

Request For Tender

Part Four – Terms and Conditions of Tender

This is **PART FOUR** of the Request for Tender,
Registry Licence Agreement for .au Second Level Domains.

There are seven Parts to the RFT. This Part must
be read in conjunction with the other Parts of the RFT.

Request For Tender

Part Four – Terms and Conditions of Tender

12. NATURE OF CONTRACT

12.1 Registry Services To Be Performed

Registry Services to be performed are described in detail in the Registry Licence Agreement.

12.2 The Contract

12.2.1 Respondents must ensure that they read the Registry Licence Agreement fully to ascertain the Registry Services to be performed and the terms on which Registry Services are to be performed.

12.2.2 The Contract will be evidenced solely by the Registry Licence Agreement.

12.2.3 The Contract is for a period of four years, unless terminated earlier under the terms of the Registry Licence Agreement.

12.3 Respondent To Make Enquiries

Respondents are advised and expected to ascertain for themselves the actual extent and nature of the Registry Services, as auDA will not entertain any claim arising from a failure to do so.

12.4 Contact Staff

12.4.1 All enquires regarding the tender process or the Contract must be directed by email to <tender@auda.org.au>.

12.4.2 All enquiries and replies to such enquiries will be recorded and posted on auDA's web site at <www.auda.org.au>.

12.4.3 Enquiries regarding the tender process received after 5.00 pm on Friday 23 September 2005 will not be answered.

13. TENDERS

13.1 Form of Tenders

13.1.1 This document, together with Schedules 1, 2, 3, 4, 5 and 6 completed will constitute a tender.

13.1.2 Additional information or documents attached to the Schedules in accordance with clause 14.1 of this Part will also be considered part of the tender.

13.2 Place to Lodge Tenders

13.2.1 The Tender Box is located at:

Maddocks, Lawyers
Level 7
140 William Street
Melbourne VIC 3000

13.2.2 Tenders are to be lodged only in the Tender Box. For clarity, fax or electronic lodgement of tenders will not be accepted or considered.

13.3 Time for Lodging Tenders

13.3.1 The **Closing Time for Tenders** is 2.00 pm on 30 September 2005.

13.3.2 Tenders will only be received at the Tender Box:

13.3.2.1 from 9.00 am on 26 September 2005;

13.3.2.2 until the Closing Time for Tenders.

13.4 Number of Copies

13.4.1 Respondents must lodge at the Tender Box:

13.4.1.1 ten hard copies of each tender, comprising nine bound copies and one unbound copy; and

13.4.1.2 a CD or a DVD containing an electronic version of the tender, in a format which can be read by Microsoft Word or Excel, or in Adobe Portable Document Format (PDF).

13.4.2 The Respondent should also maintain a copy as proof of the tender.

13.4.3 In the event of an inconsistency between the documents lodged under clause 13.4.1 of this Part, the bound hard copy version of the tender prevails to the extent of such inconsistency.

13.5 Late Tenders

auDA is entitled, but not required, to consider late tenders.

13.6 auDA not Required to Accept Tender

auDA is entitled, but not required, to accept the lowest priced or any tender.

13.7 Non-Conforming Tenders

auDA is entitled, but not required, to accept or reject any Non-Conforming Tender.

13.8 Withdrawal of Tenders

Tenders may not be withdrawn within 60 days after Closing Time for Tenders without the consent of auDA.

13.9 Changes to RFT

auDA may, by issuing addenda to all persons issued with the RFT, amend the RFT. Respondents must confirm receipt of addenda in the form required under Schedule 4.

13.10 No Collateral Contract

13.10.1 The submission of a tender by a Respondent will not give rise to any contract governing the tender process, or any aspect of the tender process.

13.10.2 auDA expressly disclaims any intention to enter into any such contract.

14. INFORMATION

14.1 Questionnaire

Respondents must:

14.1.1 complete the appropriate questionnaires contained in Schedule 2 and submit it as part of their tenders; and

14.1.2 supply any information or documents specified in the questionnaire; and

14.1.3 supply any other information or documents which the Respondents consider relevant, and which the Respondents would like the Evaluation Panel to consider in evaluating their tenders.

The information and documents will be used in the evaluation of tenders.

14.2 All Documents Must be Included

The Respondent's tender must include all documents and information which are necessary to substantiate and evidence the Respondent's claims set out in their tender. Respondents are not entitled to submit additional documents or information after their tenders are submitted, unless requested by auDA under clause 15.2.1 of this Part.

14.3 Presentation

auDA is entitled, but not required, to ask any or all Respondents to give a presentation of the Respondents' tenders to the Evaluation Panel. Respondents must ensure that all information relevant to their tenders, or which the Respondents believe should be considered by the Evaluation Panel, are included in full in their tender.

15. EVALUATION OF TENDERS

15.1 Framework for Evaluation

auDA will evaluate tenders according to the process described in Part Three.

15.2 Post-Tender Submissions

15.2.1 auDA may require a Respondent to submit additional information concerning its tender or to personally discuss its tender before any tender is accepted.

15.2.2 Should a Respondent fail to:

15.2.2.1 submit the additional information so required; or

15.2.2.2 attend personally to discuss its tender at auDA,

by the date and time stipulated by auDA, its tender may not be further considered.

