 The nomination of the provisional status of, or removal of the provisional status from, any Provisional Deliverable is to be determined solely by HealthShare NSW for HAC, in its discretion.

15.11 Retention and Destruction of Samples

15.11.1 Tenderers should note that HealthShare may retain all samples submitted as part of the tender for evaluation and may, at the discretion of HealthShare, retain the samples provided

as demonstrating that the sample evaluated was unsatisfactory, or failed to meet the specification, or was unsuitable for use by a particular customer.

- 15.11.2 The Tenderer acknowledges that samples may be damaged, destroyed or no longer suitable for sale or reuse as a consequence of the evaluation process. The Tenderer is to identify any samples capable of being returned as part of a request for any samples to be returned. Any samples not retrieved by the Tenderer within one (1) month of award of contract may be destroyed, discarded or used at the discretion of HealthShare.

16 Method of Acceptance

16.1 Acceptance

- 16.1.1 Acceptance of a Tender or part of a Tender will be subject to:

16.1.1.1 For a Tenderer who has a current Deed with the Principal for HSBP_HC15_902, the execution of a variation to that Deed

16.1.1.2 For a Tenderer who does not have a current Deed with the Principal for HSBP_HC15_902, the execution of a formal Deed of Agreement in the terms and conditions of Part 3 (Deed). Such a Deed will be co-termed with the panel contracts for HSBP_HC15_902.

- 16.1.2 Until the Principal and the successful Tenderer(s) execute a formal Deed or variation to the current Deed, there will be no legally enforceable agreement concluded between the Principal and the Tenderer(s).

16.2 Piggybacking by other NSW Agencies

- 16.2.1 If any public sector service agency (as defined in the Government Sector Employment Act) requires a Supplier to supply to it the Goods and Services then the Supplier agrees that it will enter into a separate customer contract with that government sector agency on the terms provided in a Deed (in the form of Part 3 of this RFT) as though the principal entered into this Deed on behalf of that government sector agency having regard only to necessary changes to reflect that the Goods and Services are to be supplied to that government sector agency.

16.3 Provision of Subcontractor Information

- 16.3.1 If the Supplier is awarded supply of a particular item, and the Supplier proposes to supply the Goods using a subcontractor, as a condition precedent to commencing supply, the Supplier agrees that it will complete a spreadsheet in the form requested by the Principal outlining for each item, the product code and the name of the Supplier's subcontractor.

17 General

17.1 Applicable law

- 17.1.1 The laws of New South Wales govern this RFT.

17.1.2 The Parties acknowledge and agree to submit to the non-exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia and the courts of appeal from those NSW and Commonwealth courts.

17.1.3 Without preventing any other mode of service, any document in an action (including, without limitation, any writ of summons or other originating process or any third party notice or other party notice) may be served on a Party by being delivered to (or left for that Party) at the address last notified for that Party.

17.1.4 Rules for interpreting this Deed in Part 3 (Deed) apply to this Part 1 and Part 2 (Tender Response) of this RFT.

17.2 Tenderer to inform itself

17.2.1 Before submitting its Tender, a Tenderer must:

- (a) examine all information relevant to the contingencies, risks and other circumstances having or likely to have an effect on its Tender; and
- (b) satisfy itself:
 - (i) that the Tender, including all tender prices, rates and fees, is correct; and
 - (ii) that it is financially and practically viable for the Tenderer to enter into and perform the Proposed Agreement.

17.3 Assumptions made by Tenderer

17.3.1 Where a Tenderer has made assumptions in preparing its Tender, such assumptions must be clearly set out in a supporting statement and submitted with the Tender. Any such assumptions must be made in good faith and on reasonable grounds.

17.4 Information Supplied in Statement of Requirements and Estimated Usage Data

17.4.1 The information contained in the Statement of Requirements and Attachment 1 – Estimated Usage Data has been provided with due care for the Tenderer's guidance, but is not guaranteed as being completely accurate. The Principal shall not be held liable for any errors or omissions contained in these materials.

