

**TENDERING CONDITIONS
AND
STATEMENT OF REQUIREMENTS
FOR
PROVISION OF TRANSCRIPTION
SERVICES**

RFT Number: A13/0225

Tender Issue Date: Monday 28 April 2014

Closing Date: Friday 23 May 2014

Closing Time: 5:00pm

Contact Officer

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

CONTACT NAME	Roy Waldon Solicitor to the Commission
CONTACT POSTAL ADDRESS	THE ICAC GPO Box 500 SYDNEY NSW 2001
CONTACT PHONE	(02) 8281 5999
CONTACT EMAIL ADDRESS	rwaldon@icac.nsw.gov.au

Any information given to a tenderer to clarify any aspect of this RFT will also be given to all other tenders if in the opinion of the Principal it would be unfair not to do so.

RFT OVERVIEW

1. Scope of RFT

1.1 Suppliers

- 1.1.1 This Request For Tender (RFT) seeks tenders from suppliers for the provision of a transcription service for the NSW Independent Commission Against Corruption (ICAC) described in the Statement of Requirements herein.

1.2 Contract and Duration

- 1.2.1 ICAC proposes to enter into a contract in the form of the Agreement with the successful tenderer.
- 1.2.2 The Agreement will be in place for a term of three (3) years, with provision for ICAC to exercise an option to extend the period of the Agreement for a period of one (1) year and provision for ICAC to exercise a further option to extend the period of the Agreement for a further period of one (1) year.

1.3 Current Expenditure

- 1.3.1 The current expenditure incurred by ICAC for the provision of a transcription service is in the range \$85,000 to \$220,000 per annum, depending on the number and duration of hearings. This estimate is provided for information only and does not constitute a guarantee that the same expenditure will be incurred in the future.

1.4 Selection of Suppliers

- 1.4.1 ICAC reserves the right to accept any or no tender or any part or parts of a tender. ICAC also reserves the right to select alternatives to those specified where such alternatives are deemed by ICAC to provide more satisfactory solutions ICAC's needs.

2. RFT Structure

- 2.1 This RFT comprises the following:

2.2 Tendering Conditions and Statement of Requirements

- 2.2.1 The Tendering Conditions set out the terms, conditions and processes governing the tender phase of the RFT. The Statement of Requirements is a detailed description of the Services to be provided by the successful tenderer including technical specification, service levels and performance framework. Taken together with the accepted parts of the tenderer's response, it will form part of the Agreement.

2.3 Tender Response

2.3.1 This is the Response prepared by the tenderer to enable ICAC to evaluate the tenderer's offers.

2.4 Agreement

2.4.1 This is the document which contains the terms and conditions of the contractual arrangement proposed to be made between the successful tenderer and ICAC to enable the supply of the Services to ICAC.

3. Performance Framework

3.1.1 ICAC is committed to engaging a Supplier who is able and willing to continually improve its performance during the term of the Agreement.

TENDERING CONDITIONS

4. Tender Preparation

4.1 Tenderer to inform itself

4.1.1 Before submitting its tender, a tenderer must:

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

4.1.3 Satisfy itself:

(a) that the tender, including the price offered is correct; and

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

4.2 Assumptions made by Tenderer

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

5. Eligibility to Tender

5.1 Legal Entity of Tenderer

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

5.1.2 ICAC may ask a tenderer to provide evidence of its legal status or capacity to contract. If tenders from entities propose to contract in their capacity as trustees, such evidence may include copies of the relevant trust deeds. Any evidence requested is to be provided within three (3) working days of the request.

5.2 Financial Capability of Tenderer

5.2.1 ICAC reserves the right to reject any tender if ICAC judges the tenderer not to have appropriate financial capability.

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

5.3 ABN Requirements

- 5.3.1 ICAC will not enter into an Agreement with a company that does not have an Australian Business Number (ABN) and is not registered for GST. Tenderers must be registered for GST and state their ABN in their tender.

6. Tender Process

6.1 Provisional RFT Program

- 6.1.1 Given below is ICAC's provisional RFT program. ICAC may, at its absolute discretion, amend the provisional RFT program.

Milestone	Date
RFT issue	28/4/14
RFT Close Date	23/5/14
Execution of Agreement	August 2014
Transitioning requirements completed	30/9/14
Commencement of supply of service	1/10/14

6.2 Conformity of Tenders

ICAC seeks conforming tenders. Non-conforming tenders may be excluded from the tender process without further consideration at ICAC's discretion.

6.3 Alternative Tenders

- 6.3.1 Tenderers may, if they choose, submit an Alternative Tender. An Alternative Tender must be clearly marked "Alternative Tender".

6.4 Tender Lodgement

- 6.4.1 Tenders (including all supporting information, if any) must be fully received by 5:00pm on Friday 23 May 2014. Tenderers must complete and submit a Tender Response document responding to the Tendering Conditions, the Statement of Requirements and the clauses in the Agreement. The responses should set out sequentially each section, clause or subclause and a response as follows:

Descriptive response - A full description of the tender proposal. This must clearly and concisely cover all aspects of the issue being addressed.

“NOTED” - to indicate that information, as opposed to an obligation upon the Tenderer, has been read and fully understood and the Tenderer has no question or doubt as to its meaning.

“AGREED” - to be used where the Tenderer agrees to completely satisfy the stated conditions or requirements.

“NOT AGREED – ALTERNATIVE” - to be used where the Tenderer does not agree to completely satisfy the stated conditions or requirements, but proposes an alternative. This alternative must be described in full.

“NOT AGREED” - to be used where the Tenderer does not agree to meet the stated requirement, and no alternative is proposed.

No response to a clause or subclause will be deemed to mean “NOT AGREED”.

6.4.2 Tenders must be securely sealed prior to postage or delivery and must be clearly identified with the name of the tenderer and labelled “RESPONSE TO TENDER A13/0225”. If being mailed the tender should be addressed to ICAC at P O Box 500 Sydney NSW 2001. If being delivered, the tender should be delivered to ICAC at level 21, 133 Castlereagh Street, Sydney.

6.4.3 Tenders may be submitted electronically to ICAC at icac@icac.nsw.gov.au.

6.4.4 Tenders should include the name and contact details of a person whom ICAC may contact in relation to the tender.

6.4.5 Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.

6.5 Electronic Tenders

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

6.5.2 Electronically submitted tenders may be made corrupt or incomplete, for example by computer viruses. ICAC may decline to consider for acceptance a tender that cannot be effectively evaluated because it is incomplete or corrupt. Tenderers must note that:

(a) to reduce the likelihood of viruses, a tenderer must not include any macros, applets, or executable code or files in a tender response.

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

ICAC will not be responsible in any way for any loss, damage or corruption of electronically submitted tenders.

6.6 Tender Validity Period

- 6.6.1** The Tender will remain open for acceptance by ICAC for a period of three (3) months from the Closing Date and Closing Time for tenders.

6.7 Late Tenders

- 6.7.1** Late tenders will not be considered unless ICAC is satisfied that the integrity and competitiveness of the tendering process has not been compromised. ICAC shall not penalise any supplier whose tender is received late if the delay is due solely to mishandling by ICAC.

6.8 Extension of Closing Date and Closing Time

- 6.8.1** ICAC may, in its discretion, extend the Closing Date and Closing Time.

6.9 Corruption or Unethical Conduct

- 6.9.1** It is ICAC policy that tenderers and contractors adhere to ethical work practices in their dealings with ICAC. Tenderers must comply with the requirements of the NSW Department of Finance and Services Code of Practice for Procurement and the ICAC Code of Conduct and must disclose any actual or potential conflicts of interests in the Tender Response.

- 6.9.2** If a tenderer, or any of its officers, employees, agents or sub-contractors is found to have:

- (a)** offered any inducement or reward to any public servant or employee, agent or subcontractor of ICAC in connection with this RFT or the submitted Tender;
- (b)** committed corrupt conduct in the meaning of the *Independent Commission Against Corruption Act 1988*;
- (c)** a record or alleged record of unethical behaviour; or not complied with the requirements of NSW Department of Finance and Services Code of Practice for Procurement;

this may result in the tender not receiving further consideration.

