

CONDITIONS OF SUBMISSION

RFS Number:	RFS/CASG/MLDS/2021/3 – Possible sale of S-70A-9 Black Hawk Aircraft and Associated Unique Inventory	
Assets:	<p>The Assets are up to a maximum number of 27 S-70A-9 Black Hawk Aircraft (Aircraft), certain data and the associated available unique inventory of spare parts (Inventory) (collectively, Assets).</p> <p>The number and type of Assets available may vary due to the requirements of the Commonwealth and Commonwealth commitments to other recipients, such as museums. In addition, the Commonwealth will continue to utilise spare parts from Commonwealth stores, and harvest spare parts from Aircraft as they are withdrawn from service. This will continue to affect the volume of Inventory and condition of the available Aircraft during this RFS process and after any Deed of Transfer has been signed.</p>	
Definitions: (clause 1.1)		
Inspection of Assets: (clause 1.8)	Where practicable due to COVID-19 restrictions, the Commonwealth intends to conduct Information Days at Defence Bases in Meeandah, Brisbane QLD and Oakey QLD. Attendance is optional. Only respondents who have provided a Non Disclosure Deed Poll and the details set out in clause 1.8.5 will be invited to attend. The date(s) and details for the Information Days will be provided to those respondents with the invitation.	
Submission Preparation: (clause 2.2)	<p>Respondents must return the completed Response Form and the completed and physically signed Declaration by Respondent (see Annex A and Annex B to these Conditions of Submission).</p> <p>Respondents should complete, sign and return to disposal.tender@defence.gov.au as soon as possible and by no later than 9 April 2021 the Non Disclosure Deed Poll provided with this RFS in Annex D before being eligible to receive additional information relevant to this RFS and to enable the Commonwealth to organise attendance for the Information Days. Respondents should return the signed Deed Poll as soon as possible to allow the Commonwealth sufficient time to process the Deed Poll, organise the Information Days and provide the additional data prior to the Closing Time. Respondents must comply with the terms of the Deed Poll in addition to the terms of these Conditions of Submission, including by destroying data provided by the Commonwealth when it is no longer required by the Respondent for this RFS. Respondents should note that the Non Disclosure Deed Poll is intended to be received by the Commonwealth before the submission is submitted. A delay in providing the Non Disclosure Deed Poll may delay provision of data to the respondent and may mean that the respondent is unable to attend the Information Days.</p> <p>Please note that the Draft Deed of Transfer does not need to be completed, signed or submitted as part of a submission.</p>	
Contact Officers: (clause 2.3)	Name:	<p>Jason Scerri, Assistant Director Single Disposal Organisation Materiel Logistics, Disposals and Sales Geoff Rodwell, Contracting Officer Single Disposal Organisation</p>

	Materiel Logistics, Disposals and Sales (MLDS)
Address:	Department of Defence Capability Acquisition and Sustainment Group BP25-3-019 Brindabella Business Park CANBERRA ACT 2610
Email:	disposal.tender@defence.gov.au
Closing Time: (clause 2.4.3)	16:30 local time in the Australian Capital Territory (ACT) on 21 May 2021 .
Format: (clause 2.4.4)	The Response Form should be provided in a format which is accessible using Microsoft Word 2003. The Non Disclosure Deed Poll and Declaration by Respondent (once physically signed) should be scanned and provided in Adobe Portable Document Format (PDF).
Submission Validity Period: (clause 2.5)	12 months after the Closing Time.
Purchase Price: (clause 3)	<p>Respondents should propose a Purchase Price in the Response Form.</p> <p>Respondents should note that the Commonwealth will shortlist those submissions with the highest total proposed Purchase Prices. The Commonwealth may set aside a submission that offers a lower total Purchase Price (see clause 5.1.3) and may exclude a submission which is clearly uncompetitive (clause 3.1.2).</p> <p>A payment schedule for instalments of the Purchase Price will be negotiated between the preferred respondent(s) and the Commonwealth. The Commonwealth intends that the first instalment of approximately 10% of the Purchase Price will be payable within 30 days of execution of the Deed. No Assets will be released by the Commonwealth as part of a Tranche without having received the relevant instalment for that Tranche in full.</p>
Export controls: (clause 4)	The export control requirements in clause 4 (ITAR and EAR) apply to this RFS.
Evaluation Criteria: (clause 5.1)	<p>The following evaluation criteria apply to this RFS:</p> <ol style="list-style-type: none"> the proposed Purchase Price offered by the respondent for the Assets and the proposed pricing structure, including instalment payments; the extent to which the Commonwealth is satisfied that the respondent and its subcontractors are willing and able to meet the requirements of the Draft Deed of Transfer; the respondent's proposed use of the Assets, their assessed capability to undertake that use and their past experience with assets which are similar to the Assets; the respondent's financial viability and capacity to pay the Purchase Price; any other risks, including work health and safety risks and reputational risks, to the Commonwealth of transferring the Assets to the respondent; and the extent to which the submission (either considered alone or in combination with other submission(s)) supports the Commonwealth's

