

[ATM](#tender) ID: *[INSERT ATM ID]*

PROJECT NO: *[INSERT PROJECT NUMBER]*

PROJECT NAME: *[INSERT PROJECT NAME AND DESCRIPTION OF WORKS, AS APPLICABLE]*

HEAD CONTRACT (international) two Phase (HCI-2P-2022)

DESIGN AND CONSTRUCT

TENDER DOCUMENTS

***[LAST AMENDED: 14 June 2023 - PLEASE REMOVE BEFORE THE TENDER DOCUMENTS ARE PUBLISHED ON AUSTENDER]***

***[NOTE: THIS TEMPLATE HAS BEEN PREPARED SOLELY FOR USE WITH PROJECTS THAT ARE NOT SUBJECT TO DIVISION 2 OF THE COMMONWEALTH PROCUREMENT RULES, ON THE BASIS THAT THEY ARE BEING PROCURED FOR THE DIRECT PURPOSE OF PROVIDING FOREIGN ASSISTANCE OR BEING PROCURED OUTSIDE AUSTRALIA FOR CONSUMPTION OUTSIDE OF AUSTRALIA]***

**Please note:**

* matters in ***[SQUARE BRACKETS AND ITALICS]*** are to be completed by the Commonwealth/Tender Administrator before the Tender Documents are published on AusTender or otherwise issued to Tenderers; and
* matters in **[SQUARE BRACKETS AND BOLD]** are to be completed by the Tenderer before lodging a Tender.

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1. - Tender conditions

TENDER CONDITIONS

1. Information for Tenderers
   1. General
      1. The Tenderer is invited to lodge a Tender for the Contractor's Activities and the Works on the terms of the Tender Documents.
      2. The Tenderer must direct all questions related to the Tender Documents or the tender process to the Tender Administrator under clause 2.2(a).
   2. AusTender, the Australian Government Tender System
      1. AusTender is the Australian Government's procurement information system. Access to and use of AusTender is subject to terms and conditions. In participating in this tender process, the Tenderer must comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender at https://www.tenders.gov.au/infolinks/termsofuse.
      2. The Tenderer must direct all queries and requests for technical or operational support related to AusTender to:

AusTender Help Desk

Telephone: 1300 651 698

International: +61 2 6215 1558

Email: tenders@finance.gov.au

The AusTender Help Desk is available between 9.00am and 5.00pm Australian Capital Territory Local Time, Monday to Friday (excluding Australian Capital Territory and Australian national public holidays).

* + 1. Without limiting paragraph (a), the Tenderer's attention is drawn to clauses 1.8 and 1.9 of the AusTender terms and conditions in relation to late receipt of Tenders and proof of lodgement.

1. Interpretation OF TENDER DOCUMENTS, QUESTIONS AND AMENDMENTS AND GOVERNING LAW
   1. Interpretation

In the Tender Conditions and in the other Tender Documents:

* 1. all words and expressions will (unless the context otherwise requires) have the meanings assigned to them:
     1. under clauses 1.1 and 1.2 of the Conditions of Contract in Part 5; or
     2. in these Tender Conditions,

provided that the term **Insolvency Event** will have the meaning given in theConditions of Contract in Part 5 except that a reference to "Contractor" in such definition will be read as a reference to the Tenderer;

* 1. **Annual Financial Report** means:
     1. the financial statements for the year comprising a profit and loss statement for the year, a balance sheet at the end of the year, a statement of cash flows for the year and (if required by the accounting standards) a consolidated profit and loss statement, balance sheet and statement of cash flows;
     2. the notes to the financial statements; and
     3. the directors' declaration about the financial statements and notes;
  2. **Change of Control** meanswhere a person who did not (directly or indirectly) effectively Control the Tenderer at:
     1. if the Tenderer has lodged a registration of interest, the date of submission of its registration of interest; or
     2. if the Tenderer has lodged a Tender, the date of submission of its Tender,

either alone or together with others, acquires Control of the Tenderer;

