

PART 2 - TERMS AND CONDITIONS

1 DEFINITIONS

1.1 In this Request for Expression of Interest (REOI), unless the contrary intention appears:

<i>Business Day</i>	means any day that is not a Saturday, Sunday or a public holiday in Canberra, Australian Capital Territory.
<i>Closing Time</i>	means the closing date and time for submission of Responses, as set out in the REOI Details.
<i>Commonwealth Entity</i>	means a Commonwealth entity as defined in the <i>Public Governance, Performance and Accountability Act 2013</i> .
<i>Conditions for Participation</i>	means the conditions for participation (if any) set out in the REOI Details.
<i>Confidential Information</i>	<p>means information that is:</p> <ul style="list-style-type: none">(a) by its nature confidential;(b) designated by the Commonwealth as confidential; or(c) in the case of the Commonwealth's confidential information, such that a party knows or ought to know is confidential; <p>but does not include information:</p> <ul style="list-style-type: none">(d) which is or becomes public knowledge other than by breach of this REOI or any other confidentiality obligation; or(e) that has been independently developed or acquired as established by written evidence.
<i>Contact Officer</i>	means the person specified as the contact officer for the Department in the REOI details.
<i>Content and Format Requirements</i>	means the content and format requirements for Responses (if any) as set out in the REOI Details.
<i>Department</i>	means the Commonwealth of Australia as represented by the Department of Home Affairs (the Department).

<i>Evaluation Committee or EC</i>	means the Department officers appointed to the committee responsible for evaluating Responses.
<i>Evaluation Criteria</i>	means the detailed criteria set out in Attachment C to this REOI that will be used to evaluate the compliance and/or relative ranking of Respondents.
<i>Evaluation Process</i>	means the process for the evaluation of Responses set out in Attachment C .
<i>Evaluation Team</i>	means the Evaluation Committee and its advisors, including specialist advisors.
<i>Illegal Worker</i>	<p>means a person who is a non-citizen of Australia who:</p> <ul style="list-style-type: none"> (a) does not hold a valid visa and who performs work in Australia; or (b) holds a valid visa and who performs work in Australia in breach of a visa condition that: <ul style="list-style-type: none"> i. prohibits him or her from working in Australia; or ii. restricts the work that he or she may perform in Australia.
<i>Intellectual Property Rights</i>	<p>means all intellectual property rights, including:</p> <ul style="list-style-type: none"> (a) patents, copyright, rights in circuit layouts, registered designs, trademarks, know how, trade secrets and any right to have confidential information kept confidential; and (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).
<i>Late Response</i>	means a Response which is lodged after the Closing Time.
<i>Personal information</i>	means information or opinion (including information or opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent or can reasonably be ascertained from the information or opinion.

<i>Registered Respondents</i>	means Respondents who have completed the registration process for this REOI
<i>REOI</i>	means this document, including all parts, attachments, schedules or annexures to it, and any addenda issued by the Department in respect of it.
<i>REOI Details</i>	means the specific details about this REOI as set out in Part 1 of this REOI.
<i>Requirement</i>	means the goods, products and/or services required under this REOI, as listed or described in the Statement of Requirement (SOR) in Attachment A .
<i>Respondent</i>	means any entity who submits a Response.
<i>Response</i>	means a response submitted by a Respondent to this REOI, including documents that are described as responses, proposals, submissions or expressions of interest.
<i>Response Validity Period</i>	means the period specified as such in the REOI Details.
<i>Statement of Requirement (SOR)</i>	means the description of the requirements as set out in Attachment A.
<i>Terms and Conditions</i>	means the terms and conditions of this REOI activity set out in this Part 2 of this REOI.

1.2 Additional definitions may appear throughout this REOI.

2 INTERPRETATION

2.1 In this REOI, except where the contrary intention is expressed:

- (a) words importing a gender include any other gender;
- (b) words in the singular number include the plural and words in the plural number include the singular;
- (c) section headings are inserted for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (d) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority, agency or other entity;

- (e) another grammatical form of a defined word or expression has a corresponding meaning;
- (f) a reference to a clause, paragraph, part, attachment, schedule or annexure is to a clause, paragraph, part, attachment, schedule or annexure to this REOI;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (h) the meaning of general words is not limited by specific examples introduced by including, 'for example' or similar expressions and the word 'include' is not a word of limitation.

2.2 To the extent of any inconsistency between any of the information in this REOI, the information will be interpreted in the following order of priority (with the first listed having the highest priority and the last listed having the least priority):

- (a) the Terms and Conditions in Part 2 of this REOI;
- (b) the REOI Details in Part 1 of this REOI;
- (c) Attachment A to this REOI;
- (d) Attachment C to this REOI;
- (e) Attachment B to this REOI; and
- (f) any other document forming part of this REOI.