	<p>objective of disposing of all the Assets to a single respondent or as few respondents as practicable.</p>
<p>Evaluation Process: (clause 5.1)</p>	<ol style="list-style-type: none"> 1. The Commonwealth will shortlist those submissions which offer the highest total proposed Purchase Prices. 2. Subject to these Conditions of Submission, the Commonwealth will evaluate shortlisted submissions (other than those which have been excluded in accordance with these Conditions of Submission) against the evaluation criteria. The Commonwealth will rank shortlisted submissions based on the outcomes of the evaluation. 3. The highest-ranked shortlisted submission(s) will be preferred. 4. Should, for any reason, the preferred Respondent(s) subsequently have its/their submission(s) excluded from evaluation, or a Deed of Transfer not be signed with that/those preferred respondent(s), then the next-ranked submission(s) will be preferred, and this process may be repeated until all the Assets are allocated. 5. The Commonwealth's preference is to enter into a single Deed of Transfer with one preferred respondent for the sale of all Assets. However, the Commonwealth may also consider a combination of part submissions which support the Commonwealth's objective of disposing of all the Assets to as few respondents as practicable.
<p>Essential Requirements: (clause 5.2)</p>	<p>Submissions (including all attachments, annexes and supporting documentation other than insurance certificates) must be written in English.</p> <p>The respondent must not be an individual or entity on the Consolidated List (as published by the Australian Government Department of Foreign Affairs and Trade) to which the <i>Charter of the United Nations Act 1945</i> and the <i>Autonomous Sanctions Act 2011</i> currently applies.</p>

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1 GENERAL CONDITIONS

1.1 Definitions

- 1.1.1 In these Conditions of Submission, in addition to any defined terms set out in the RFS Details Schedule, the following definitions apply:
- a. 'AECA' means the Arms Export Control Act 1976 (US);
 - b. 'Assets' has the meaning given in the RFS Details Schedule and Draft Deed;
 - c. 'Closing Time' has the meaning given in the RFS Details Schedule;
 - d. 'Contact Officer' means the person specified as the Contact Officer in the RFS Details Schedule or any alternative person nominated by the Commonwealth in writing from time to time;
 - e. 'Declaration by Respondent' means the document set out in Annex B;
 - f. 'Deed' means any deed, agreement, memorandum or contract for the disposal of the Assets entered into by the Commonwealth resulting from the RFS process;
 - g. 'Draft Deed' means the draft document set out in Annex C;
 - h. 'EAR' means the USA Export Administration Regulations;
 - i. 'Essential Requirement' has the meaning given in the RFS Details Schedule;
 - j. 'Evaluation Criteria' means the evaluation criteria set out in the RFS Details Schedule;
 - k. 'Evaluation Process' means the evaluation process set out in the RFS Details Schedule and clause 5.1;
 - l. 'FMS' means acquisition via the USA Foreign Military Sales process which makes the materiel acquired subject to Section 3 of AECA;
 - m. 'Government Entity' includes a local government or foreign government entity;
 - n. 'Insolvency Event' has the meaning given in the Draft Deed;
 - o. 'ITAR' means the USA International Traffic in Arms Regulations;
 - p. 'Recipient Assurance Letter' means a letter which respondent/s must sign as described in clause 4;
 - q. 'Response Form' means the form set out in Annex A;
 - r. 'RFS' means this Request for Submission process for the disposal of the Assets;
 - s. 'Submission Validity Period' means the Submission Validity Period set out in the RFS Details Schedule;
 - t. 'Transfer Authorisation' means authorisation in writing given by the United States Government, in accordance with the ITAR, EAR or the AECA, authorising access to, or new end use of, or retransfer of, the Assets;
 - u. 'USA' means the United States of America; and
 - v. 'Working Day' in relation to the doing of an action in a place, means any day in that place other than:
 - (i) a Saturday, Sunday or public holiday; or
 - (ii) any day within the two-week period beginning on the first Saturday that falls before Christmas Day (or beginning on Christmas Day when it falls on a Saturday).