17.5 The Principal's entitlement to vary this RFT

17.5.1 The Principal may, in its sole discretion and without liability of any kind, cancel or supplement or vary this RFT at any time by written notification via the NSW Government's eTendering website.

17.5.2 Without limiting clause 17.5.1, the Principal reserves the right at any time and for any reason as determined by the Principal in its sole discretion:

- (a) not to proceed with any stage of this RFT (for example, the Principal may elect whether or not to commence or continue negotiating, whether or not to execute any Deed);
- (b) not to proceed with individual elements of this RFT (for example, the Principal may elect to procure particular Goods or Services related to this RFT in another way);
- (c) to proceed in a manner other than that described in this RFT;
- (d) to vary or amend (including by replacement) any part of this RFT, including:
 - (i) any part of the RFT process;
 - (ii) any dates, milestones or timeframes referred to in this RFT;
 - (iii) any contractual documentation required in connection with this RFT; or
 - (iv) any assumptions, objectives or requirements relating to this RFT;
- (e) to accept any or no Tender or any parts or part of a Tender;
- (f) to terminate a Tenderer's further participation in this RFT for any reason including but not limited to those reasons expressly set out in this RFT;
- (g) to adopt different approaches with different Tenderers as appropriate in relation to the conduct of finalisation activities and any associated negotiations, provided that this does not extend to the conduct of evaluations;
- (h) to enter into any contractual arrangements with any Tenderer or with any other person in relation to this RFT, with or without notice to any other Tenderer; and

- (i) suspend, abandon or terminate any negotiations being conducted at any time with any Tenderer and, at the Principal's option, pursue other supply arrangements:
 - (i) whether under this RFT or under any other procurement process; or
 - (ii) with any other entity, including another Tenderer under this RFT.

17.5.3 The Principal may, in its sole discretion, reject any or all Tenders at any time. When rejecting a Tender, the Principal does not have to provide any reasons unless so required by law.

17.5.4 While the Principal is seeking Tenders in relation to the matters in this RFT, any assumptions or requirements by the Principal in relation to this RFT should not be taken as a commitment by the Principal that such matters will be the subject of a Deed. The Principal's assumptions and requirements may vary depending on a variety of factors, including the Tenders it receives.

17.6 RFT is not an Offer

17.6.1 This RFT is not intended to constitute an offer to any Tenderer by the Principal to enter into a Deed or any associated contract, arrangement or understanding for the provision of any Goods or Services in connection with this RFT.

17.6.2 No obligations will arise between any Tenderer and the Principal with respect to the supply of Goods or Services as contemplated in the RFT unless and until formal contractual documentation has been signed and all necessary governmental and ministerial approvals, consents, leases and licences have been obtained.

17.7 A Tenderer's failure to comply with this RFT

17.7.1 Without limiting clause 17.5.2 (f), if a Tenderer fails to comply with any provision of this RFT, the Principal may exclude that Tenderer from any further participation in this RFT process by notifying the Tenderer in writing.

17.8 Liability

17.8.1 Any recipient of this RFT or any information related to this RFT obtained during this RFT process releases and indemnifies the Principal, NSW Health and all other NSW Government authorities and agencies and their respective officers, employees and agents from all Claims, liabilities, damages and costs which may arise under statute, law, equity or otherwise arising from, whether directly or indirectly, or in connection with, this RFT, this RFT process or any Tender, and whether founded in contract, quasi-contract, tort (including negligence), statutory, restitutionary claims or otherwise.

17.8.2 Without limiting the generality of clause 17.8.1, and to the maximum extent permitted by law, the Principal, NSW Health and all other NSW Government authorities and agencies and their respective officers, employees and agents will not be liable to any Tenderer on the basis of any promissory estoppel, quantum merit or any other contractual, quasi contractual, tortious (including negligence) or restitutionary grounds whatsoever as a consequence of any matter or thing relating or incidental to a Tenderer's participation in this RFT process, including, without limitation, instances where:

- (a) a Tenderer is not engaged pursuant to a Deed or any particular Order or engaged pursuant to any other agreement;
- (b) the Principal varies or terminates this RFT process or any negotiations with a Tenderer;
- (c) the Principal decides not to proceed with acquiring any Goods or Services in whole or in part; or

- (d) the Principal exercises any of its other rights under or in relation to this RFT or this RFT process.