15.2.3 A Respondent is not otherwise entitled to submit any additional information concerning its tender after its tender is submitted. Such information, if submitted, will not be considered.

15.3 Rectification of Errors and Omissions

auDA reserves the right to:

15.3.1 check tenders for errors and omissions; and

15.3.2 by agreement with a Respondent, amend a tender price submitted by the Respondent to remedy the effect of any errors or omissions in the calculation of the tender price; and

15.3.3 by agreement with a Respondent, otherwise amend the tender of the Respondent to remedy the effect of any errors or omissions.

15.4 Independent Evaluation Panel

15.4.1 The evaluation of the tenders will be carried out by the Evaluation Panel.

15.4.2 The Evaluation Panel comprises:

15.4.2.1 the two independent directors of the auDA board, that is, Tony Staley and Greg Crew; and

15.4.2.2 Chris Disspain (auDA's Chief Executive Officer) and Jo Lim (auDA's Chief Policy Officer); and

15.4.2.3 Craig Ng, a partner of Maddocks Lawyers (the solicitors for auDA); and

15.4.2.4 John Higgins, managing director of Hayes Knight VIC (the accountants for auDA); and

15.4.2.5 Keith Davidson, the executive director of InternetNZ; and

15.4.2.6 David Keegel, a director of Cybersource Pty Ltd; and

15.4.2.7 such other person that the Evaluation Panel may appoint from time to time,

with the assistance from such other consultants and advisors that the Evaluation Panel may appoint from time to time.

- 15.4.3 auDA may, from time to time, appoint or remove any member of the Evaluation Panel.

15.5 Probity Adviser

David Baird, a partner of Maddocks Lawyers, has been appointed by the board of auDA as the probity adviser in relation to this Request for Tender.

16. ACCEPTANCE OF TENDER

16.1 Determination by Board of auDA

- 16.1.1 Following the evaluation of the tenders, the Evaluation Panel will prepare a report and recommendations to be received by the board of auDA.
- 16.1.2 After considering the Evaluation Panel's report and recommendations the board of auDA will resolve which Respondent (if any) is to be awarded the Contract.

16.2 Acceptance of Tender

- 16.2.1 The successful Respondent will be notified in writing of the acceptance of its tender.
- 16.2.2 The notification of the acceptance of tender will create a contract between the parties on the basis of the successful Respondent's tender and the Registry Licence Agreement.
- 16.2.3 The successful Respondent must execute and return to auDA a formal agreement in the form of the Registry Licence Agreement, as amended by the insertion of any details which Respondents are required to include in tenders (including any documents or information provided to auDA under Schedule Two of Part Five) within seven days of its receipt from auDA.

16.3 Guarantee

- 16.3.1 auDA may accept a tender on condition that a guarantee in respect of the Registry Operator's obligations under the Contract, in the form specified by auDA, is executed by persons or bodies corporate specified in auDA's acceptance.
- 16.3.2 The successful Respondent will be required to notify auDA in writing if it is willing to undertake the Contract on this condition within a fixed time.

16.4 Transition Period

The successful Respondent (if it is any person other than AusRegistry) is required to conduct a transition process under the Registry Licence Agreement. If the Registry Licence Agreement is terminated by either party during the transition period, or otherwise under clause 3.3 of the Registry Licence Agreement, auDA is:

- 16.4.1 entitled to negotiate with other Respondents; and

16.4.2 not required to re-tender,
for the performance of Registry Services.

17. PROBITY OF TENDER PROCESS

17.1 Statutory Declaration and Confidentiality Undertakings

A statutory declaration in the form of Schedule 5 and confidentiality undertakings in the form of Schedule 6 must be made by a person authorised to make such a declaration on behalf of the Respondent and submitted with its tender.

17.2 Canvassing

Respondents must not approach, or request any other person to approach, or offer any gift or hospitality to:

- 17.2.1 any member of auDA's staff; or
- 17.2.2 any board member of auDA; or
- 17.2.3 any officer or staff of the Australian Government's Department of Communications, Information Technology and the Arts, or the Australian Government Information Management Office; or
- 17.2.4 any member or staff of the Australian Information and Communications Technology in Education Committee, or the Australian Government's Department of Education, Science and Training; or
- 17.2.5 any partner or staff of Maddocks; or
- 17.2.6 any partner or staff of Hayes Knight; or
- 17.2.7 any member or staff of InternetNZ; or
- 17.2.8 any member or staff of Cybersource Pty Ltd; or
- 17.2.9 any other member of the Evaluation Panel or any consultant or advisor engaged by auDA in connection with the RFT or the evaluation process,
individually or collectively:
- 17.2.10 to solicit support for their tenders; or
- 17.2.11 to enter into any contract, arrangement or understanding in connection with the transfer, or proposed transfer of any trade, business or undertaking as a Registrar, or any Relevant Interest in any Registrar, in the event that the Respondent is awarded the Contract; or
- 17.2.12 otherwise seek to influence the outcome of the tender process.

17.3 Prohibited Conduct

The tender of any Respondent engaging in conduct prohibited under clause 17.2 of this Part will be immediately disqualified, and will not be considered by auDA.