1.2 Interpretation

- 1.2.1 This RFS comprises:
- a. these Conditions of Submission (including the RFS Details Schedule);
 - b. the Annexes to the Conditions of Submission; and

- c. any other document provided by the Commonwealth to respondents (whether at the same time as, preceding or following the release of this RFS) which the Commonwealth specifies as forming part of this RFS, or which can reasonably be inferred as forming part of this RFS.
- 1.2.2 If there is any inconsistency between any part of this RFS, a descending order of precedence will be accorded so that the provision in the higher ranked document in clause 1.2.1, to the extent of the inconsistency, prevails.
- 1.2.3 In the RFS, unless the contrary intention appears, words, abbreviations and acronyms have the same meaning given to them in the Conditions of Submission (including the RFS Details Schedule), Draft Deed or Response Form.
- 1.2.4 Any time or date in the RFS is for the convenience of the Commonwealth and does not create an obligation on the part of the Commonwealth to take any action or exercise any right by that date.

1.3 Acceptance of Submission

- 1.3.1 Acceptance of a submission shall only occur when a completed and executed Deed is issued by the Commonwealth to a successful respondent, and any acceptance of the submission is subject to the terms of the Deed. The Commonwealth, at its discretion, may not accept any submission and may not issue a Deed.
- 1.3.2 If the respondent is a Government Entity, the Commonwealth may propose an alternative form of deed to the Draft Deed, which is similar to the Draft Deed but reflects government requirements. Respondents which are Government Entities may request to be provided with the alternative form of deed prior to submitting a submission.

1.4 Amendment of RFS

Note to respondents: Any amendment to the RFS will be issued by the Commonwealth through AusTender. Refer to clause 2.4 for more information on AusTender.

- 1.4.1 The Commonwealth may clarify or amend any aspect of the RFS by issuing a formal amendment to the RFS through AusTender.
- 1.4.2 If the Commonwealth amends this RFS under clause 1.4.1 after submissions have been submitted, it may seek amended submissions.
- 1.4.3 Respondents will have no claim against the Commonwealth or any Commonwealth personnel for any failure to inform a respondent of an amendment to the RFS, or any failure to seek amended submissions, or any other matter arising in connection with an amendment to this RFS.

1.5 Commonwealth's Rights

- 1.5.1 Respondents submit their submissions subject to these Conditions of Submission.
- 1.5.2 To the extent permitted by law, no binding contract (including a process contract) or other understanding (including any form of contractual, quasi-contractual or restitutionary rights, or rights based upon similar legal or equitable grounds) will exist between the Commonwealth and a respondent unless and until any Deed is signed by the Commonwealth and a successful respondent.
- 1.5.3 Clause 1.5.2 does not apply to:
- a. the executed Declaration by Respondent or Non Disclosure Deed Poll; or
 - b. any other deed or contractual arrangement entered into by the respondent (such as a deed of confidentiality), as required by the Commonwealth from time to time.
- 1.5.4 The Commonwealth will not be responsible for any costs or expenses incurred by any respondent in the preparation or lodgement of a submission or in taking part in the RFS process.