* 1. **Claim** includes (without limitation) any claim (at law or in equity):
     1. under, arising out of, or in any way in connection with, any contract which the Tenderer may enter into with the Commonwealth for the Contractor's Activities and the Works;
     2. arising out of, or in any way in connection with, any task, thing or relationship connected with the Contractor's Activities, the Works or the Project; or
     3. otherwise at law or in equity including (without limitation):
        1. by statute;
        2. in tort for negligence or otherwise, including (without limitation) negligent misrepresentation; or
        3. for restitution;
  2. **Closing Date and Time** means the date and time specified in the Tender Particulars;
  3. **Disclaimer and Confidentiality Agreement** means thedisclaimer and confidentiality agreement published on AusTender or issued by the Tender Administrator by email or post (as applicable) in respect of this tender process;
  4. **Financial Representative** means the Tenderer's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the Tenderer;
  5. **Financial Viability Assessment** means an assessment of whether the Tenderer has the necessary financial viability to perform the Contractor's Activities, achieve Completion of the Works and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer carried out by an Independent Financial Adviser;
  6. **Independent Financial Adviser** means an independent financial adviser engaged by the Commonwealth;
  7. **Information Documents** means:
     1. the documents listed in the Disclaimer and Confidentiality Agreement, with such listed Information Documents being published on AusTender or issued by the Tender Administrator by email or post (as applicable), as indicated in the Disclaimer and Confidentiality Agreement; and
     2. any other document or amendment to a document which is published on AusTender or issued by the Tender Administrator by email or post (as applicable) (including attachments to the Information Document, as indicated in the Information Document) prior to the Closing Date and Time and at the time of being published or issued expressly stated to be an "Information Document" or an amendment to an Information Document (notwithstanding that AusTender describes such documents as "addenda" or "ATM Documents");
  8. **Joint Bid Basis** means a Tender lodged:
     1. by an unincorporated joint venture; or
     2. on any other basis involving more than one party if the Commonwealth is relying upon a representation that those parties will be jointly and severally responsible for performing the Contractor's Activities, achieving Completion of the Works and otherwise meeting the obligations under the Contract in Part 5 if the parties are the successful Tenderers;
  9. **Material Change** means any actual, potential or perceived material change to the circumstances of the Tenderer including any change:
     1. arising out of or in connection with:
        1. a Change of Control;
        2. an Insolvency Event; or
        3. the Tenderer's financial viability, availability, capacity or ability to perform the Contractor's Activities, achieve Completion of the Works and otherwise meet its obligations under the Contract in Part 5; or
     2. which affects the truth, completeness or accuracy of:
        1. if the Tenderer has lodged a registration of interest, the registration of interest;
        2. if the Tenderer has lodged a Tender, the Tender; or
        3. any other information, documents, evidence or clarifications provided by the Tenderer to the Commonwealth arising out of or in connection with its registration of interest, the registration of interest process, its Tender or the tender process;
  10. **Project** means the project described in the Tender Documents;
  11. **Separation Arrangement** means any arrangement that the Tenderer:
      1. has in place;
      2. will put in place; or
      3. is required to put in place in accordance with any Statutory Requirement, these Tender Conditions (including under clause 25.3) or the Disclaimer and Confidentiality Agreement,

for the purpose of preventing, ending, avoiding, mitigating, resolving or otherwise managing any Material Change or Strategic Interest Issue;

* 1. **Strategic Interest Issue** means any issue that involves an actual, potential or perceived risk of an adverse effect on the Commonwealth's international or diplomatic interests or relationships (including with the Host Nation) or national security interests including:
     1. protecting Australia’s national interests, in accordance with all Statutory Requirements of Australia (including the Information Security Requirements);
     2. ensuring that the whole (or any part) of the Confidential Information and if applicable, Sensitive and Classified Information will be treated strictly in accordance with the Disclaimer and Confidentiality Agreement and the Tender Documents; and
     3. ensuring compliance by all Tenderers and the successful Tenderer with Australia’s national security requirements, in accordance with all Statutory Requirements of Australia (including the Information Security Requirements);
  2. **Tender** means the documents lodged with the Commonwealth pursuant to these Tender Conditions;
  3. **Tender Administrator** means the person specified in the Tender Particulars;
  4. **Tender Conditions** means these tender conditions in Part 1;
  5. **Tender Documents** means the:
     1. Tender Conditions;
     2. Tender Particulars in Part 2;
     3. Tender Form in Part 3;
     4. Tender Schedules in Part 4;
     5. Contract in Part 5, including the "Works Description" (as defined in clause 1.1 of the Conditions of Contract in Part 5); and
     6. other documents specified in the Contract Particulars in Part 5, which correspond to the definition of "Contract" under clause 1.1 of the Conditions of Contract in Part 5,

but excludes the Information Documents;