- 6.9.3** ICAC may, in its discretion, invite a relevant tenderer to provide written comments within a specified time before ICAC excludes the tenderer on this basis.

- 6.9.4** If ICAC becomes aware of any undisclosed or incompletely disclosed conflict of interests by a successful tenderer after the Agreement has been executed, then ICAC reserves the right to terminate the Agreement.

6.10 Addenda to RFT

- 6.10.1** If, for any reason ICAC, at its sole discretion, requires the RFT to be amended before the Closing Date and Time, an Addendum will be issued. In each case, an Addendum becomes part of the RFT. ICAC, during the tender period may issue

Addenda altering the RFT. In such cases, it is the obligation of the tenderer to verify if any Addenda were issued prior to the Closing Date, even if a tender has already been submitted.

6.10.2 Tenderers must check the web site address, www.icac.nsw.gov.au and download the Addendum.

6.11 Costs of Tenderer participating in the RFT

6.11.1 ICAC will not be liable to any Tenderer for any expenses or costs incurred by the Tenderer as a result of its participation in this RFT, including where the RFT has been discontinued.

6.12 Ownership of Tenders and Tender Documentation

6.12.1 All tenders become the property of ICAC on submission. ICAC may make copies of the tenders for any purpose related to this RFT.

6.12.2 All ICAC tender documentation obtained by tenderers whose tenders are unsuccessful and all ICAC tender documentation obtained by entities that choose not to submit a tender must be returned to ICAC.

6.13 Discontinuance of Tender Process

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

6.14 Variations to Tenders

6.14.1 At any time after the Closing Date of tenders and before ICAC accepts any tender received in response to this RFT, a tenderer may, subject to 6.14.2, vary its tender:

- (a) by providing the ICAC with further information by way of explanation or clarification;
- (b) by correcting a mistake or anomaly; or
- (c) by documenting agreed changes negotiated.

6.14.2 Such a variation may be made either:

- (a) at the request of ICAC, or
- (b) with the consent of ICAC at the request of the tenderer; but only if,
 - (i) in the case of variation requested by the tenderer under clause 6.14.1(a)-(b), it appears to ICAC reasonable in the circumstances to allow the tenderer to provide the information or correct the mistake or anomaly; or

- (ii) in the case of variation under 6.14.1(c), ICAC has confirmed that the draft-documented changes reflect what has been agreed.

6.14.3 If a tender is varied in accordance with clause 6.14.1(a) or 6.14.1(b), ICAC will provide all other tenderers whose tenders have similar characteristics with the opportunity of varying their tenders in a similar way.

6.14.4 A variation of a tender under clause 6.14.1 will not be permitted if in ICAC's view:

(a) it would substantially alter the original tender; or

(b) in the case of variation under clause 6.14.1(a) or 6.14.1(b), it would result in the revising or expanding of a tender in a way that would give a tenderer an unfair advantage over other tenderers.

6.15 Evaluation Process

6.15.1 Tenders will be assessed against the evaluation criteria listed below which are not indicated in order of significance or equal weight. The evaluation criteria for this RFT that do not relate to price will account for 70% of the total evaluation score. The evaluation criteria for this RFT that relate to price will account for 30% of the total evaluation score. Information supplied by the tenderer in Tender Response will contribute to the assessment against each criterion.

6.15.2 Tenderers must respond clearly to all the evaluation criteria listed in this RFT. Tenders that do not include a fully completed Tender Response, in particular those tenders which do not contain sufficient information to permit a proper evaluation to be conducted, or electronic tenders that cannot be effectively evaluated because the file has become corrupt, may be excluded from the tender process without further consideration.

6.15.3 ICAC may assess an Alternative Tender against the evaluation criteria where submitted with a Conforming Tender.

6.16 Evaluation Criteria

6.16.1 The evaluation criteria for this RFT (which include but are not limited to) are:

- (a) Capability and capacity to provide a transcription service in accordance with the Statement of Requirements including the extent to which the Response meets the mandatory and desirable requirements set out in the Statement of Requirements.
- (b) Quality assurance.
- (c) Proposed arrangements for managing the Agreement.
- (d) Price.
- (e) Previous experience and performance on meeting the requirements covered in this RFT or other similar requirements.
- (f) Financial capacity and stability.
- (g) Compliance with the proposed conditions of the Agreement.

- (h) Record of ethical behaviour.

6.17 Site inspections and Presentations by Tenderer

- 6.17.1** Prospective tenderers may arrange to inspect the ICAC hearing rooms by contacting the ICAC Contact Officer.
- 6.17.2** ICAC may, during the evaluation of tenders, undertake site inspections of tenderer's proposed premises. ICAC may in its discretion, and as part of the evaluation process, invite any or some of the tenderers to make personal presentations regarding their tender. The tenderer shall make any presentations at its own cost. However, receiving a presentation by a tenderer in no way represents a commitment by ICAC to accept any aspect of the tender. All information obtained during the course of presentation or site inspection may be taken into consideration in the evaluation of tenders.

6.18 Acceptance or Rejection of Tenders

- 6.18.1** ICAC is not bound to accept the lowest priced tender.
- 6.18.2** If ICAC rejects all the tenders received it may invite fresh tenders based on the same or different criteria (specifications and details contained in Alternative Tenders will not be used as the basis for the calling of new tenders).
- 6.18.3** ICAC expressly reserves the right to accept, in its discretion, either or both of the following:
 - (a) Any Alternative Tender or part of an Alternative Tender, when submitted with a Conforming Tender; and
 - (b) Any other Non-Conforming Tender or part of a Non-Conforming Tender (not, in either case, being an Alternative Tender or part of an Alternative Tender) that, in ICAC's opinion, is substantially a Conforming Tender.

6.19 Post Tender Negotiations

- 6.19.1** Before making any determination as to acceptance or rejection of Tenders ICAC may, at its discretion, elect to conduct limited negotiations with preferred tenderers, including those who have submitted Alternative Tenders or who have submitted Conforming Tenders, to mutually improve outcomes. ICAC will not enter into negotiations to amend the Agreement.
- 6.19.2** If ICAC considers that none of the tenders are fully acceptable either because of non-conformance or because they do not represent sufficient value for money, but considers that full conformity is achievable, negotiations may be conducted with the tenderer that submitted the most conforming tender based on the evaluation criteria. The purpose of the negotiations will be advised by ICAC and made clear to the participants before the commencement of negotiation.
- 6.19.3** ICAC may at its absolute discretion elect to conduct post tender negotiations under 6.19 with more than one tenderer in the event that it decides that the closeness of the tenders or timing constraints warrants doing so.

6.20 Method of Acceptance

6.20.1 Acceptance of a tender or part tender will be subject to the execution of the Agreement. Until ICAC and the successful tenderer execute the Agreement there will be no legally enforceable agreement concluded between them.

6.21 Disclosure Information

6.21.1 Following ICAC's decision, all tenderers will be notified in writing of the outcome of their Tenders.

6.21.2 Details of this tender and the outcome of the tender process will be disclosed in accordance with the *Government Information (Public Access) Act (NSW)*.

STATEMENT OF REQUIREMENTS

1. Introduction
2. Service requirements

1. INTRODUCTION

1.1 The ICAC

ICAC is a corporation constituted by section 4 of the *Independent Commission Against Corruption Act 1988* (the ICAC Act). The role of ICAC is to investigate, expose and minimise corruption in or affecting the NSW public sector. As part of its role ICAC may conduct public inquiries (hearings held in public) and compulsory examinations (hearings held in private).

1.2 Location of hearings

Hearings will generally be conducted in the two hearing rooms at ICAC's new Sydney premises at level 7, 255 Elizabeth Street Sydney NSW. The ICAC will relocate to these premises in September 2014.

Hearings may be conducted elsewhere, including outside the Sydney metropolitan region, however this is likely to be a rare occurrence. All of the public inquiries or compulsory examinations referred to in the hearings profile below were conducted at ICAC's Sydney premises.

1.3 ICAC Transcript

Transcription of the evidence given at hearings, produced to the standards of the Supreme Court of New South Wales, is required for all hearings conducted by the Commission.

It is essential that transcript is accurate and produced on a timely basis and meet ICAC's requirements for confidentiality and security of data.