1.6 Other Commonwealth Rights

- 1.6.1 Without limiting its other rights under the RFS or at law or otherwise, the Commonwealth may at any stage of the RFS process, exclude a submission or part of a submission from consideration if:

- a. an Insolvency Event occurs in relation to the respondent;
- b. the Commonwealth considers, in its discretion, that entering into a Deed with the respondent may bring the Commonwealth into disrepute;
- c. the Commonwealth considers, in its discretion, that the respondent intends or may intend to use the Assets for an unlawful purpose;
- d. the submission is incomplete (for example, if the respondent has failed to provide, or refuses to provide, a completed and signed Declaration by Respondent substantively in the form of Annex B);
- e. the Commonwealth considers, in its discretion, that the submission is non-competitive; or
- f. the Commonwealth has reasonable grounds to believe that a representation or warranty given by a respondent in its submission is false or misleading.

1.6.2 In addition, the Commonwealth reserves all rights at any time during the RFS process, to do all or any of the following:

- a. consider any late submission, where consistent with probity requirements;
- b. permit any organisation to participate as a respondent in the RFS process prior to the Closing Time;
- c. obtain and consider in the Evaluation Process additional information (whether obtained through the RFS process or by any other means) relevant to a submission;
- d. use material submitted in response to one Evaluation Criterion in the evaluation of any other Evaluation Criterion;
- e. seek clarification or additional information from, and enter into discussions with, any or all of the respondents in relation to their submissions;
- f. shortlist one or more respondents;
- g. consider a joint submission or a part submission;
- h. allow a respondent to substitute itself with another person;
- i. contact the respondent's referees, or any other person or organisation, in relation to the submission directly and without notifying the respondent, and use the information obtained from that person or organisation in the Evaluation Process; and
- j. perform such checks, gather such information and make such inquiries as the Commonwealth considers appropriate to verify the content of the Declaration by Respondent or any part of it and use the information obtained in the Evaluation Process.

1.6.3 Without limiting its rights at law or otherwise, the Commonwealth, at its discretion, may:

- a. discontinue the RFS at any time;
- b. change the structure or timing of the RFS process;
- c. decline to issue any Deed; or
- d. dispose of any or all Assets separately from the RFS process,

and the Commonwealth will notify respondents to this effect.

1.6.4 The Commonwealth's preference is to enter into a single Deed of Transfer with one preferred respondent for the sale of all Assets. However, the Commonwealth may also consider a combination of part submissions which support the Commonwealth's objective of disposing of all the Assets to as few respondents as practicable (e.g. 80% sale of Assets to one respondent and 20% to another).

1.6.5 The Commonwealth does not currently intend to sell Inventory independently of any Aircraft. Submissions which only offer to purchase Inventory are unlikely to be preferred.

1.7 Reporting and Disclosure Requirements

1.7.1 Without limiting the Commonwealth's right to disclose other information, for any Deeds awarded, the Commonwealth may publicly disclose a successful respondent's name, postal

address and a range of details about the Deed, including the names and details of any subcontractors engaged by the successful respondent in respect of the Deed.