3 NO CONTRACT OR UNDERTAKING

3.1 Nothing in this REOI will be construed to create any binding contract, agreement or undertaking, either express or implied, between the Commonwealth and any Respondent. Any conduct or statement whether prior to or subsequent to the issue of this REOI is not, and this REOI is not, and will not be deemed to be:

- (a) an offer to contract; or
- (b) a binding undertaking of any kind by the Commonwealth (including, without limitation, an undertaking that could give rise to any promissory estoppel, quantum meruit or on any other contractual, quasi contractual or restitutionary grounds or any rights with a similar legal or equitable basis whatsoever).

4 RESPONSE CLOSING TIME

4.1 Responses **must** be lodged before the Closing Time.

4.2 The judgement of the Department as to the time a Response has been lodged will be final.

4.3 The Department may extend the Closing Time for all Respondents, at its sole and absolute discretion. If it does so, the Department will issue an addendum notifying Registered Respondents of the extension in accordance with clause 12 - Issue by the Department of Addenda and Notices.

5 RESPONSE LODGEMENT

- 5.1 Responses to this REOI must be lodged electronically via the Contact Officer email address in Part 1 of this REOI.
- 5.2 Responses lodged by any other means, including by hand or facsimile, will not be considered.

Virus Checking

- 5.3 In submitting their Responses electronically, Respondents warrant that they have taken reasonable steps to ensure that Response files are free of viruses, malicious code, worms or other disabling features that may affect the Department's computing environment.

Response File Formats, Naming Conventions and Sizes

- 5.4 Respondents are required to lodge their Response in accordance with the requirements set out in this clause 5 for file format/s, naming conventions and file sizes. Failure to comply with any or all of these requirements may result in the Response not being submitted successfully and/or may eliminate the Response from consideration.
- 5.5 The Department will accept Responses lodged in Microsoft Word, Microsoft Excel, Portable Document Format or other format specified in **Attachment B** or as agreed in writing by the Contact Officer.
- 5.6 The Response file name/s need to:
- (a) incorporate the Respondent's name;
 - (b) reflect the various parts of the Response they represent, where the Response comprises multiple files;
 - (c) not contain any of the following characters: \ / : * ? " < > | ; and
 - (d) not exceed 100 characters.
- 5.7 Response files:
- (a) may not exceed a combined file size of 5 megabytes per email;
 - (b) should be sent from a high level directory on a Respondent's desktop, so as not to impede the submission process; and
 - (c) should not be selected from a secure or password protected location, or from portable media such as, but not limited to, CD, DVD or USB; and
 - (d) should be zipped (compressed) together for transmission to migrationassistancepolicy@homeaffairs.gov.au (Respondents should contact the Contact Officer if they wish to use compression software other than 'WinZIP' or 'WinRAR' compression software, and may only do so if approved by the Contact Officer in writing).
- 5.8 Response files should not exceed the combined file size limit of five megabytes. If an email would otherwise exceed five megabytes, the Respondent should either:
- (a) transmit the Response files as a compressed (zip) file not exceeding five megabytes; or

- (b) lodge the Response in multiple emails ensuring that each email does not exceed five megabytes and clearly identify each email as part of the Response.
- 5.9 If a Response consists of multiple emails, due to the number of files or file size, Respondents should ensure that transmission of all files is completed before the Closing Time.
- 5.10 Responses are required to be completely self-contained. No hyperlinked or other material may be incorporated by reference.

Scanned or imaged material, including statutory declarations

- 5.11 Scanned images of signed and/or initialled pages within the Response, including statutory declarations and deeds of confidentiality where they are required, are permitted so long as the total file size does not exceed the five megabyte limit. The use of scanned or imaged material, where it expands the Response file size beyond the five megabyte limit per email, is prohibited.
- 5.12 The Department may require Respondents to courier or security post the originals of signature and initialled pages to the Department after the Closing Time at the Respondent's cost. Receipt of these documents, including time and date, will be provided to the Respondent by the Contact Officer.

Lodgement process

- 5.13 Respondents must email a Response to migrationassistancepolicy@homeaffairs.gov.au.
- 5.14 Before submitting their Response, Respondents are required to:
 - (a) take all steps to ensure that the Response is free from anything that might reasonably affect useability or the security or operations of the Department 's computing environment;
 - (b) ensure that the Response does not contain links in spreadsheets or documents to other spreadsheets or documents not included in the Response, macros, script or executable code of any kind unless that specific material has previously been approved in writing by the Department; and
 - (c) ensure that the Response complies with all file type, format, naming conventions, size limitations or other requirements specified in this REOI or otherwise advised by the Department.
- 5.15 Respondents should allow sufficient time for Response lodgement, including time that may be required for any problem analysis and resolution prior to the Closing Time.
- 5.16 If Respondents have any problem emailing a Response they must contact the Department via the Contact Officer prior to the Closing Time. Failure to do so may exclude a Response from consideration.

Proof of lodgement

- 5.17 When a Response lodgement has successfully completed, a separate email confirming receipt of the Response will also be dispatched from migrationassistancepolicy@homeaffairs.gov.au to the email address of the sender.