18 Access to Tenderer's Premises

- 18.1** The Principal may inspect any premises or facility which is owned or occupied by the Tenderer and is, in the reasonable opinion of the Principal, relevant to the provision of the Goods or Services, during the Tender evaluation stage. The Principal will give reasonable notice to Tenderers of any proposed inspection.

19 Disclosure of information

19.1 Outcome Notification

- 19.1.1 Following the Principal's decision, all Tenderers will be notified in writing of the outcome of their Tenders.

19.2 Disclosure

- 19.2.1 Details of Tenderers and the outcome of the tender process will be disclosed in accordance with the Government Information (Public Access) Act (NSW) and the Premier's memorandum 2007-01.

- 19.2.2 An outline of these requirements can be found in Annexure 1 to Part 1 of this RFT.

20 Complaints procedure

- 20.1 It is the NSW Government's objective to ensure that suppliers in the health industry are given a fair opportunity to participate in government contracts. Should any supplier feel that it has been unfairly excluded by the tendering or unfairly disadvantaged by the conditions in the Statement of Requirements, it is invited to write to:

Chief Procurement Officer

NSW Ministry of Health

Locked Mail Bag 961

North Sydney NSW 2059

ANNEXURE 1 TO PART 1 (Disclosure of Information)

Disclosure of information concerning Tenderers and outcome of the tender process.

1. In accordance with the Premier's Memorandum 2007-01 referred to in clause 19.2.1, the following **tender information** is required to be disclosed:

Tender Type	Level of Disclosure	Basis of Disclosure
For all public calls for tender, expressions of interest or other such public calls which may result in a contract with the private sector.	<p>As a minimum:</p> <ul style="list-style-type: none"> • A concise description of the proposed works, goods or services the subject of the tender call; • The date responses to the tender call close and where responses are lodged; and • Location of the tender call documents <p>The names and addresses of all entities which submit responses.</p>	<p>Routine public disclosure at the time tender calls are advertised.</p> <p>Routine public disclosure with 7 days of the date tender calls closed.</p>
In a multi-stage tender process.	The names and addresses of the shortlisted entities, except where such disclosure is likely to compromise the competitiveness of the subsequent tender process.	Routine public disclosure within 7 days of these entities being advised of their shortlisting.

2. In accordance with Part 3, Division 5 of the GIPA Act, the following **contract information** is required to be disclosed:

Contract size and type	Level of Disclosure	Basis of Disclosure
<p>Class 1 contracts.</p> <p>All government contracts with estimated value \$150,000 or above.</p>	<p>(a) The name and business address of the supplier;</p> <p>(b) Particulars of any related body corporate (within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth) in respect of the supplier, or any other private sector entity in which the supplier has an interest, that will be involved in carrying out any of the supplier's obligations under the contract or will receive a benefit under the contract;</p> <p>(c) The date on which the contract became effective and the duration of the contract;</p> <p>(d) Particulars of the project to be undertaken the goods or services to be provided or the real property to be</p>	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>