1.8 Assets including Inspection of Assets

- 1.8.1 The number of Assets may vary due to the requirements of the Commonwealth and Commonwealth commitments to other recipients, such as museums. In addition, the Commonwealth will continue to utilise spare parts from Commonwealth stores, and harvest spare parts from Aircraft as they are withdrawn from service. This will continue to affect the volume of Inventory and condition of the available Aircraft during this RFS process and after any Deed of Transfer has been signed.
- 1.8.2 The Commonwealth may not be able to provide log books and technical data to any purchaser other than certain Computer-Aided Maintenance Management System (CAMM2) data, but will endeavour to provide data where practicable. Provision of CAMM2 data, and attendance at an Information Day, is subject to the Commonwealth receiving a signed Non Disclosure Deed Poll in the form set out in the RFS. Respondents should assume that they may need to obtain some technical data from an alternative source, such as a manufacturer, at their own cost. In addition, Aircraft will not necessarily be in a registrable or flyable condition at purchase.
- 1.8.3 To aid in the preparation of submissions, the Commonwealth intends, subject to COVID-19 restrictions, to provide prospective respondents with an opportunity to inspect the Assets at an Information Day, as described in the RFS Details Schedule.
- 1.8.4 Respondents should note the effect of clauses 1.4.1 and 2.1. Respondents should not rely on a statement made during any inspection visit or briefing as amending or adding to this RFS, unless that amendment or addition is confirmed by the Commonwealth in writing.
- 1.8.5 Attendance at any inspection visits or briefings will be limited to two representatives from each prospective respondent. To arrange attendance, prospective respondents must, at least five Working Days prior to the date described in the RFS Details Schedule, provide their completed Non Disclosure Deed Poll and a written nomination to the Contact Officer, including the following details:
- a. respondent's name and location; and
 - b. full details of respondent's proposed representatives, including:
 - (i) full name;
 - (ii) position;
 - (iii) date of birth;
 - (iv) residential address;
 - (v) work telephone number;
 - (vi) work email address
 - (vii) Nationality (for the purposes of security and base access); and
 - (viii) a colour Portable Document Format (PDF) copy of a current government-issued photo identity document (i.e. passport or driver's licence).
- 1.8.6 The Contact Officer will notify the relevant respondent if any nomination is not accepted. A nomination may not be accepted in the discretion of the Commonwealth and without providing reasons.
- 1.8.7 Prospective respondents' representatives must comply with all applicable Commonwealth safety and security requirements, including induction processes and codes of conduct while inspecting the Assets and will not be permitted to take photographs of the Assets.
- 1.8.8 Due to logistics and security requirements, representatives of respondents that have not registered by the five Working Days prior to a planned Information Day may not be able to attend any visit or briefing or inspect the Assets.

2 SUBMISSION PREPARATION AND LODGEMENT

2.1 Respondents to Inform Themselves

- 2.1.1 The Commonwealth makes no representations or warranties that the information in the RFS or any information communicated or provided to respondents during the RFS process is, or will be, accurate, current or complete.
- 2.1.2 Respondents are solely responsible for:
- a. examining the RFS, any documents referenced in or attached to the RFS and any other information made available by the Commonwealth to respondents in connection with the RFS process;
 - b. obtaining and examining all further information which is obtainable by the making of reasonable inquiries relevant to the risks, contingencies, and other circumstances having an effect on their submissions; and
 - c. satisfying themselves that their submission is accurate, complete and not misleading.
- 2.1.3 If the RFS references any other material such as reports, plans, drawings, samples or other reference material, the respondent is responsible for obtaining the referenced material and considering it prior to submitting a submission.
- 2.1.4 Respondents prepare and lodge their submissions based on the acknowledgements and agreements in the Declaration by Respondent in Annex B.

2.2 Submission Preparation

- 2.2.1 Respondents must:
- a. submit the completed Response Form in Annex A;
 - b. submit the completed and signed Declaration by Respondent in Annex B and Non Disclosure Deed Poll in Annex D; and
 - c. provide all additional documents requested in the Response Form.
- 2.2.2 Respondents must also comply with any additional requirements for submission preparation and content (including the Essential Requirement that submissions must be in English) set out in these Conditions of Submission (as amended from time to time).

2.3 Contact Officer and RFS Inquiries

- 2.3.1 Respondents should direct any questions regarding this RFS in writing to the Contact Officer specified in the RFS Details Schedule.
- 2.3.2 Respondents may submit questions to the Contact Officer up until 5pm Australian Capital Territory time on the day that is five Working Days prior to the Closing Time. The Commonwealth may choose not to answer questions submitted after that time.
- 2.3.3 Any question submitted by respondents is submitted on the basis that the Commonwealth may circulate respondents' questions and the Commonwealth's answers to all other respondents without disclosing the source of the questions or revealing the substance of a proposed submission.

2.4 Lodgement of Submissions

Note to respondents: Submissions must be lodged electronically via AusTender.

The Closing Time will be displayed in the relevant AusTender webpage together with a countdown clock that displays in real time the amount of time left until Closing Time (for more information please see AusTender Terms of Use). For the purposes of determining whether a submission response has been lodged before the Closing Time, the countdown clock will be conclusive.