- 5.18 Failure to receive a receipt within 1 Business Day means that lodgement may not have completed successfully. Respondents should refer to clause 5.14 and clause 5.16 and recomplete the Response lodgement process until the Response lodgement is successfully completed.
- 5.19 The Department will not be liable for any loss, damage, costs or expenses incurred by Respondents or any other person if, for any reason, a Response or any other material or communication relevant to this REOI, is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

Late Responses, incomplete Responses and corrupted files

- 5.20 The Department reserves the right not to accept a Response which is not properly submitted before the Closing Time, unless the delay in Response lodgement is late as a consequence of mishandling by the Department.
- 5.21 Lodgement of Responses before the Closing Time is entirely the Respondent's responsibility.
- 5.22 Late Responses, Responses that are incomplete due to a failure to email all files by the Closing Time, Responses with electronic files that cannot be read or decrypted, Responses which the Department believes to potentially contain any virus, malicious code, worms, other disabling features or anything else that might compromise the integrity or security of the Department's computing environment, may be excluded from evaluation.

6 DEPARTMENT CONTACT OFFICER AND ENQUIRIES ABOUT THE REOI

Contact Officer

- 6.1 All enquiries in relation to this REOI are to be:
- (a) in writing by email;
 - (b) directed to, and only to, the Contact Officer at migrationassistancepolicy@homeaffairs.gov.au; and
 - (c) received by the Contact Officer four (4) Business Days before the Closing Time.
- 6.2 The Department may, at its sole and absolute discretion, refuse to accept any enquiry not made in accordance with clause 6.1.
- 6.3 The Department reserves the right to publish on its website any enquiry of the meaning of the content of this REOI and Department's response, on a non-attributable basis.
- 6.4 If a Respondent believes that its request for clarification is confidential, it should notify the Department of this upon submitting the written request. A determination will be made by the Department, at its absolute discretion, as to whether or not the request is confidential.
- 6.5 If the Department determines the request is:
- (a) not confidential, it will advise the Respondent of this decision. The Respondent may then resubmit the request as a non-confidential request, in which case it will be dealt with in the manner outlined above, or

- (b) confidential, the answer to the request (if any) will not be discussed by the Department to other Respondents.

6.6 Whether or not a request is confidential or determined by the Department to be confidential or is otherwise withdrawn by a Respondent, does not limit or otherwise affect the Department's rights under this REOI.

7 RESPONSE VALIDITY PERIOD

7.1 Responses are to remain valid for the Response Validity Period.

8 INTENDED TIMEFRAME FOR THE REOI PROCESS

8.1 The REOI Details set out the Department's intended timetable for the REOI Process. However, any time or date set out in this REOI (other than the Closing Time) is indicative only, and creates no obligation on the Department, or any right in a Respondent, in relation to these dates.

8.2 The Department can change the intended timetable in the REOI Details (other than the Closing Time) in its absolute discretion at any time, and without giving any notice to Respondents.

9 FORMAT FOR RESPONSES

9.1 A Respondent must meet each of the Content and Format Requirements set out in 'Mandatory Requirements', in the REOI Details.

9.2 Subject to clause 15, any Respondent who fails to meet any of the Content and Format Requirements set out in the REOI Details will be excluded from further consideration.

9.3 The Department may at any time during the Evaluation Process determine that a Respondent does not meet one or more Content and Format Requirements.

9.4 Respondents must complete and provide, as part of their EOI Response:

- (a) all of the completed response tables in **Part 2 of ATTACHMENT B**
- (b) a signed copy of the declaration, substantially in the form set out in **Part 3 of ATTACHMENT B**; and
- (c) all of the completed response tables in **Part 4 of ATTACHMENT B**.

9.5 The Department will accept EOI Responses lodged in Microsoft Word, Microsoft Excel, Portable Document Format or as agreed in writing by the Contact Officer.

9.6 Respondents should note that each requirement in each part of Attachment B may not be of equal importance or weight. However, Respondents should address each requirement completely.

10 PART RESPONSES

10.1 Unless otherwise indicated in the REOI Details, Respondents are to offer to provide the entire Requirement and no Responses for only part of the Requirement will be allowed.

- 10.2 Where the REOI Details indicate that only part of the Requirement will be allowed, **Attachment A** sets out which part or parts of the Requirement may be the subject of a Response.

11 NO CONSORTIA OR JOINT RESPONSES

- 11.1 A Response is required to be submitted by a single legal entity that exists at the Closing Time and who proposes to provide the Requirement.

12 ISSUE BY THE DEPARTMENT OF ADDENDA AND NOTICES

- 12.1 The Department may vary, supplement or clarify this REOI prior to the Closing Time, by issuing notices and other information as addenda posted on the page for this REOI on the Department's website.
- 12.2 Respondents are required to monitor the Department's website and collect addenda as notified.
- 12.3 The Commonwealth will accept no responsibility if a Respondent fails to become aware of any addendum notice which would have been apparent from a visit to the Department's website for this REOI.
- 12.4 Each addendum forms part of this REOI upon issue.
- 12.5 If a Respondent finds or reasonably believes it has found any discrepancy, error, ambiguity, inconsistency, omission or misleading statement (error) in this REOI, or in any other information given or made available by the Department, the Respondent should promptly notify the Contact Officer in writing setting out the error in sufficient detail. Any consequential amendment of this REOI or information provided by the Department will be made available to all Respondents in accordance with this clause 12.