In addition to using transcript for its own purposes, ICAC may also need to make transcript of its proceedings available to a court as evidence of what was said in a hearing. This will be necessary where what was said is required to be admitted in evidence in a criminal prosecution. It is therefore essential that there is a mechanism for certifying the accuracy of the transcript in a form admissible in evidence under the *Evidence Act 1995*.

1.4 Current use of information technology

The standard office automation software is Microsoft Office. Transcript text for individual hearings is accessed via the Commission's network utilising Word 2007 however this may be upgraded to Word 2013. The transcription service proposed by the tenderer should be able Word 2007 capable and able to be made Word 2013 capable.

Further information is available to Tenderers on request.

1.5 Hearings profile

In any one day of a public inquiry (public hearing) evidence may be taken from a number of witnesses.

A number of compulsory examinations (private hearings) may be conducted on any given day. This is because the examination of each witness is categorised as a separate compulsory examination. Compulsory examinations are usually conducted sequentially rather than simultaneously. There may be occasions when one or more compulsory examinations in one matter are held simultaneously with a public inquiry or compulsory examinations in another matter.

In the calendar year **2010** there were 89 days of public inquiries and 157 compulsory examinations. On 17 days a public inquiry was conducted simultaneously with one or more compulsory examinations not related to the public inquiry.

In the calendar year **2011** there were 73 days of public inquiries and 95 compulsory examinations. On 8 days a public inquiry was conducted simultaneously with one or more compulsory examinations not related to the public inquiry.

In the calendar year **2012** there were 82 days of public inquiries and 244 compulsory examinations. On 18 days a public inquiry was conducted simultaneously with one or more compulsory examinations not related to the public inquiry.

In the calendar year **2013** there were 90 days of public inquiries and 196 compulsory examinations. On 34 days a public inquiry was conducted simultaneously with one or more compulsory examinations not related to the public inquiry.

Between 1 January 2014 and 30 March **2014** there were 19 days of public inquiries and 42 compulsory examinations. On 7 days a public inquiry was conducted simultaneously with one or more compulsory examinations not related to the public inquiry.

2. SERVICE REQUIREMENTS

2.1 Information about tenderers

It is **mandatory** the Tenderer provides the following information:

- company name and ABN
- address
- telephone number
- facsimile number
- email address
- name of contact person
- details of all off-site premises to be used to provide the transcription service
- a current client list and referees.

Tenderers are also required to provide the following information if requested by ICAC:

- the most recent annual report
- the most recent audited financial statements
- identification details of principals, directors, secretary and major shareholders
- identification details of all staff who will have any dealings with ICAC information

2.2 Transcription service

It is **mandatory** that the Tenderer provide a transcription service which involves:

- on-site recording and monitoring of ICAC hearings;
- off-site transcription of ICAC hearings in electronic form;
- production of transcript, witness lists and exhibit lists in electronic form in the format required by ICAC;
- regular, timely and secure transmission of electronic product from and to ICAC;
- all items of equipment including hardware, software, cables, connectors etc to provide the transcription service;
- all services for the operation of equipment and software to provide the transcription service, including supply, installation, maintenance, and support;
- identification of any equipment including hardware, software, cables, connectors etc required to be provided by ICAC to ensure delivery of the transcription service;

- provision of trained personnel to provide the transcription service; and
- certification of the accuracy of the transcript in a form admissible in evidence under the *Evidence Act 1995*.

2.3 Alternative tender

ICAC will consider an alternative tender based on the provision of instantaneous transcription services to its hearing rooms. It is **mandatory** that the provision of any instantaneous transcription service includes:

- on-site recording and monitoring of ICAC hearings;
- on-site electronic transcription of ICAC hearings;
- production of transcript, witness lists and exhibit lists in electronic form in the format required by ICAC;
- regular, timely and secure transmission of electronic product from and to ICAC;
- all items of equipment including hardware, software, cables, connectors etc to provide the transcription service;
- all services for the operation of equipment and software to provide the transcription service, including supply, installation, maintenance, and support;
- identification of any equipment including hardware, software, cables, connectors etc required to be provided by ICAC to ensure delivery of the transcription service;
- provision of trained personnel to provide the transcription service; and
- certification of the accuracy of the transcript in a form admissible in evidence under the *Evidence Act 1995*.

2.4 Description of solution

It is **mandatory** that the tender fully set out the solution to the provision of the transcription service in terms of:

- mechanisms to achieve reliability;
- mechanisms to achieve timely production of transcript in electronic form;
- mechanisms to handle electronic transcript production;
- mechanisms to ensure required levels of accuracy;
- mechanisms to ensure timely and secure transmission of electronic product to and from the ICAC.

2.5 Pricing

It is **mandatory** that Tenderers set out the basis on which they will charge ICAC for the provision of the transcription service.

It is **mandatory** that the mechanism for any proposed variation in charges during the term of the contract (and any extension thereof) is fully set out.

2.6 Independence of tenderer from ICAC’s technical expertise

It is **mandatory** that the transcription service is totally independent of ICAC expertise for installation, modification, operation, maintenance and support.

2.7 Production of transcript at other sites

It is **mandatory** that the transcript service be available for hearings held at sites other than the ICAC’s premises. Tenderers are required to specify how this will be provided and to specify any variations in equipment, procedures and cost from those that apply to hearings to be conducted at the ICAC’s premises.

2.8 Equipment and assistance provided by ICAC

It is **mandatory** that the Tenderer identify any equipment including hardware, software, cables, connectors etc required to be provided by ICAC and/or technical assistance to ensure delivery of the transcription service.

2.9 Liaison with ICAC

The ICAC and the successful Tenderer will both nominate a contact officer who will liaise with each other on behalf of their respective employers during the duration of the contract or any extension thereof and the email address of each contact officer.

ICAC will normally use email to book the transcription service for each hearing.

2.10 Liability in event of cancellation of a hearing

It is **mandatory** that the ICAC is not held liable in the event of cancellation of a sitting where a minimum of three (3) hours notice from the appointed time is given.

2.11 Description of equipment to be provided by the tenderer

It is **mandatory** that all equipment required to support the bid solution is fully itemised and described by the Tenderer (“Contractor Equipment”).

2.12 Quantity of Contractor Equipment

It is **mandatory** that sufficient quantities of Contractor Equipment are available to provide transcript services for all hearings.

2.13 Backup and recovery of electronic format data

It is **mandatory** that suitable Contractor Equipment is supplied for the backup and recovery of electronic format data sufficient to ensure that no delays will be experienced in the transcript production process.

It is **mandatory** that the Tenderer fully describe the mechanism and procedures for backup and recovery of electronic data held on Contractor Equipment.

2.14 Equipment installation

It is **mandatory** that full installation services are provided by the Tenderer for all items of Contractor Equipment, including delivery, registration of delivered equipment items, unpacking, removal of packing material, hardware setup and configuration, and software setup and configuration.

2.15 Equipment maintenance

It is **mandatory** that the Tenderer provides a maintenance and support service for all items of Contractor Equipment and software used to provide the transcription service so that all equipment is maintained in good working order and condition.

2.16 Maintenance period

It is **mandatory** that the maintenance service be provided for the duration of the Agreement and any extension thereof.

2.17 Retention of damaged parts containing data

It is **mandatory** that the maintenance service incorporates a method for retention by ICAC of damaged parts of Contractor Equipment that may hold sensitive data.

2.18 Full description of proposed maintenance service

It is **mandatory** that Tenderers fully describe the proposed maintenance service including hours of availability, problem resolution, available expertise, response time and problem escalation mechanisms.

2.19 Timeframe for provision of transcript

It is **mandatory** that a complete and accurate transcript is available in electronic form on a timely basis.

The response to the tender should indicate the time within which the final electronic form of transcript will be provided to ICAC:

- a) of that part of the hearing conducted prior to lunch (1.00pm); and

- b) of that part of the hearing conducted between the end of the lunch period and the end of the hearing day (usually from 2.00pm to 4.00pm).

2.20 Electronic transcript

The ICAC requires that the electronic version of the transcript be compatible with its existing computer systems such that transcript text can be made available, without conversion and loss of formatting, to the ICAC's word processing application (currently Microsoft Word 2007).