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	<p>leased or transferred under the contract;</p> <p>(e) The estimated amount payable to the supplier under the contract;</p> <p>(f) A description of any provisions under which the amount payable to the supplier may be varied;</p> <p>(g) A description of any provisions with respect to the renegotiation of the contract;</p> <p>(h) In the case of a contract arising from a tendering process, the method of tendering and a summary of the criteria against which the various tenders were assessed; and</p> <p>(i) A description of any provisions under which it is agreed that the supplier is to receive payment for providing operational or maintenance services.</p>	
<p>Class 2 contracts.</p> <p>Class 1 contracts (i.e. government contracts with estimated value \$150,000 or above) which also:</p> <ul style="list-style-type: none"> • Have not been the subject of a tender process, the proposed contract has not been made publicly available and the terms and conditions of the contract have been negotiated directly with the supplier; or • Have been the subject of a tender process and where the final contract terms and conditions are substantially negotiated with the successful Tenderer (this includes alliance type contract); or 	<p>The information required for Class 1 contracts and:</p> <p>(a) Particulars of future transfers of significant assets to the State at zero, or nominal cost to the State, including the date of their proposed transfer;</p> <p>(b) Particulars of future transfers of significant assets to the supplier, including the date of their proposed transfer;</p> <p>(c) The results of any cost-benefit analysis of the contract conducted by the agency;</p> <p>(d) The components and quantum of the public sector comparator if used;</p> <p>(e) Where relevant, a summary of information used in the supplier's full base case financial model (for example, the pricing formula for tolls or usage charges);</p> <p>(f) Where relevant, particulars of how risk, during the construction and operational phases of a contract to undertake a specific project (such as construction, infrastructure or property development), is to be apportioned between the parties, quantified (where practicable) in net present-value terms and specifying the major assumptions involved;</p>	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>

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<ul style="list-style-type: none"> • Involve operation or maintenance obligations for 10 years or longer; or • Involve a privately financed project as defined by relevant Treasury guidelines; or • Involve a transfer of land or other asset to a party in exchange for the transfer of land or other asset to an agency. 	<p>(g) Particulars as to any significant guarantees or undertaking between the parties including any guarantees or undertakings with respect to loan agreements entered into a proposed to be entered into; and</p> <p>(h) Particular of any other key elements of the contract.</p>	
<p>Class 3 contracts.</p> <p>Class 2 contracts where the estimated value of the government contract is \$5 million or more.</p>	<p>A copy of the Class 3 contract.</p> <p>Note: if some or all of a class 3 contract is not disclosed for reasons of confidentiality (refer section 32 of the GIPA Act), the agency is to disclose:</p> <ul style="list-style-type: none"> • The reasons for not publishing the contract or provisions; • A statement as to whether the contract or provisions will be published and, if so, when; and • Where some but not all of the provisions of the contract have been disclosed, a general description of the types of provisions that have not been published. 	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>

3. Access Applications

Tenderers must acknowledge that any person may make an application to the Health Administration Corporation for any item of contract information which is not required to be routinely disclosed in the government contracts register under Part 3, Division 5 of the GIPA Act. A person who makes an access application for government information has a legally enforceable right to be provided with access to the information unless there is an overriding public interest against disclosure of the information.

Commercial-in-confidence is a public interest consideration against disclosure.

Commercial-in-confidence information means any information that discloses:

- the supplier's financing arrangements, or
- the supplier's cost structure or profit margins, or
- the supplier's full base case financial model, or

- any intellectual property in which the supplier has an interest, or
- any matter the disclosure of which would place the supplier at a substantial commercial disadvantage in relation to other suppliers, whether at present or in the future.

Under section 14 of the GIPA Act there is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

- undermine competitive neutrality in connection with any functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market,
- reveal commercial-in-confidence provisions of a government contract,
- diminish the competitive commercial value of any information to any person,
- prejudice any person's legitimate business, commercial, professional or financial interests,
- prejudice the conduct, effectiveness or integrity of any research by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).

ANNEXURE 2 to PART 1 (Dictionary for RFT Process)

1. Terms Defined in Deed

Unless the context requires otherwise, capitalised terms not defined below which are used in Part 1 (Tender Overview, and Terms and Conditions of Tender) and Part 2 (Tender Response) of this RFT have the meanings given to them in Part 3 (Deed). Where a capitalised term is defined below and in the Part 3 (Deed), the definition below prevails for the purposes of Part 1 (Tender Overview, and Terms and Conditions of Tender) and Part 2 (Tender Response) of the RFT, but the definition in Part 3 (Deed) prevails for the purposes of Part 3 (Deed).