- 2.4.1 AusTender is the Australian Government's procurement information system. Access to and use of AusTender is subject to terms and conditions. In participating in this RFS, respondents must comply with those terms and conditions and any applicable instructions, process, procedures and recommendations as advised on AusTender at: <https://www.submissions.gov.au/?event=public.termsOfUse>.
- 2.4.2 All queries and requests for AusTender technical or operational support are to be directed to:

AusTender Help Desk

Telephone: 1300 651 698

International: +61 2 6215 1558

Email: submissions@finance.gov.au

The AusTender Helpdesk is available between 9am and 5pm Australian Capital Territory (ACT) local time, Monday to Friday (excluding ACT and national public holidays).

- 2.4.3 Submissions are to be lodged electronically via AusTender (<https://www.submissions.gov.au>) before the Closing Time, in accordance with the submission lodgement procedures set out in this RFS and on AusTender.
- 2.4.4 Submissions are to be lodged in the format specified in the RFS Details Schedule. All file names should:
- a. sufficiently identify the respondent by including their name; and
 - b. reflect the parts of the submission they represent, where the submission comprises multiple files.
- 2.4.5 Submission files should not exceed a combined file size of 500 megabytes per upload.
- 2.4.6 Submissions lodged after the Closing Time may be excluded from consideration in accordance with Commonwealth policy, unless the Commonwealth determines in its sole discretion that it has caused or contributed to the respondent's failure to lodge by the Closing Time.

2.5 Submission Validity Period

- 2.5.1 The Commonwealth requires that submissions submitted in response to this RFS remain open for acceptance during the Submission Validity Period.
- 2.5.2 The Commonwealth may request an extension of the Submission Validity Period.

2.6 Alterations, Erasures and Illegibility

- 2.6.1 The Commonwealth may exclude a submission that contains alterations, erasures, illegibility, ambiguity or incomplete details.

2.7 Errors and Corrections

- 2.7.1 If the Commonwealth considers that there are unintentional errors of form, incompleteness, inconsistencies or ambiguities (collectively, 'errors') in a submission, the Commonwealth may request the respondent to correct or clarify the errors.
- 2.7.2 The Commonwealth is under no obligation to consider additional information provided by the respondent in a response to a request which would result in a respondent obtaining an unfair advantage over other respondents.

2.8 Confidentiality

- 2.8.1 Respondents must identify in their Response Form any aspects of their submission that they consider should be kept confidential should they be incorporated into a Deed, and provide justification and reasons for the confidentiality. Where the Commonwealth agrees that these aspects are confidential, this will be specified in the Deed.
- 2.8.2 Despite any agreement under clause 2.8.1, the Commonwealth may disclose information:
- a. if required by law or statutory or portfolio duties, or required for public accountability reasons, including following a request by a Minister, Parliament or a Parliamentary Committee;
 - b. for the purpose of defending any claim or proceeding in relation to this RFS process or any Deed;
 - c. which is in the public domain otherwise than due to a breach of contract, law or confidence; or
 - d. as contemplated under clause 2.10.

2.9 Conduct

Note to respondents: Respondents should note that the Declaration by Respondent sets out a number of acknowledgements and undertakings to be given by respondents, including in relation to conflicts of interest.

- 2.9.1 The Commonwealth may exclude a submission from consideration if, in the opinion of the Commonwealth, the respondent has failed to comply with any part of the Declaration by Respondent.
- 2.9.2 The Commonwealth may exclude a submission from consideration if the respondent, or any of its officers, has been convicted of bribery of Commonwealth, State, Territory or foreign government officials at any time during the last seven years.

2.10 Use of Submission Documents

- 2.10.1 All submission documents submitted in response to this RFS become the property of the Commonwealth. Respondents submit documents in response to this RFS on the basis that the Commonwealth may use, retain and copy the information contained in those documents for the purposes of:
- a. evaluation of submissions and selection of any preferred respondent;
 - b. preparation and negotiation of any Deed; and
 - c. verifying the currency, consistency, accuracy or adequacy of information provided under any other RFS process conducted by the Commonwealth.
- 2.10.2 The Commonwealth may disclose all or part of the submission documents to a third party for the purposes of assisting the Commonwealth in the conduct of the RFS process, and for the purposes contained in clause 2.10.1.
- 2.10.3 Nothing in this clause 2.10 changes or affects the ownership of intellectual property in the information contained in the submission documents.