It is **mandatory** that the electronic transcript be compatible with existing ICAC systems to enable timely and secure electronic transfer of transcript and allow for the ICAC to produce hard copy transcript without loss of formatting.

2.21 Secure automatic transmission of data

It is **mandatory** that a mechanism to enable secure automated transmission of transcript text data in electronic form from the transcription service system to the ICAC's network is provided to the satisfaction of the ICAC.

2.22 Compatibility of cabling and network equipment

It is **mandatory** that the cabling and network equipment used are compatible with ICAC's existing network such that existing cabling may be used for the connection of transcription service equipment.

2.23 Transcript data conversion

It is **mandatory** that no significant transcript data conversion is required in the process of transferring electronic forms of text. Outline the proposed mechanism for any data conversion, if required.

2.24 Availability of data for backup purposes

It is **mandatory** that an electronic form of all transcript data is available in order to provide full recovery of any transcript document that may become lost, corrupted or otherwise non-available.

2.25 Frequency of backup procedure

It is **mandatory** that backups are taken and provided to ICAC at a frequency to enable document recovery, if necessary, on the day following production.

2.26 Form of transcript

It is **mandatory** that when printed from the electronic form the transcript complies with ICAC's formatting requirements as set out below.

Note that in the following a "sitting" in relation to a public inquiry refers to the proceedings of a morning or part thereof, or the proceedings of an afternoon or part thereof and in relation to a compulsory examination refers to that compulsory examination.

2.27 Separate document for morning and afternoon sittings

It is **mandatory** that the transcript of each sitting is a separately named document, i.e. morning and afternoon sittings must be presented separately.

2.28 Naming conventions

It is **mandatory** that documents are named according to the ICAC's naming conventions. These will be conveyed to the Tenderer upon signing of the Agreement.

2.29 Format for cover page for transcript of each sitting

It is **mandatory** that a cover page for each sitting is created for printing from the electronic product containing the information and in the format of the examples for a public inquiry and a compulsory examination in **Schedule A**.

2.30 Format for other transcript pages

It is **mandatory** that the other transcript pages for each sitting are created for printing from the electronic product in the format of the example in **Schedule B**, including the print size and font.

2.31 Data on the bottom of each transcript page, excluding the cover sheet

It is **mandatory** that the following information is provided at the bottom of each page of transcript except for the cover sheet:

- Date of transcript, e.g. 22/4/13
- page number, e.g. 1236
- transcriber's initials, e.g. AEB (for Anne Eliza Black)
- surname of witness, e.g. JONES
- name of counsel examining witness in brackets, e.g. (WATSON)
- ICAC investigation number, e.g. E12/2107

2.32 Paper size

It is **mandatory** that transcript documents be formatted for printing on A4 paper.

2.33 Line numbering

It is **mandatory** that some form of line numbering in the margin, or other such suitable breakdown of pages for ready reference to text can be provided.

2.34 Additional features

Tenderers should inform ICAC of any additional or enhanced features that the proposed equipment can provide, or any ideas or suggestions that would improve upon that proposed.

2.35 Quality control

It is **mandatory** that **methods** of quality control be specified for the document as a whole and for aspects within it, e.g. names, dates, etc.

2.36 Accuracy

The level of accuracy of its transcript is essential to ICAC, especially from an evidentiary point of view.

It is **mandatory** that Tenderers specify the level of accuracy guaranteed for the documents produced.

2.37 Spelling

It is **mandatory** that the Tenderer provide proposals acceptable to ICAC to ensure accurate and uniform spelling of all names and words occurring in the transcript.

2.38 Audits

It is **mandatory** that the successful tenderer agree to ICAC conducting spot audits from time to time to satisfy itself as to the quality of the service.

2.39 Electronic despatch

It is **mandatory** that Tenderers specify the means by which they will securely transmit electronic product from and to ICAC and to outline the steps they would take to ensure the safe storage of such backups as it would be deemed necessary to keep until notification of the arrival of the original in usable format.

2.40 Exhibit list

It is **mandatory** that an Exhibit List for each sitting is created for printing from the electronic product in the format in **Schedule C** and setting out the following information:

- Exhibit number

- description of the exhibit
- ICAC property number of exhibit
- page number of transcript where exhibit tendered
- name of witness

2.41 Witness list

It is **mandatory** that a Witness List is created for printing from the electronic product in the format in **Schedule D** for each public inquiry and updated on a daily basis. The list will set out the following information:

- name of the witness
- name and address of the legal representative
- name and address of the instructing solicitor
- date(s) of appearance
- transcript page(s) where evidence of witness commences

2.42 Certification

It is **mandatory** that the Tenderer provide details of how transcribers will certify that that part of the transcript prepared by them has been accurately transcribed.

2.43 Audio recording of hearing

ICAC audio records the evidence given in each public inquiry and compulsory examination. It is **mandatory** that the Tenderer be able to operate ICAC recording equipment to ensure that all evidence is recorded.

2.44 Documentation relating to the transcription process

This refers to forms, etc. that document the process and assist in the future retrieval and administration of the output of the transcription process.

It is **mandatory** that any such documentation is the property of ICAC and will be provided to ICAC.

2.45 Transcription service staff on site

It is **mandatory** that staff of the Tenderer are provided **on site** to record the hearings and monitor the recording and transmission process.

2.46 Transcription service staff off site

It is **mandatory** that (with the exception of the provision of instantaneous transcript) the Tenderer provide staff off-site to undertake the actual transcription.

2.47 Staff required for various combinations of hearings at ICAC premises and elsewhere

It is **mandatory** that staffing flexibility is provided such that the needs of the following can be supported:

- one hearing
- two simultaneous hearings at the ICAC's premises
- two simultaneous hearings, one at a site other than the ICAC's premises

2.48 Conduct of staff

It is **mandatory** that when at ICAC premises the Contractor and its staff comply with all reasonable directions of ICAC officers and the ICAC procedures relating to occupational health and safety.

2.49 Transcription staff

It is **mandatory** that Tenderers specify the numbers of staff and supervisors (on site and off site) to be used to provide the transcription service for each and every hearing.

2.50 Staff numbers

It is **mandatory** that the necessary staff numbers be maintained at all times to ensure delivery of the transcription service.

2.51 Staff training

It is **mandatory** that staff be fully trained and proficient in each and every aspect of the transcription service to a standard acceptable to the Commission, as necessary to the Request for Tender and for the life of the contract and any extension thereof.

2.52 Responsibility for ensuring professional standards

It is **mandatory** that the successful Tenderer bears sole responsibility to ensure that the highest professional standards, commensurate with the ICAC's requirements, are maintained. The ICAC will at all times be the sole determiner as to whether or not the professional standards and proficiency required has been maintained.

2.53 Security vetting

It is **mandatory** that all staff directly or indirectly involved in the provision of the transcription service (including persons undertaking maintenance of equipment used to provide the transcription service) be security vetted by the ICAC. This will involve completion by each staff member of the ICAC's security vetting package. The level of vetting will be determined by the ICAC. At least three weeks from the ICAC receiving a completed security vetting package is required by the ICAC to complete vetting. Only

staff who are deemed by ICAC to have been security vetted are to be involved directly or indirectly in the provision of the transcription service.

2.54 Consent to conduct enquiries/release information

It is **mandatory** that staff being vetted consent to the ICAC undertaking any background enquires the ICAC considers appropriate to satisfy itself that the particular person does not pose any security or other risk to the ICAC.

2.55 Advance security vetting to cover emergency staff

To cater for cases when emergency staff may be brought in, it is **mandatory** that stand-by staff be security vetted in advance.

2.56 Notice required for security vetting

It is **mandatory** that the Commission be given four weeks notice of appointment of new staff so that security vetting can be conducted.

2.57 Notification of change in information

It is mandatory that all staff security vetted by ICAC immediately advise ICAC of any change to the information provided by them to ICAC during their security vetting.

2.58 Staff departure and exit interviews

It is **mandatory** that ICAC be given at least two weeks advance notice in writing of staff's intention to leave and the staff member concerned is made available to ICAC for an exit interview if the ICAC so requests.