2. Other Definitions

For the purpose of the tendering process, except where the context requires otherwise, the following phrases, terms and words shall have the meanings set out below.

“ABN” means an Australian Business Number as provided in GST law.

“Addendum” means an addition to this RFT made by the Principal before the Closing Date and Time.

“Agreement” means an agreement made by a Tenderer with the Principal pursuant to the RFT under which there is an Agreement to enable Eligible Customers to acquire Goods or Services from the Tenderer (the Supplier), such agreement being embodied in a Deed of Agreement between the Principal and the Supplier in the form of Part 3 (Deed) to this RFT.

“Alternative Tender” means a “Non-Conforming Tender” that does not fully meet the conditions of tendering but purports to provide a better value for money solution. The alternative tender may be a solution that is consistent with the scope of the outcome sought by the RFT but is not the anticipated solution in the RFT, such as different proposal that offer different benefits, different pricing structures that fall outside volume and/or warehousing discount.

“Best and Final Offer” or “BAFO” means a process to improve the quality of tenders that are potentially acceptable but have some deficiencies. Short listed Tenderers are asked to revise their proposals in specific areas, which then become their best and final offer and the basis for further evaluation.

“Business Day” means any weekday that is not a public holiday in Sydney NSW, in accordance with the Public Holidays Act 2010 (NSW).

“Category” means generic categories comprising of multiple products inclusive of the associated services for its supply.

“Claim” means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

“Closing Date and Time” means the closing date and time specified in this RFT for the receipt of Tenders.

“Codes” means NSW Government codes, policies, policy directives, policy compliance procedures, guidelines and Standards listed in the Head Agreement Details or Schedule 2 (Statement of Requirements) and any other codes, policies, policy directives, policy compliance procedures, guidelines and Standards specified in writing by the Principal or the Customer to the Supplier together with any other codes of practice relating to procurement, and includes any amendments to any of the above that may be applicable to this Deed.

“Conforming Tender” means a Tender that conforms in all material aspects to:

- (a) the Statement of Requirements specified in Schedule 2 (Statement of Requirements) of Part 3 (Deed);
- (b) the terms and conditions of Part 3 (Deed); and
- (c) other parts of this RFT, except those parts pertaining to the Principal’s obligations under the RFT,

and is (ignoring any immaterial departures), in the prescribed form.

“Contact Officer” means the person named as the Contact Officer in clause 14.3.1 of Part 1 (Tender Overview, and Terms and Conditions of Tender).

“Contractor” means a Tenderer who has entered into an Agreement with the Health Administration Corporation (HAC).

“Corrupt, Collusive or Unethical Conduct” has the meaning given to it in clause 14.12 of Part 1 (Tender Overview, and Terms and Conditions of Tender).

“Customer Contract” means the contract that is made between the Contractor and an Eligible customer, on the terms and conditions stated in clause 18 of Part 3 (Deed), by means of the placing of an order by the Eligible Customer with the Contractor.

“Date of Agreement” means the date of execution of the Deed of Agreement by the Principal.

“Deed” means the agreement in the form of Part 3 (Deed) made by the Principal with a Supplier in accordance with the RFT.

“Deliverables” means the Goods or Services sought under this RFT, as detailed in the Statement of Requirements.

“Eligible Customer” means:

- (a) a NSW government sector agency as defined in the Government Sector Employment Act; and
- (b) a public body referred to in clause 6 of the Public Works and Procurement Regulation 2014 including a private hospital, a local council or other local authority, a charity or other community non-profit organisation, a private school or college, a university, a public authority of the Commonwealth, any other State or Territory, a public authority of any other jurisdiction (but only if it carries on activities in this State), a contractor to a government sector authority (but only in respect of things done as such a contractor).
- (c) such other persons or entities, which the Principal may from time to time in its discretion, specify.

“Equipment” includes devices, instruments, machinery, tooling, vehicles and vessels.

“First Price Review Date” means the date twelve (12) months after the Date of Agreement.