2.11 Collusive Tendering and Unlawful Inducements

- 2.11.1 Respondents and their officers, employees, agents and advisors must not engage in any collusive tendering, anti-competitive conduct or any other similar conduct with any other respondent or person or offer any unlawful inducements in relation to their submission or the RFS process.
- 2.11.2 Respondents must disclose, where indicated in the Response Form, if their submissions have been compiled with the assistance of current or former (within the previous 12 months) employees or contractors of the Commonwealth.
- 2.11.3 The Commonwealth may exclude a submission from consideration if:
- a. the respondent or its officers, employees, agents or advisors have engaged in any conduct described in clause 2.11.1; or
 - b. the submission has been compiled with the assistance of the persons described in clause 2.11.2.

3 PRICE BASIS

3.1 Purchase Price

- 3.1.1 Respondents may propose a Purchase Price as described in the RFS Details Schedule and Response Form. The price proposed must be in Australian dollars and is an offer by the respondent which is binding on the respondent for the Submission Validity Period.
- 3.1.2 The Commonwealth may exclude from further evaluation any submission that is clearly uncompetitive.
- 3.1.3 Respondents should note that, unless the Draft Deed states otherwise, in addition to the Purchase Price, respondents are responsible for all costs associated with collection and subsequent transport of the Assets, the costs of complying with the Deed and any applicable laws and all other taxes, duties and any government charges.

4 EXPORT CONTROLS

4.1 Export Controls

Note to respondents: This clause 4 only applies if, and to the extent that, the Assets are FMS acquired, or subject to ITAR or EAR export controls, as identified in the RFS Details Schedule.

The Commonwealth shall request such further information and documentation from respondents or preferred respondents as the Commonwealth requires to obtain Transfer Authorisations and/or retransfer approval requests. In particular, each preferred respondent for an FMS acquired or ITAR-controlled Asset must sign a standard Recipient Assurance Letter as required by the United States Department of State as a pre-requisite for the Department of State considering a third party retransfer application. The Commonwealth will provide the required form to applicable respondents.

Respondents should note that the Commonwealth must be able to obtain all necessary authorisations and approvals described in this clause prior to entering any Deed or allowing access as part of any inspection, or transferring Assets, where the Assets are subject to US export controls.

- 4.1.1 This clause 4 only applies if, and to the extent that, the Assets are FMS acquired or subject to the ITAR or EAR, as identified in the RFS Details Schedule.
- 4.1.2 The Commonwealth will not transfer any Asset and may not enter any Deed with a respondent for the transfer of any Asset which is FMS acquired or subject to the ITAR unless:
- a. the respondent and applicable subcontractors have provided to the Commonwealth all necessary completed and signed Recipient Assurance Letters on the correct letterhead and in the format required by the US Department of State and provided to the respondent by the Commonwealth; and
 - b. the Commonwealth has obtained Transfer Authorisation from the US Department of State in respect of that respondent and Asset.
- 4.1.3 The Commonwealth will not transfer any Asset and may not enter any Deed with a respondent for the transfer of any Asset which is subject to EAR unless the Commonwealth has obtained Transfer Authorisation from the US Department of Commerce in accordance with the EAR in respect of that respondent and Asset.
- 4.1.4 The Commonwealth will use reasonable endeavours to promptly request Transfer Authorisation in order to lawfully transfer an Asset to the preferred respondent(s). However, the Commonwealth cannot and does not represent or warrant that any such authorisation or approval will be able to be obtained, or will be able to be obtained within a reasonable time.
- 4.1.5 Respondents acknowledge and agree that:
- a. obtaining a Transfer Authorisation or other transfer authorisation or approval is outside the control of the Commonwealth; and
 - b. the Commonwealth may not enter into any Deed in respect of any Asset and will not transfer any Asset, which is FMS acquired, or subject to the ITAR or EAR unless the relevant approval or authorisation has been obtained.
- 4.1.6 In addition to its other rights under these Conditions of Submission, the Commonwealth reserves the right to exclude a submission from further consideration, or exclude a submission from consideration in relation to particular Assets (such as a particular Asset lot or item) at any time should:
- a. the Commonwealth be unable to obtain US Department of State or US Department of Commerce Transfer Authorisation or any other transfer authorisation or approval required from the US Government;
 - b. the Commonwealth be unable to obtain US Department of State or US Department of Commerce Transfer Authorisation, or any other transfer authorisation or approval required from the US Government, within what the Commonwealth considers to be a reasonable time; or
 - c. the US Government advises the Commonwealth that the respondent will not be able to obtain a Transfer Authorisation or any other transfer authorisation or approval required from the US Government.