2.59 Removal of staff

It is **mandatory** that ICAC can require the removal of staff from involvement in the provision of the transcription service. Reasons will not necessarily be given for such decisions.

2.60 Subcontracting

It is **mandatory** that the successful tenderer not subcontract any part of the transcription services without ICAC's written approval.

2.61 Confidentiality of records

It is **mandatory** that all records relating to ICAC hearings are dealt with confidentially and that no information or records obtained or created during the course of or for the purpose of the provision of the transcription service is communicated to any contractor staff not security vetted by ICAC or to any other person, other than ICAC officers.

2.62 Ownership of items and records

It is **mandatory** that all items and records used and produced for the transcription service and any copies are and remain ICAC property.

2.63 Insurance

It is **mandatory** that the successful Tenderer provides insurance cover for Workers Compensation, Public Liability, and any other insurances as considered necessary by ICAC. Copies of all relevant policies are to be provided by the successful tenderer to ICAC on contract award.

SCHEDULE A

SAMPLES OF TRANSCRIPT COVER PAGES FOR EACH SITTING OF A PUBLIC INQUIRY AND EACH COMPULSORY EXAMINATION

INDEPENDENT COMMISSION AGAINST CORRUPTION

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THE HON. MEGAN LATHAM, COMMISSIONER

PUBLIC INQUIRY

OPERATION: MAXIMUS

Reference: E12/1010

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 25 MARCH 2014

AT 10:21 AM

PAGES 29 - 67

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

25/03/14 (DRG)
E12/1010

28T

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COMPULSORY EXAMINATION

OPERATION: MAXIMUS

Reference: E12/1010

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 24 MARCH 2014

AT 9:30 AM

PAGES 246PT-309PT

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24/03/14 (STV)
E12/1010

246PT

SCHEDULE B

SAMPLE OF TRANSCRIPT PAGES

THE COMMISSIONER: Yes. Is this is Mr Oweis?

MR POLIN: Yes, Commissioner.

MR HARRIS: Commissioner, Harris for Mr Oweis. Could I indicate he would be seeking a section 38 declaration.

THE COMMISSIONER: Thank you, Mr Harris.

10 MR HARRIS: And may I foreshadow that he'll be making an affirmation.

THE COMMISSIONER: Thank you.

MR HARRIS: Thank you.

THE COMMISSIONER: Mr Oweis, do you understand that if I make the order that is proposed that it protects you against the use of your answers in any criminal, any criminal proceedings against you but it does not protect you in the event that you give false evidence before the Commission, you
20 understand that?

MR OWEIS: Yes.

THE COMMISSIONER: All right. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and according there is no need for the witness to make objection in respect of any particular
30 answer given or document or thing produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDING
40 THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Can we have the witness affirmed, please

<CARMEN MICHELLE ATTARD, under former oath [2.07pm]

THE COMMISSIONER: Yes, sorry about that delay. Yes, Mr- - -

MS McGLINCHEY: Commissioner, if I could just briefly- - -

THE COMMISSIONER: Oh, yes.

10 MS McGLINCHEY: - - -make an application.

THE COMMISSIONER: Yes.

MS McGLINCHEY: Look, on behalf of my client I'm making an applicant that the name Smith be the subject of a non-publication order and I do that on information from my client that Smith actually suffers, has a longstanding history of depression and may find it quite difficult to perhaps read in the papers tomorrow that there was a discussion about her position and various matters to do with how, with whatever benefit she may have
20 got. So it's not to do with assisting my client at all, it's just in sensitivity of suppression of a name, not the evidence.

THE COMMISSIONER: Do you have a view about it, Mr Polin?

MR POLIN: No, Commissioner, other than later on down the track if there needs to be findings that you need to be able to- - -

THE COMMISSIONER: Mmm.

30 MR POLIN: That's, but if that can be revisited later on down the track, that might be able to resolve that issue, as long as the findings can make sense in terms of identifying the transaction and the like if need be.

THE COMMISSIONER: Oh, well, we'll cross that bridge when we come to it. I'll make an order until further notice that the name, Smith, was it?

MS McGLINCHEY: Smith, yes.

40 THE COMMISSIONER: Smith be suppressed.

AN ORDER THAT THE NAME "SMITH" IS TO BE SUPPRESSED

MS McGLINCHEY: Yes.

THE COMMISSIONER: Sorry, the spelling it S.M.I.T.H, is it?

received that email and asking them for money or, or accepting the money that they offered you did so by way of repeating an explanation or an account that you knew to be false, do you understand that?---In hindsight yes, yes, yes.

10 No, no, no, no, not in hindsight. You said - this is the point I'm making - you said you understood very soon after 9 May, 2012 that your brother was giving you a false explanation for needing these funds so what's implicit in that answer is that you sought money after that email was received by you from staff and you repeated an account to them, a reason for the, for the necessity for the loans that you knew to be false. Doesn't that logically follow?---Yes, it does.

20 And you did that, did you not, because you knew your brother was in trouble, you didn't know what it was, you didn't know what the explanation really was but you did it because he was in trouble and you didn't really care how you got the money to him, isn't that the reason?---Well, I wouldn't say I wouldn't care how I got the money, I was concerned about how I got the money.

But you needed the money because you knew he was in, he was in some sort of trouble?---Well, I, I didn't know it was him specifically, I still thought it was Jessica at that time.

All right. Anything arising?

MR POLIN: Commissioner, there was just one matter.

30 I've been asking you questions for two, three, nearly four hours today haven't I?---Yes, you have.

Your counsel asked you one question about your health and you got visibly upset about it?---Yes.

40 I've been asking you questions and repeatedly about the fact that you've been told false stories, that you were asking for money for people on the basis of those false stories, you never seemed to get upset about it, why is that?---Because my personal health is not something that I like to talk publicly about.

You've lost hundreds of thousands of dollars you say?---Probably because I've already shed tears over the last six months about it.

It doesn't seem to concern you though as you're giving evidence?---It does concern me, believe it, it's just not outwardly, that's all.

Nothing further, Commissioner.

SCHEDULE C

SAMPLE OF EXHIBIT LIST

EXHIBIT LIST

Date: 17 February, 2014

Number E13/0275

Number	Description	Page No.
	EXHIBIT 1 - BUNDLE OF 30 WRITTEN APPLICATIONS MADE BY MR CAMILLERI FOR ADVANCES OF HOLIDAY/LONG SERVICE LEAVE AT RAILCORP.....	18
	EXHIBIT 2 - BUNDLE OF DOCUMENTS CONTAINING CODE OF CONDUCT OF RAILCORP (JULY 2011), CODE OF CONDUCT OF RAILCORP (MAY 2012), GIFTS & BENEFITS DECLARATION FORM AND “1 POLICY: GIFTS AND BENEFITS”	32
	EXHIBIT 3 - COPY CONFLICTS OF INTEREST REGISTER.....	40

Date: 18 February, 2014

Number E13/0275

Number	Description	Page No.
	EXHIBIT 4 - “FILE NOTE” OF GAVIN CAMPBELL DATED 5 NOVEMBER 2012	104
	EXHIBIT 5 - LETTER FROM JOSEPH CAMILLERI TO GAVIN CAMPBELL “RE CURRENT PERSONAL FINANCIAL SITUATION- JOE CAMILLERI” DATED 8 NOVEMBER 2012.....	117
	EXHIBIT 6 - LETTER FROM JOHN CAIRNS, DIRECTOR PEOPLE AND CHANGE TO JOE CAMILLERI “RE YOUR EMPLOYMENT” DATED 14 FEBRUARY 2013	125
	EXHIBIT 7 - ROLLING STOCK LEVEL 3 MAINTENANCE AND LOGISTICS CONTRACT STEERING COMMITTEE MEETING- NUMBER 1	161
	EXHIBIT 8 - EMAIL CHAIN FROM MARK ROSS-SMITH TO JOSEPH CAMILLERI “RE EVERYTHING INFRASTRUCTURE AGREEMENT” DATED 15 AUGUST 2012	172
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	EXHIBIT 10 - LETTER WITH CBA LETTERHEAD ADDRESSED TO JESSICA CAMILLERI DATED 22 OCTOBER 2012.....	181

SCHEDULE D

SAMPLE OF WITNESS LIST

WITNESS LIST

Date: 17 February, 2014

Number E13/0275

Name of Witness

Page No.