“GST” means a good and services tax and has 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 (Cth)* or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation made under those Acts.

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

“HealthShare NSW” (HS or HSNSW) means the unit of the Health Administration Corporation Public Health System Support Division named as such and established under s126B of the Health Services Act 1997.

“HealthShare NSW – Strategic Procurement Services – (SPS)” is a business unit providing shared services to NSW Health – HSNSW may conduct tendering and contracting activities for the NSW government, including:

- (a) inviting and accepting tenders,
- (b) entering into contracts on behalf of the health Administration Corporation, and on-going contract administration and management, and includes the duly authorised delegates of the Health Administration Corporation (HAC).

“Information” means all information relating to or developed in connection with:

- (a) the business, technology or other affairs of the Discloser;
- (b) the Goods, the Services or the Head Agreement Deed or a Customer Contract;
- (c) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including without limitation, computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property owned or used by, or licensed to, the Discloser.

“Interim NSW Goods and Services Procurement Policy Framework” means the NSW Government’s interim goods and services procurement policy, the current version of which can be viewed and downloaded at:

<http://www.procurepoint.nsw.gov.au/policy/goods-and-services/nsw-procurement-board-policy-framework>

“National Product Catalogue” means a repository of product, pricing and other data for the healthcare industry for the purpose of data synchronisation, and is the single source of product master data for public health institutions in Australia seeking to purchase medicines, medical devices and other healthcare items.

“New Generation Product” means the development of innovative products or the adaptation of known products either singly or in combination to produce new products that have improved functionality and the potential for improved healthcare outcomes.

“New Price” means the new Price that the Supplier is entitled to charge as a result of the agreed mechanism by which Prices may be varied in accordance with the Agreement.

“Non-Conforming Tender” means a tender that does not conform in all material aspects to:

- (a) the Statement of Requirements;
- (b) the terms and conditions of Part 3;
- (c) other Parts of this RFT;
- (d) is not in the prescribed form.

“NSW Health” means the NSW Department of Health and any public body or organisation under the direction or direct or indirect control of the Minister of Health or the Secretary of the Ministry of Health.

“Price” is “the price payable for a Deliverable as set out in Schedule 3 and, where relevant, means the price exclusive of any Applicable Discount specified in Schedule 3”.

“Price Review Date” means the First Price Review Date and each anniversary of the First Price Review Date.

“Principal” means the Health Administration Corporation.

“Product” means an individual line item within a generic Category of products inclusive of the associated services for its supply and delivery.

“Proposed Agreement” means:

- (i) with reference to a Tenderer who has a current Deed with the Principal for HSBP_HC15_902, that Deed duly signed between the Tenderer and the Principal.
- (ii) with reference to a Tenderer who does not have a current Deed with the Principal for HSBP_HC15_902, a new Deed of Agreement made by a Tenderer with the Principal in the form as set out in Part 3 of this RFT.

“Provisional Deliverables” has the meaning given to it in clause 15.8.1 of Part 1 and clause 8.10(a) of Part 3.

“Request for Tender” or **“RFT”** means the invitation by HealthShare NSW on behalf of the Principal to suppliers to respond with a Tender in accordance with the terms and conditions of the RFT.

“SME” means small and medium enterprises (SMEs) from NSW, other States and Territories of Australia or New Zealand, with up to 200 full time equivalent employees. For this definition of SME, grouping provisions apply. If the SME is controlled by another legal entity (e.g. a Parent Company) the 200 employee figure is aggregated across both entities, i.e., subsidiaries of larger companies are classified according to their parent company employees levels.

“Statement of Requirements” means the detailed description of the Goods and Services contained in Part 2B – Product & Pricing Schedule).

“Supplier” means a Tenderer who has entered into a Deed with the Principal.

“Supporting Item” has the meaning given to it in clause 14.6.5 of this Part 1.

“Tenderer” means the legal entity entitled to submit a Tender in accordance with clause 13 (Eligibility to Tender) of Part 1 (Tender Overview, and Terms and Conditions of Tender).