13 ISSUE BY THE DEPARTMENT OF REQUESTS FOR CLARIFICATION

- 13.1 If the Department requires clarification of information contained in a Response, it will request clarification from the Respondent in writing. The Department will not accept information provided in response to a request for clarification if that information alters the original Response in any material respect. If the Respondent fails to supply clarification to the satisfaction of the Department, the Department may exclude the Response from further consideration.
- 13.2 Respondents should:
- (a) respond to any request for clarification within the time period and in the format specified by the Department;
 - (b) ensure that clarifying information provided answers the Department's enquiry and is fully consistent with the Response submitted by the Respondent; and
 - (c) not seek to materially alter any aspect of their Response by providing additional information to the Department.
- 13.3 The Department may require the Respondent to submit similar information to that required by this REOI in respect of any proposed subcontractors if that

information was not already required to be included in the Response by this REOI.

- 13.4 The Respondent should not interpret a request to clarify the Response as being an indication that its organisation will or will not be the preferred Respondent. The Respondent should treat all contacts as strictly confidential and not disclose the details of any contacts to any third parties. A Respondent's failure to observe confidentiality may result in the exclusion of their Response from further consideration.

14 CORRECTIONS BY A RESPONDENT AFTER LODGEMENT

- 14.1 If, after submission of a Response but before the Closing Time, a Respondent becomes aware of any discrepancy, error or omission in the Response and wishes to lodge a correction or additional information, it must resubmit its whole Response in accordance with this REOI, clearly stating that the Response is a replacement Response. Where more than one Response has been submitted, the Department will evaluate the last submitted Response.
- 14.2 The Department is not under any obligation to consider any corrections or additional information provided after the Closing Time. The Department will consider this material only where it considers it appropriate to do so.

15 UNINTENTIONAL ERRORS OF FORM

- 15.1 An unintentional error of form is an error that the Department is satisfied:
- (a) represents incomplete information not consistent with the Respondent's intentions and, if relevant, capabilities at the time the Response was lodged; and
 - (b) does not materially affect the competitiveness of the Respondent's bid.
- 15.2 If the Department considers that there are unintentional errors of form in a Response, the Department may request the Respondent to correct or clarify the error, but will not permit any material alteration or addition to the Response.

16 PRESENTATIONS, INTERVIEW AND SITE VISITS

- 16.1 The Department may, at its sole discretion, require the Respondent to give a presentation regarding its Response, attend an interview and/or host a site visit to the Respondent's premises (or other premises where the Requirement will be provided). Such requirements will be at the Department's sole discretion.
- 16.2 Any costs incurred by the Respondent in relation to any presentations, interview or site visits will be borne by the Respondent.

17 THE EVALUATION CRITERIA AND EVALUATION PROCESS

- 17.1 An Evaluation Committee will conduct the evaluation of Responses in accordance with the Evaluation Process set out in **Attachment C**.
- 17.2 Responses will be evaluated on the basis of the Evaluation Criteria specified in **Attachment C**.
- 17.3 For the purpose of evaluation of Responses, the Department may:

- (a) use any material provided in Response to one Evaluation Criteria in the evaluation of other criteria;
- (b) seek clarification or information from any Respondent, whether or not similar information has been sought from other Respondents;
- (c) make independent inquiries about any matters that may be relevant to the evaluation including security, financial and probity checks in relation to the Respondent, its subcontractors and any related entities or their personnel (and a Response may be rejected by the Department if the Respondent does not provide, at its cost, all reasonable assistance to the Department in this regard);
- (d) obtain information regarding the capacity and capability of a Respondent from referees nominated by the Respondent or any other person contacted by the Department; and
- (e) use any relevant information obtained in respect of a Respondent either through this REOI process or by independent inquiry.

18 NO LEGAL RELATIONSHIP; DISCLAIMER; ACCEPTANCE OF RESPONDENT'S OFFER

- 18.1 This REOI is an invitation to apply for evaluation by the Department and is not to be taken as an offer to enter into a contract or agreement, or any sort of recommendation for inclusion in the legislative instrument. This REOI does not include any tax, legal, commercial or investment advice.
- 18.2 Lodging an REOI Response will constitute a request for evaluation in accordance with this REOI by the Respondent.
- 18.3 The Respondent acknowledges that the remade legislative instrument may include any or all exams or courses submitted by the Respondent for evaluation, and delivered by the Respondent. No Respondent will necessarily be included in the legislative instrument.
- 18.4 The inclusion in the legislative instrument of a course or exam delivered by a Respondent is subject to the execution of a Memorandum of Understanding in a form acceptable to the Department, between the Respondent and the Department.
- 18.5 The issue of this REOI (and/or the submission of any Response) does not create any legal relationship or obligation (or quasi-legal relationship or obligation) in respect of:
 - (a) the process to be followed (including in relation to evaluation and assessment of any Response); or
 - (b) entering into a contractual arrangement with a Respondent; or
 - (c) inclusion of a course or exam in the legislative instrument.
- 18.6 Despite clause 18.1, if a court finds there to be a contract between the Department and a Respondent regarding the conduct of this REOI process, the Respondent agrees that the Department's liability for negligence, breach of statute, and any breach of the terms of such a contract is limited to the Respondent's costs of participation in the REOI process. For the avoidance of

doubt, the Department is not liable for any lost profit, lost opportunity or other losses of the Respondent.