ROBERT FRANK JAMES MASON, affirmed [11.53am].....12
Occupation: Chief Executive, New South Wales Trains
Legal Representative: Mr Mackay
Address: 502/17A Hickson Road, Dawes Point

GAVIN DAVID CAMPBELL, affirmed [3.16pm].....65
Occupation: Director of Maintenance for Sydney Trains
Legal Representative: Mr Goodman
Address:

Date: 18 February, 2014

Number E13/0275

Name of Witness

Page No.

GAVIN DAVID CAMPBELL, on former affirmation [9.56am]80
Occupation: Director of Maintenance for Sydney Trains
Legal Representative: Mr Goodman
Address:

MARK EDWARD ROSS-SMITH, affirmed [2.24pm].....146
Occupation: Employee of EIG
Legal Representative: Mr Eurell
Address:

Date: 19 February, 2014

Number E13/0275

Name of Witness

Page No.

MARK EDWARD ROSS-SMITH, on former affirmation [10.01am].....183
Occupation: Employee of EIG
Legal Representative: Mr Eurell
Address:

WITNESS LIST
E13/0275

FORM OF AGREEMENT

TRANSCRIPTION SERVICES AGREEMENT

This AGREEMENT is made on

2014

BETWEEN: THE INDEPENDENT COMMISSION AGAINST CORRUPTION a corporation constituted under the *Independent Commission Against Corruption Act 1988* (“ICAC Act”) of Level 21, 133 Castlereagh Street, Sydney New South Wales A.B.N. 17 934 402 440 (“ICAC”)

AND:

A.B.N
 (“the Supplier”)

WHEREAS:

- A. ICAC wishes the Supplier to provide a Transcription Service.
- B. The Supplier has agreed to provide a Transcription Service on the terms and conditions contained in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

“**Commencement Date**” means the commencement date for the undertaking of the Services specified in Part 1 of Schedule A.

“**Completion Date**” means the completion date for the undertaking of the Services specified in Part 2 of Schedule A.

“**Confidential Information**” means in relation to a party all information which relates either directly or indirectly to the business of that party regardless of the form in which that information is constituted, and which is not lawfully in the public domain; but does not include:

- . details of the Agreement, including the description of the Services to be provided, commencement date of the Agreement and the period of the Agreement;
- . the full identity of the Supplier including details of cross ownership of relevant companies;
- . the financial provisions of this Agreement;
- . the significant evaluation criteria used in tender assessment;

- . any provisions relating to options available under or variations to this Agreement.

"**GST**" means a tax, levy, duty, charge, deduction imposed by the GST law together with any related additional tax, interest, penalty, fine, or other charge calculated by reference to the value of anything supplied other than one imposed on net income GST.

"**GST Law**" means any law imposing a GST and includes *A New Tax System (Goods & Services Tax) Act 1999*, or if that Act does not exist for any reason, means any Act imposing, or relating, to a GST and any regulation made pursuant to any such Acts.

"**ICAC Representative**" means the ICAC employee notified to the Supplier from time to time pursuant to clause 3.2.

"**Intellectual Property**" means present and future copyright, patents, trade marks (whether or not registered) and designs (whether or not registered), business names and Confidential Information.

"**Service Fee**" means the fees to be paid by ICAC to the Supplier for the Services, as set out in Part 4 of Schedule A.

"**Specification**" means the documents which comprise ICAC Tendering Conditions and Statement of Requirements (as set out in Schedule B to this Agreement), the Supplier's successful response (as set out in Schedule C to this Agreement) together with the detail of any negotiated resolution of any non conformance as set out in Schedule D to this Agreement.

"**Supplier Representative**" means the employee of the Supplier notified to ICAC from time to time pursuant to clause 3.1.

"**Transcription Service**" means the provision by the Supplier of the transcription service described in the Statement of Requirements and the Supplier's response.

1.2 In this Agreement, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning this Agreement;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expression have corresponding meanings;

- (d) a reference to a clause, paragraph, part, schedule or annexure is a reference to a clause or paragraph or part of or schedule or annexure to this Agreement and a reference to his Agreement includes any schedules and annexures;
- (e) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to “A\$”, “\$A”, “dollar” or “\$” is a reference to Australian currency;
- (g) a reference to a specific time for the performance of an obligation is a reference to that time then currently operative in Sydney NSW.
- (h) a reference to a third party includes its executors, administrators, successors and permitted assigns;
- (i) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies; and
- (j) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Interpretation Act 1987 (NSW)*.

2. APPOINTMENT OF THE SUPPLIER

2.1 In consideration of ICAC agreeing to meet its obligations under this Agreement, the Supplier agrees to provide the Transcription Service in accordance with the provisions of this Agreement.

2.2 The Supplier will:

- a) provide the Transcription Service so as to fully and adequately meet the requirements indicated to the Supplier by ICAC in accordance with this Agreement and any reasonable request made by ICAC from time to time which is not in conflict with the intention of this Agreement;
- b) provide all information in respect to the provision of the Transcription Service as ICAC or the ICAC Representative may from time to time reasonably request;
- c) keep the ICAC Representative fully informed as to the Supplier’s progress in provision of the Transcription Service, and in particular in respect of any problems or difficulties which the Supplier may identify, consult with the ICAC Representative regarding the manner of provision of the Transcription Service, and comply with all reasonable directives issued by the ICAC Representative regarding the provision of the Transcription Service, and the Agreement generally;

- d) undertake the Transcription Service to a standard set out in the Specification and with due care, skill, diligence and competence and in such a manner as will keep disruption of ICAC business and administration to a minimum;
 - a) ensure that the Transcription Service is provided in accordance with the Specification or any mutually agreed variation thereto;
 - b) ensure that appropriately qualified competent and experienced personnel undertake the performance of the Transcription Service;
 - c) ensure the provision of the Transcription Service achieves the performance indicators specified in the Specification.
- 2.3 The Supplier is appointed as an independent contractor and is not an employee, agent nor partner of ICAC. The relationship between the parties shall not come within the scope of any law or regulation in relation to annual holidays, long service leave, worker's compensation, sick leave or any other employment arrangement or entitlement whether arising under statute or otherwise except as provided in this agreement.
- 2.4 ICAC will promptly notify the Supplier, if it is not reasonably satisfied with the provision of any aspect of the Transcription Service, specifying the reasons for its dissatisfaction. If so notified by ICAC, the Supplier must, as soon as possible and, in any event, within ten (10) days of such notification, take such reasonable steps as may be necessary to remedy the matter(s) to the reasonable satisfaction of ICAC, at no additional cost to ICAC.
- 2.5 If the Supplier fails to address any dissatisfaction referred to in clause 2.4 above, to ICAC's reasonable satisfaction within the said period of ten(10) days, then ICAC may arrange for an alternative supplier to remedy the short coming at the expense of the Supplier and/or may terminate this Agreement by notice in writing to the Supplier.

3. PROJECT MANAGEMENT

- 3.1 On or before the Commencement Date, the Supplier will nominate and appoint a Supplier Representative being a suitably qualified and experienced employee, acceptable to ICAC, to be primarily responsible for liaising with ICAC in relation to the provision of the Transcription Service, and shall inform ICAC of the name, qualifications and experience of that employee, together with the details of a person, also acceptable to ICAC, who will relieve that person during periods of leave or other absence.
- 3.2 The ICAC representative for liaising with the Supplier in relation to the provision of the Services will be the person employed in the position of Solicitor to the Commission.
- 3.3 The Supplier Representative will be primarily responsible for the provision of the Transcription Service on behalf of the Supplier and for ensuring that the provision of the Transcription Service progresses in accordance with this Agreement and for liaising with

ICAC in relation to the provision of the Transcription Service and without limiting the generality of the foregoing, the Supplier will ensure that the Supplier Representative:

- (a) has a detailed knowledge of all aspects of the Transcription Service and of the progress of the delivery of the Transcription Service from time to time;
- (b) fully and promptly responds to all enquiries or suggestions made by the ICAC Representative in relation to the provision of the Transcription Service;
- (c) liaises with the ICAC Representatives regarding the provision of the Transcription Service;
- (d) is available to attend and attends meetings with the ICAC Representative from time to time during the duration of this Agreement;
- (e) promptly advises the ICAC Representative if any aspect of the Transcription Service cannot reasonably be met or of any proposed alterations or amendments to the Transcription Service and will liaise with the ICAC Representative to determine a mutually acceptable amendment to the delivery of the Transcription Service.