- 4.1.7 The respondent shall, at all times, comply with all the conditions and requirements of any Transfer Authorisation, including any assurance provided by the respondent to the US Government in the respondent's signed Recipient Assurance Letter.

5 EVALUATION AND SELECTION OF SUBMISSIONS

5.1 Evaluation Criteria and Process

- 5.1.1 The Commonwealth will select the submission(s) which the Commonwealth considers best meet(s) the Evaluation Criteria.
- 5.1.2 Submissions will be evaluated in accordance with the Evaluation Process in this clause 5.1 and the RFS Details Schedule against the Evaluation Criteria set out in the RFS Details Schedule.
- 5.1.3 The Commonwealth will shortlist the submissions which propose the highest total Purchase Price and set aside the remaining submissions.
- 5.1.4 If a shortlisted submission is excluded from the evaluation in accordance with this RFT, the Commonwealth may, in place of the excluded submission, add to the shortlist the submission(s) which propose the next highest total Purchase Price from those submissions which had previously been set aside, and resume evaluation in respect of those shortlisted submission(s).
- 5.1.5 The Commonwealth may exclude from evaluation at any time any submissions that are assessed by the Commonwealth as being deficient against an Evaluation Criterion, or which these Conditions of Submission state may be excluded from the RFS process. Except for a submission which is non-compliant with an Essential Requirement as described in clause 5.2, if a submission which may be excluded is for more than one Asset, that submission may be excluded in respect of one Asset or some Assets only, rather than being excluded in its entirety.
- 5.1.6 The Commonwealth may negotiate with one, or more than one, respondent at any stage of the evaluation.

5.2 Essential Requirements

- 5.2.1 Subject to clause 2.7, the Commonwealth will exclude a submission from further consideration in its entirety if the Commonwealth considers that the submission is non-compliant with any of the Essential Requirements.

5.3 Negotiation

- 5.3.1 The Commonwealth may engage one or more respondents in negotiations, which may involve respondents being asked to clarify, improve or consolidate any aspects of their submissions.

5.4 Preferred Respondent Status

- 5.4.1 The Commonwealth may select one or more respondents as preferred respondents, but such selection:
- a. does not affect or limit the Commonwealth's rights or the respondents' obligations under the RFS; and
 - b. is not a representation that any Deed will be entered into between the Commonwealth and any respondent,
- and the Commonwealth may select any other respondent under the RFS whether or not a respondent has been selected as a preferred respondent.
- 5.4.2 The Commonwealth may, in its absolute discretion, offer to a preferred respondent fewer Assets than the respondent has sought to obtain.

5.5 Resultant Deed

- 5.5.1 The Commonwealth is under no obligation to permit the collection of an Asset by a respondent until a Deed is signed with that respondent.
- 5.5.2 The provision of any Asset will be in accordance with the terms of the Deed.

- 5.5.3 If a respondent is offered a Deed but does not sign and return that Deed within 20 Working Days of the date on which the Deed was offered by the Commonwealth, the Commonwealth may allocate the Assets to another respondent.

5.6 Debriefing of Respondents

- 5.6.1 Respondents will be notified whether they have been successful or unsuccessful and may request a debriefing. Respondents requiring a debriefing should contact the Contact Officer.
- 5.6.2 Each respondent will be debriefed on the Commonwealth's assessment of its submission's performance against the Evaluation Criteria.