19 OUTCOME OF THE REOI PROCESS

- 19.1 This REOI is the selection process for inclusion of courses in the legislative instrument.
- 19.2 Respondents are advised that the submission of a REOI Response is not a guarantee of further invitations to participate in any subsequent REOI processes relating to the selection of the courses for inclusion in the legislative instrument.
- 19.3 The Department proposes to enter into a Memorandum of Understanding with the successful Respondents (if any) of this REOI process.

20 DEBRIEFING

- 20.1 If a Response is unsuccessful, the Respondent will be notified in writing and offered an opportunity for a debriefing. If the Respondent would like a debriefing, the Respondent should contact the Contact Officer to arrange a suitable time.
- 20.2 Respondents will be debriefed against the Evaluation Criteria. In accordance with Commonwealth policy, a Respondent will not be provided with information concerning other Responses or Respondents, except for publicly available information and except in so far as comparative statements can be made without breaching confidentiality.

21 INTELLECTUAL PROPERTY RIGHTS IN RESPONSE DOCUMENTS

- 21.1 All Intellectual Property Rights in this REOI are vested in the Commonwealth.
- 21.2 The Respondent agrees that all Responses become the property of the Department and that the Department, and anyone assisting the Department, may copy, adapt, modify, disclose, communicate or do anything else to all material contained in the Response which the Department considers necessary for the purpose of:
 - (a) evaluating or clarifying the Response (including any subsequent offer);
 - (b) negotiating any resultant arrangement with the Respondent;
 - (c) managing any resultant arrangement with the Respondent;
 - (d) complying with any law;
 - (e) referring any material suggesting collusion by Respondents to the Australian Competition and Consumer Commission (**ACCC**) and the use by the ACCC of that material to conduct any review it deems necessary;
 - (f) providing information to another person in the situations specified in clause 22.4 or 22.5 (Confidentiality); and
 - (g) anything else related to the above purpose or otherwise to the REOI process, including audit and complying with governmental and parliamentary reporting requests and requirements.
- 21.3 However, clause 21.2 does not transfer ownership of any Intellectual Property Rights in the information contained in the Response to the Department (these

remain vested in the person with the original ownership of that intellectual property).

22 CONFIDENTIALITY

General

22.1 Respondents acknowledge that the Department is subject to a number of specific requirements, which support internal and external scrutiny of the REOI and, in particular, any subsequent processes that may result in arrangements. These include:

- (a) disclosure requirements under the *Freedom of Information Act 1982* (Cth);
- (b) compliance with Commonwealth and Departmental record keeping policies, standards and guidelines; and
- (c) compliance with record keeping obligations under the *Archives Act 1983* (Cth).

Disclosure to Parliament and its Committees

22.2 Respondents acknowledge that the Parliament and its Committees have the power to require the disclosure of Commonwealth agreements, contract information and any associated information to enable them to carry out their functions.

Department's confidentiality obligations

22.3 Subject to clauses 22.4 and 22.5, the Department undertakes to keep confidential any Confidential Information provided to the Department by Respondents prior to entering into arrangements (if any) and, in respect of unsuccessful Respondents, after the execution of any such arrangements.

Limitation of obligation of confidentiality

22.4 The obligation of confidentiality in clause 22.3 does not apply if the Confidential Information:

- (a) is disclosed by the Department to its advisers or employees solely in order to evaluate the Response and during subsequent negotiations (if any);
- (b) is disclosed to a Department 's internal management personnel, solely to enable effective management or auditing of Response and related activities;
- (c) is disclosed by the Department to the responsible Minister;
- (d) is disclosed by the Department, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the Commonwealth within the Commonwealth's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
- (f) is authorised or required by law to be disclosed;
- (g) is in the public domain otherwise than due to a breach of clause 22.3; or
- (h) is disclosed with the consent of the Respondent.

- 22.5 The Department may provide any information supplied by a Respondent in its Response or as part of this REOI process to any other Commonwealth Entity to assist that agency determine if it wishes to take advantage of the Respondent's offer to provide the Requirement to that agency. The provisions of this clause 22 will apply in respect of the relevant Commonwealth Entity as if references to the Department were references to that agency.

Preservation of confidentiality

- 22.6 Once the REOI process has been finalised, the Department will not keep such information provided by the successful Respondent(s) confidential unless it, in its absolute discretion, considers it appropriate to do so.