3.4 If the Supplier Representative leaves the employ of the Supplier the Supplier will promptly notify ICAC and will nominate and appoint a replacement employee as soon as possible (and in any event within 14 days of the date upon which the previous representative leaves its employment). The Supplier will notify ICAC of the new Supplier Representative's name, qualifications and experience forthwith.

4. REMUNERATION OF THE SUPPLIER

4.1 The Supplier will provide ICAC with a legally acceptable tax invoice for any part of the Service Fee then due in accordance with this Agreement, providing documented detail of any schedule of rates, services or consumables provided during the period the subject of the tax invoice. ICAC shall pay the Supplier that part of the Service Fee specified without deduction or set-off, except as provided by this Agreement or prescribed by law, within the period specified in this Agreement or, if no time is specified, within thirty (30) days of receipt of the tax invoice and appropriate supporting documentation.

4.2 ICAC shall not be obliged to make any payment to the Supplier unless and until the Supplier has completed to the reasonable satisfaction of ICAC provision of the Transcription Service due to be completed by the date of the invoice and provided the relevant documentation in support thereof.

5. ICAC's OBLIGATIONS

5.1 Subject to the provisions of this Agreement, including the Schedules hereto, and clause 11, ICAC must provide to the Supplier access to ICAC's premises, personnel and information as is reasonably necessary to enable the Supplier to properly and promptly perform the Transcription Service.

6. INDEMNITIES

6.1 The Supplier hereby indemnifies and shall keep indemnified ICAC from and against all loss or damage from and against any claim, demand, action, suit or proceeding that may be made or brought by any person against ICAC in respect of any fact, matter or claim which arises out of a breach by the Supplier of a warranty or condition of this Agreement.

7. CONFIDENTIAL INFORMATION

7.1 Each party must keep confidential all Confidential Information of the other party which becomes known to it during the currency of this Agreement.

7.2 Each party must use Confidential Information of the other party solely for the purposes of performing its obligations under this Agreement and must not disclose Confidential Information of the other party to any person without the prior written consent of the other party.

7.3 Each party must provide all reasonable assistance to the other party in the taking of:

(a) legal action against any person (including an employee of either party) relating to a disclosure of Confidential Information; or

(b) any other necessary steps to retain the confidentiality of Confidential Information of that other party.

7.4 Each party must take all reasonable steps and measures (including, without limitation, procuring the execution by its employees and contractors, who may be in possession of Confidential Information of the other party, of confidentiality agreements reasonably acceptable to the other party) to ensure that the confidentiality of Confidential Information of the other party is retained.

7.5 On completion or termination of this Agreement, or earlier demand, each party must immediately return to the other party or delete or destroy all Confidential Information of the other party in its possession or control.

7.6 The obligations of the parties under this clause survive termination or expiry of this Agreement for any cause.

8 TERM AND TERMINATION

- 8.1 This Agreement will commence on the Commencement Date and will continue until the Completion Date unless an option under this Agreement is exercised or the Agreement is earlier terminated in accordance with this clause.
- 8.2 The ICAC may terminate this Agreement in accordance with clause 2.5, or as otherwise provided in the Schedules to this Agreement.
- 8.3 Either party may, by written notice to the other party, terminate this Agreement immediately if:
- (a) the other party commits any breach of this Agreement and fails to remedy that breach (where it is capable of being remedied) within 14 days of notice requiring it to do so; or
 - (b) any secured creditor of the other party takes any step to exercise its rights in relation to that party's assets or that party assigns any of its property for the benefit of or enters into any arrangement with its creditors, or any steps is taken to appoint a receiver, receiver and manager, liquidator, provisional liquidator or administrator over all or any part of that party's assets or business.
- 8.4 ICAC may terminate this Agreement should the majority ownership of the Supplier change during the currency of this Agreement.
- 8.5 The expiry or termination of this Agreement will be without prejudice to any accrued rights of the parties.

9 OPTION TO EXTEND

- 9.1 ICAC may elect to extend the period of the Agreement for a period of one year AND may also elect to further extend the period of the Agreement for a further one year period at the expiration of the first extension period.
- 9.2 In each case the ICAC will notify the Supplier of its election to extend the period of the agreement by providing notice in writing to that effect to the Supplier at least one month before the expiration of the Agreement (or the extension thereof).

10 NON SOLICITATION OF PERSONNEL

- 10.1 Both the Supplier and ICAC agree that they will not during the term of this Agreement and for a period of 6 months following its termination attempt to induce or

solicit any employee or agent of the other party to leave the employment or agency of the other party or directly or indirectly employ those employees or agents.

11 ACCESS AND SECURITY

11.1 Any designated person of the Supplier (in this clause referred to as “designated person”) whom the Supplier proposes:

- (a) will carry out the Supplier’s provision of the Transcription Service under the Agreement; and
- (b) will be required, while carrying out some or all of that work or performing some or all of those duties to:
- (c) enter secure areas in ICAC’s buildings or places;
- (d) work with ICAC’s personnel for extended periods;
- (e) have access to, or be responsible for the physical custody of, official, classified, sensitive or commercial information, or documents or valuable assets belong to ICAC or a third party; or
- (f) hold a particular kind of security clearance the details of which have been notified to the Supplier by ICAC;
- (g) dispose of office or other waste from premises occupied or otherwise utilised by ICAC;

must be authorised by ICAC under this clause to carry out that work or perform those duties.

11.2 The Supplier or a designated person, shall provide to ICAC such information as ICAC from time to time requests for the purpose of allowing ICAC to undertake investigations for the purposes of this clause. ICAC warrants such information will be used only for the purpose of establishing a person’s suitability for the grant of such authorisation.

11.3 The Supplier shall ensure that only persons who:

- (a) are properly qualified and/or experienced for the tasks they are to perform; and
- (b) will act, in all the circumstances, in a fit and proper manner while they are carrying out work or performing duties under the Agreement;

are notified to ICAC as designated persons.

11.4 ICAC shall promptly notify the Supplier in writing of:

- (a) the names of the designated persons it authorises to carry out work or perform duties under this Agreement (in this clause referred to as an “authorised person”) the type and level of clearance given in respect of each of those persons and the date from which, or the period during which, those clearances will be effective; and
- (b) the names of the designated persons it refuses to authorise to carry out such work or perform such duties;

and the Supplier shall sign a copy of that notice, and return it to ICAC as soon as possible as acknowledgement of the contents of the notice.

11.5 The Supplier shall promptly advise ICAC in writing of any change in the circumstances of an authorised person that in the Supplier’s reasonable opinion, is likely to affect ICAC’s assessment of the person as an authorised person.

11.6 ICAC may, at its absolute discretion, give notice requiring the Supplier to remove personnel from work in respect of the Transcription Service, without giving reasons for that request. The Supplier shall promptly arrange for the removal of such personnel and their replacement with personnel acceptable to ICAC.

11.7 ICAC will require the Supplier to arrange for its employees or agents engaged in the performance of this Agreement to undergo such security vetting procedures as ICAC may require and which may involve the giving of an undertaking as to secrecy and information.

11.8 For the purposes of this clause:

- (a) a reference to “ICAC” includes a reference to any ICAC security advisor; and
- (b) a reference to “the Supplier” includes a reference to a subcontractor.

12. DISPUTE RESOLUTION

12.1 The parties must, during and after the term of this Agreement, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this agreement prior to commencing any proceedings.

12.2 If a party requires resolution of a dispute during or after the term of this Agreement, it must do so in accordance with clause 12.

12.3 Compliance with these provisions is a condition precedent to any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect

of such disputes, except in the case of applications for urgent interlocutory relief or a breach by the other part of this clause.