23 CONFLICT OF INTEREST

- 23.1 Respondents are required to immediately notify the Department if the Respondent becomes aware of an actual, perceived or potential conflict of interest at any time before the completion of the REOI process which is not fully disclosed in its Response. A conflict of interest may exist if:

- (a) the Respondent or any of its personnel have a relationship (whether professional, commercial or personal) with any personnel in the Department; or
- (b) the Respondent has a relationship with, and obligations to, an organisation which would affect the performance of the Requirement or would bring disrepute to or embarrass the Department; or
- (c) the Respondent or any of its personnel have a relationship which could affect the Department's security.

- 23.2 If a Respondent has or may have an actual, perceived or potential conflict of interest, the Department may at its discretion:

- (a) enter into discussions to seek to resolve the conflict of interest;
- (b) impose conditions on the Respondent for the management of the actual, perceived or potential conflict of interest; or
- (c) take any other action which it considers appropriate.

- 23.3 If a Respondent is unwilling or unable to enter into discussions under clause 23.2(a), comply with the conditions imposed under clause 23.2(b) or otherwise resolve the actual, perceived or potential conflict of interest in a manner satisfactory to the Department, the Department may then exclude the Response from further consideration.

24 COMPLIANCE WITH COMMONWEALTH POLICIES

The Australian National Audit Office

- 24.1 The attention of Respondents is drawn to the *Auditor-General Act 1997* (Cth), which provides the Auditor-General or an authorised person with a right to have, at all reasonable times, access to information, documents and records in the possession of a Commonwealth Entity.

- 24.2 Respondents should obtain, and will be deemed to have obtained, their own advice on the impact of the *Auditor-General Act 1997* (Cth) on its participation in this REOI process and any subsequent arrangement.
- 24.3 It is intended that any resultant Memorandum of Understanding will contain a right of access by the Auditor-General, or an authorised person, to information, documents, records and the Department's assets, including those on the Respondent's premises, which are related to the relevant Memorandum of Understanding.

Privacy Legislation

- 24.4 The *Privacy Act 1988* (Cth) establishes a national scheme providing, through codes of practice adopted by private sector organisations and the Australian Privacy Principles, for the appropriate collection, holding, use, correction, disclosure and transfer of Personal information by private sector organisations.
- 24.5 Respondents should obtain, and will be deemed to have obtained, their own advice on the impact of the *Privacy Act 1988* (Cth) on their participation in this REOI process and any subsequent Memorandum of Understanding.
- 24.6 Respondents are expected to comply with the *Privacy Act 1988* (Cth), including the Australian Privacy Principles.
- 24.7 It is intended that any resultant Memorandum of Understanding will require the Respondent to comply with the *Privacy Act 1988* (Cth).

Freedom of Information

- 24.8 The *Freedom of Information Act 1982* (Cth) gives certain rights to the community to access information in the possession of the Commonwealth, which may include any Response submitted and any arrangement resulting from this REOI process and related documents. Access is only limited by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by the Department and public authorities.
- 24.9 Respondents should obtain, and will be deemed to have obtained, their own independent, professional advice on the impact of this legislation on their participation in this REOI process.

Workplace Gender Equality

- 24.10 Respondents should note that they will be required to comply with their obligations under the *Workplace Gender Equality Act 2012* (Cth) and must not enter into any subcontracting arrangements with a subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the Act.

- 24.11 If a Respondent, or any other party that the Respondent proposes to deliver the Requirement, is currently named as non-compliant under the *Workplace Gender Equity Act 2012* (Cth), this is to be disclosed in its Response. In this case, Respondents will be required to obtain a letter of compliance from the Workplace Gender Equality Agency to be eligible for Commonwealth business. The letter of compliance may be attached to a Response or provided separately prior to the Closing Time.

Prohibition of Illegal Workers

- 24.12 Respondents should note that it is the Department policy not to engage with providers engaging Illegal Workers and the declaration in **Attachment B** contains a statement from the Respondent confirming that it will comply with this policy.

Anti-Terrorism Measures

- 24.13 The Respondent and any nominated subcontractors proposed in the Response may not at the Closing Time be listed as terrorists under section 15 of the *Charter of the United Nations Act 1945* (Cth). A consolidated list of such persons, entities and associated assets is maintained by the Department of Foreign Affairs and Trade under the *Charter of the United Nations (Dealing with Assets) Regulations 2008*.
- 24.14 The Department will not consider a Response from a person or organisation on the list.

Unpaid Employee Entitlements

- 24.15 The Respondent may not have a judicial decision against it relating to employee entitlements (not including decisions which are under appeal), in respect of which the Respondent has not paid the claim.

Ombudsman

- 24.16 Respondents should be aware of the *Ombudsman Act 1976* (Cth), which provides rights of access to places occupied by Commonwealth contractors to conduct investigations at those places.
- 24.17 Respondents should obtain, and will be deemed to have obtained, their own independent advice on the impact of this legislation on their participation in this REOI process and any subsequent Memorandum of Understanding.
- 24.18 It is intended that any resultant Memorandum of Understanding will include a right of access by the Ombudsman to the Respondent's premises and/or relevant documents.

Fair Work Act 2009 (Cth)

- 24.19 Respondents are required to comply with all relevant workplace relations laws, including:
- (a) the *Fair Work Act 2009* (Cth) or any applicable workplace relations laws;
 - (b) work health and safety laws; and
 - (c) worker's compensation laws.

Fraud Control

- 24.20 Respondents' attention is drawn to the Australian Government's position on fraud control, set out in the [Commonwealth Fraud Control and Corruption Framework](#).

Subcontracting

- 24.21 Where subcontractors are specified in the REOI Response, the Respondent is required to identify whether the subcontractor complies with the *Fair Work Act 2009* (Cth).

25 PUBLIC STATEMENTS

- 25.1 Respondents may not make any public statements (by means of advertisement or otherwise) in relation to this REOI, or any subsequent Memorandum of Understanding arising out of this REOI, without the prior written consent of the Department. However, nothing in this clause is to be read as limiting a Respondent's right to enter into public debate or criticism of the Australian Government, its agencies, or personnel.

26 ETHICAL DEALING

- 26.1 The Respondent must not:
- (a) lodge a Response that has been compiled with improper assistance of employees or former employees of the Department or uses information improperly obtained or in breach of an obligation of confidentiality;
 - (b) engage in misleading or deceptive conduct in relation to Responses or the REOI process;
 - (c) engage in any collusive conduct, anti-competitive conduct, or any other unlawful or unethical conduct with any other Respondent, or any other person in connection with the preparation of their Response or the REOI process;
 - (d) attempt to solicit information from or influence improperly any officer, employee or agent of the Department, or violate any applicable laws or Commonwealth policies regarding the offering of inducements in connection with the REOI process; or
 - (e) otherwise act in an unethical or improper manner, or contrary to any law.
- 26.2 The Department may exclude from consideration any Response lodged by a Respondent that, in the Department's opinion, has engaged in any behaviour contrary to clause 26.1 in relation to the REOI process. This right is in addition to any other remedies the Department may have under law or in any arrangement with a successful Respondent.

27 ACKNOWLEDGEMENT AND DISCLAIMER

- 27.1 The Respondent acknowledges and agrees that:
- (a) by lodging a Response it accepts the conditions set out in this REOI;
 - (b) lodgement of their Response on time and in accordance with these Terms and Conditions is entirely their responsibility;
 - (c) the Department will not be liable for any loss, damage, costs or expenses incurred by Respondents or any other person if, for any reason, a Response or any other material or communication relevant to

this REOI is not received on time, is corrupted or altered or otherwise not received as sent, cannot be read or decrypted, or has its security or integrity compromised;

- (d) the Department does not warrant that unauthorised access to information and data transmitted via the internet will not occur (Respondents should take their own measures to protect information transmitted electronically);
- (e) under subsection 137.1 of the *Criminal Code Act 1995* (Cth), giving false or misleading information to the Commonwealth is a serious offence;
- (f) the Respondent is deemed to have:
 - i. examined this REOI, any documents referred to in it, and any other information made available in writing by the Department to Respondents for the purpose of responding;
 - ii. examined all further information which is obtainable by the making of reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on its Response;
 - iii. satisfied itself as to the correctness and sufficiency of its Response, including its Response prices; and
 - iv. obtained independent advice on the effect of all relevant legislation in relation to the Respondent's participation in this REOI.
- (g) The Department may reject any Response which is made subject to any due diligence or other investigation to be performed after a Response is submitted.

27.2 All information (whether written, oral or in any other form) which has been and may subsequently be made available to the Respondent is provided on the following conditions:

- (a) in deciding to lodge or not lodge a Response, or in the interpretation of this REOI, the Respondent does not rely on
 - i. any representation (whether oral or in writing) other than as expressed in this REOI; or
 - ii. other conduct of the Department, or any of its officers, employees, advisers or agents;
- (b) any information contained in this REOI or otherwise provided by the Department may not be accurate and/or may change;
- (c) where any such information relates to future matters, no steps have been taken to verify that the information is based upon reasonable grounds, and no representation or warranty, expressed or implied, is made by the Department, or any of its officers, employees, agents or advisers that the statements contained in this REOI or otherwise provided by the Department will be achieved;

- (d) this REOI is designed to reflect and summarise information concerning the Department's Requirement only and is not a comprehensive description of it;
- (e) neither the delivery of this REOI nor any arrangement made subsequent to this REOI will imply that there has been no material change since the date of this REOI or since the date as at which any information contained in this REOI is stated to be applicable;
- (f) except as required by law and only to the extent so required, the Department and its respective officers, employees, agents and advisers will not be liable to any person or body for any loss, damage, cost or expense arising from any information or representations, actual or implied, contained in or omitted from this REOI or other information provided by the Department, or by reason of any reliance by any person or body on any such information or representation; and
- (g) the Respondent should seek its own professional advice as appropriate and should not construe this REOI or other information provided by the Department as investment, legal or tax advice.

27.3 The Respondent is responsible for all costs and expenses related to the preparation and lodgement of their Responses, any subsequent negotiations and any other action or Response in relation to this REOI.