- 12.4 The existence of a dispute or the commencement of proceedings does not affect the obligation of the parties to continue to perform their obligations under this Agreement.
- 12.5 If a party requires resolution of a dispute it must immediately submit full details of the dispute to the chief executive of the other party.
- 12.6 If the dispute is not resolved within one month of submission of the dispute to the chief executive of the other party, or such other time as agreed between the parties, the dispute must be submitted to conciliation in accordance with and subject to the Institute of Arbitrators and Mediators Australia Conciliation Rules.
- 12.7 A party must not commence proceedings in respect of the dispute unless the dispute is not settled by conciliation within one month of submission to conciliation, or such other time as the parties agree.

13. NOTICE

- 13.1 A notice to be given by a party to another party under this Agreement must be:
- (a) in writing;
 - (b) directed to the recipient's address set out in the Schedule or as varied by written notice; and
 - (c) left at or sent by registered post, hand delivery, or facsimile to that address, and will be deemed to be duly given;
 - (d) in the case of hand delivery, on the day of delivery;
 - (e) 3 days after the date of posting by registered post; or
 - (f) if sent by facsimile, when the answerback or message confirmation is received, as the case may be.
- 13.2 The provisions of this clause are in addition to any other mode of service permitted by law.

14. FORCE MAJEURE

- 14.1 Neither party will be liable for any failure or delay in the performance of its obligations under this Agreement if that failure or delay is due to circumstances beyond that party's

control. If that failure or delay in performance exceeds 60 days, either party may immediately terminate this Agreement by written notice to the other party.

14.2 This clause does not apply to any obligation to pay money.

15. LAW AND JURISDICTION

15.1 This Agreement is governed by the laws of the State of New South Wales.

15.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of the State of New South Wales and the Commonwealth of Australia and courts entitled to hear appeals from those Courts.

16. SEVERABILITY

16.1 Any provision of this Agreement will be read down to the extent necessary to prevent that provision or this Agreement being invalid, voidable or unenforceable in the circumstances.

16.2 If notwithstanding sub-clause 16.1 a provision of this Agreement is still invalid or voidable:

- (a) if the provision would not be invalid or voidable if a word or words were omitted, that word or those words will be deleted; and
- (b) in any other case, the whole provision will be deleted, and the remainder of this Agreement, will continue to have full force and effect.

17. ASSIGNMENT

17.1 The Supplier shall not, without the previous consent of the ICAC in writing, assign the Agreement, or any part thereof or mortgage, charge or encumber, all or any of the monies payable or to become payable under this Agreement, to any person without the consent in writing of the ICAC being first obtained.

17.2 Any permission to subcontract or assign the obligation to perform services or to supply services under the Agreement shall not discharge the Supplier from any liability in respect of the Agreement and shall extend only to the permission actually given, but not so as to prevent any proceedings for any subsequent breach of this clause; and all rights under the Agreement shall remain in full force, and shall be available as against any such subsequent breach.

18 GOODS AND SERVICES TAX (GST)

- 18.1 Notwithstanding any other provision of this Agreement, if with respect to any provision of the Transcription Service the Supplier is or becomes liable to pay GST:
- (a) Subject to paragraph (b) and (c) the Supplier may recover from the ICAC the amount of such GST in addition to and at the same time and in the same manner as the ICAC is obliged to pay the price for that supply otherwise provided for under this Agreement.
 - (b) The Supplier warrants and undertakes that at the time any provision of the Transcription Service on which GST is imposed is made by it to the ICAC under this Agreement it is or will be registered under the GST Law. If the ICAC requests written evidence of registration, the Supplier will promptly produce evidence satisfactory to the ICAC.
 - (c) The recovery of any amount in respect of GST by the Supplier from the ICAC is subject to the Supplier issuing to the ICAC a tax invoice enabling the ICAC to claim any applicable input credits in respect of the supply.

19. COMPLIANCE WITH STATUTORY REQUIREMENTS

- 19.1 The Supplier agrees, warrants and undertakes that all work done in connection with the Services complies and conforms with all applicable legislation both state and Commonwealth, and any regulations, bylaws, ordinances, or orders made under such legislation as well as any applicable codes of conduct, policies, guidelines, quality assurance standards, all relevant Australian standards applicable to the Services and any other formal requirement relevant to the provision of the Services.

20. CONFLICT OF INTEREST

- 20.1 The Supplier represents and warrants that no undisclosed conflict of interest exists or is likely to arise in the performance of the Services at the date of this Agreement.
- 20.2 The Supplier warrants and undertakes to notify the ICAC, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest. On receipt of such notice the ICAC may approve the Supplier undertaking any work which the ICAC considers might give rise to a conflict of interest or refuse to approve whereby the Supplier will refrain from undertaking any such work. The ICAC may thereupon exercise its rights of termination under this Agreement.

20.3 Failure by the Supplier to adhere to the provisions of this clause will give rise to a ground for termination pursuant to clause 8 without prejudice to any accrued rights or remedies of the ICAC.

21. COMPLIANCE WITH ETHICAL STANDARDS

21.1 The Supplier shall comply with the principles of the NSW Department of Finance and Services Business Ethics Statement as in operation at the commencement of this Agreement and the ICAC Code of Conduct.

22. COMPLIANCE WITH ENERGY MANAGEMENT POLICY

22.1 Any products provided by the Supplier shall comply with the *Government Energy Management Policy*, as in operation at the commencement of this Agreement, unless no suitable component is available which so complies.

23. KEEPING OF RECORDS

23.1 *Records*

The Supplier must keep proper accounts, records (including information stored by computer and other devices) and time sheets in accordance with the accounting principles generally applied in commercial practice in respect of its time charge billing, its expenditure and fees and amounts payable to others properly engaged pursuant to this Agreement.

23.2 *Access*

The Supplier must, within a reasonable time of any request, give the ICAC access to, or copies of, any information which may be reasonably required to enable any claim to be substantiated and verified.

24. MINIMUM INSURANCE REQUIREMENTS

24.1 Without limiting the Supplier's obligations under this Agreement the Supplier will take out and maintain during the term of this Agreement with a reputable insurance company in the name of the Supplier, the ICAC and any subcontractor such insurance policies, if any, as are specified in Part 7 of Schedule A.

24.2 The Supplier will, on request, produce to the ICAC satisfactory evidence that the Supplier has effected and renewed the insurance policies referred to in clause 24.1 which will be maintained fully effective and current during the term of this Agreement.

25. ENTIRE AGREEMENT

25.1 This Agreement including its schedules and attachments:

- (a) constitutes the entire agreement of the parties as to its subject matter and supersedes all prior representations and agreements in connection with that subject matter; and
- (b) may only be altered in writing signed by all parties.

EXECUTED AS AN AGREEMENT

Signed for **the Supplier** by an authorised person in the presence of:

Signature of Authorised Person

Signature of witness

Name of Authorised Person (print)

Name of witness (print)

Position held

Signed for **The Independent Commission Against Corruption** by an authorised officer in the presence of:

Signature of Officer

Signature of witness

Name of Officer (print)

Name of witness (print)

Office held

SCHEDULE A

PART 1

Commencement Date: 1 October 2014

PART 2

Completion Date: 30 September 2017 (unless an option to extend is exercised by ICAC)

PART 3

Service Fees:

The amount to be paid to the Supplier for the Services shall be \$XXXX

PART 4

ICAC Representative: Roy Waldon, Solicitor to the Commission

PART 5

Supplier Representative: XXXX

PART 6

Address for Notices (clause 14)

Independent Commission Against Corruption
Level 7, 255 Elizabeth Street, Sydney NSW 2000

Supplier
XXX

PART 7

Insurance requirements.

- (a) a broad form public liability policy of insurance in the amount of not less than \$10,00,000 in respect of each and every occurrence and unlimited in the aggregate for any one period of cover;
- (b) workers' compensation insurance in accordance with applicable legislation in respect of all the Supplier's employees;
- (c) such other cover as specified in clause 5.12 of the Request for Tender if required by ICAC.

SCHEDULE B

ICAC TENDERING CONDITIONS AND STATEMENT OF REQUIREMENTS

SCHEDULE C

TENDERER'S RESPONSE

SCHEDULE D

NEGOTIATED OUTCOME OF ANY NON CONFORMANCE