28 DEPARTMENT'S RIGHTS

28.1 Notwithstanding anything else contained in this REOI or limiting its rights at law or otherwise, the Department may:

- (a) vary the terms of this REOI, or the structure, requirements or processes referred to in this REOI;
- (b) vary the timing referred to in this REOI;
- (c) determine at any stage or stages after the Closing Time, short list(s) of Respondents on any basis that the Department considers appropriate;
- (d) cease, suspend or vary the REOI process, or any part of it, where this is in the public interest;
- (e) seek additional information from any Respondent at any time (including from or in respect of a Respondent's proposed subcontractors or agents);
- (f) provide additional information to all Respondents at any time (and where the information is provided after the Closing Time, allow the submission of revised Responses);
- (g) seek and/or contact any contacts or referees other than those proposed by Respondents;
- (h) seek amended Responses or call for new Responses;
- (i) add to, alter, delete or exclude any part of the Requirement;
- (j) select and negotiate with one or more Respondent(s) (including but not limited to parallel negotiations) and/or discontinue any of those negotiations at any time for any reason;

- (k) publish or disclose the names of successful Respondents or those who are shortlisted as a result of evaluations; and
 - (l) allow or not allow a related entity to take over a Response in substitution for the original Respondent.
- 28.2 Without limiting its other rights under this REOI or at law, if the Department concludes that a Respondent has retracted, or attempts to retract, undertakings under which material technical, commercial, financial, corporate, relationship management, legal or contractual issues were resolved during negotiations, the Department may choose to not proceed with that Response and/or exercise another right given by this REOI.
- 28.3 The Department will not be liable or in any way responsible for any loss, cost, expense, claim or damage incurred by a Respondent because the Department:
 - (a) does not invite a Respondent to participate in any subsequent process following completion of this REOI; or
 - (b) exercises or fails to exercise any of the Department's rights under this REOI, including the right to vary the REOI in anyway; or
 - (c) fails to inform a Respondent of its exercise or non-exercise of those rights.
- 28.4 The Department may reject any Response lodged by a Respondent that is engaging or has engaged in any conduct that contravenes any laws or contravenes the Terms and Conditions as set out in this REOI.

29 RIGHT TO TERMINATE

- 29.1 Without limiting the Department's rights under this REOI, at law or otherwise, the Department may, at its sole discretion, suspend or terminate this REOI process at any time, without the requirement to give prior notice if:
 - (a) the Department does not receive any REOI Responses in response to this REOI;
 - (b) the Department does not receive any REOI Response in response to this REOI which meet the Requirements;
 - (c) the Department determines it is in the public interest to do so.

30 APPLICABLE LAW

- 30.1 The laws of the Australian Capital Territory apply to this REOI process.

31 COMPLAINTS

- 31.1 Any complaints arising out of the REOI process should be directed to the Contact Officer in writing by email to migrationassistancepolicy@homeaffairs.gov.au, clearly identifying the issue of concern and the facts and evidence which support the Respondent's complaint.
- 31.2 A Respondent who makes a complaint is requested to clearly identify the issue of concern and to provide any supporting facts and evidence.

- 31.3 On the request of the Commonwealth, all Respondents are to cooperate with the Commonwealth in the resolution of any complaint regarding this REOI process.

32 LOBBYING CODE OF CONDUCT

- 32.1 Respondents must not engage in, or procure or encourage others to engage in, activity which would result in a breach of the Lobbying Code of Conduct (the "Lobbying Code") or the Australian Public Service Commission (APSC) Circular 2008/4, Requirements relating to the Lobbying Code of Conduct and Post Separation Contact with Government. The Lobbying Code requires that Government Representatives shall not knowingly be a party to a lobbying activity where the Lobbyist is not registered on the Prime Minister and Cabinet's Register of Lobbyists.

33 DEPARTMENT'S INFORMATION

- 33.1 Respondents must not, and must ensure that their employees, agents or subcontractors do not, either directly or indirectly record, divulge or communicate to any person any:
- (a) Confidential Information concerning the affairs of the Department, the Commonwealth or a third party acquired or obtained from the Department; or
 - (b) document, data or information provided by the Department in the course of the Respondent preparing or amending an REOI Response and which the Department indicates to Respondents is confidential or which Respondents know or ought reasonably to know is confidential.
- 33.2 The Department's information in the possession of the Respondent must be stored in accordance with the minimum standards for that type of information, as defined in the [Protective Security Policy Framework](#). By submitting a REOI Response, Respondents agree to grant the Department the right for it, or its agent, to inspect premises to ensure compliance with storage requirements.
- 33.3 The Department may require that all written information (whether confidential or otherwise and without regard to the type of media on which such information was provided to Respondents), and all copies of such information made by Respondents, be:
- (a) returned to the Department - in which case Respondents will be required to promptly return all such information to the address identified by the Department; or
 - (b) destroyed by Respondents - in which case Respondents will be required to promptly destroy all such information and provide the Department with written certification that the information has been destroyed.
- 33.4 The Department may exclude from further consideration any REOI Response lodged by a Respondent who has engaged in any behaviour contrary to this clause 33.