* 1. **Tender Validity Period** means 90 days from the Closing Date and Time;
  2. **Tenderer** means the person (or persons) or other entity (or entities) invited to lodge a Tender;
  3. any reference to a Part is a reference to a Part of the Tender Documents; and
  4. any reference to one of the documents described in the definition of the "Tender Documents" under paragraph (s) is a reference to the document so entitled which is included in the Tender Documents.
  5. Questions and Amendments to Tender Documents
     1. If the Tenderer finds any discrepancy, ambiguity, error or omission in the Tender Documents, has any questions or concerns, or wishes to make a complaint or any enquiry concerning the Tender Documents or the tender process, it must notify the Tender Administrator by email no later than 7 days prior to the Closing Date and Time. Subject to the Commonwealth Procurement Rules (if applicable), neither the Commonwealth nor the Tender Administrator is obliged to respond to all such notices, questions, concerns, complaints or enquiries. Subject to paragraph (b), the Commonwealth may (in its absolute discretion) respond to such notices, questions, concerns, complaints or enquiries in the form of addenda under paragraph (d) or as an Information Document.
     2. At the time of its notice under paragraph (a), the Tenderer may request that a matter notified under paragraph (a) and any response remain confidential on the basis that the whole or any part of the matter notified contains commercial-in-confidence information. The Tenderer must clearly state in its notice that it is a request under this paragraph (b) and must provide justification for its request. If a request is made under this paragraph (b), the Tender Administrator will notify the Tenderer by email that the Commonwealth (in its absolute discretion) either:
        1. agrees that the whole or any part of the matter notified contains commercial-in-confidence information (in which case the relevant matter notified and any response will not be published on AusTender or issued to all Tenderers); or
        2. does not agree that the whole or any part of the matter notified or any response should remain confidential on the basis that the request or any response contains commercial-in-confidence information.
     3. If the Tender Administrator notifies the Tenderer under paragraph (b)(ii):
        1. the Tenderer must notify the Tender Administrator by email no later than 2 days after receiving the notice if it wishes to withdraw the matter raised under paragraph (a); and
        2. if the Tenderer does not withdraw the matter raised in accordance with subparagraph (i), the Commonwealth may (in its absolute discretion) respond to the notice in the form of addenda under paragraph (d) or as an Information Document (in which case the relevant matter notified and any response will be published on AusTender or otherwise issued to all Tenderers).
     4. TheCommonwealth may (in its absolute discretion) amend the Tender Documents at any time prior to the Closing Date and Time. All amendments to the Tender Documents will be in the form of addenda published on AusTender or issued by the Tender Administrator by email or post (as applicable) (including attachments to addenda, as indicated in the addendum). No explanation or interpretation of the Tender Documents may be relied upon by the Tenderer unless in the form of addenda. All addenda under this paragraph (d) will become part of the Tender Documents.
     5. In the event of a discrepancy between:
        1. AusTender and the Tender Particulars, AusTender will prevail;
        2. a communication by AusTender and a communication by the Tender Administrator by email or post, the communication by AusTender will prevail; and
        3. a communication by the Tender Administrator by email and a communication by the Tender Administrator by post, the communication by post will prevail.
  6. Industry Briefing
     1. The Commonwealth may conduct one or more industry briefings (including any Site visits) in relation to the Tender Documents, the tender process, the Contractor's Activities, the Works and the Project. The Tender Administrator will notify the Tenderer by email of the details of any industry briefing, including:
        1. the scheduled date, time and location (in person or by videoconference) for the industry briefing;
        2. the maximum number of Tenderer personnel (whether employees, subcontractors, consultants or otherwise) who may attend the industry briefing;
        3. the time and date by which the Tenderer must notify the Tender Administrator if it wishes to attend the industry briefing; and
        4. any other information required by the Tender Administrator.
     2. If the Tenderer wishes to attend an industry briefing as notified by the Tender Administrator under paragraph (a), it must notify the Tender Administrator by email no later than the time and date specified in the Tender Administrator’s notice under paragraph (a), providing details of the Tenderer, the full names and addresses of all Tenderer personnel proposed to attend the industry briefing and all other information required by the Tender Administrator in its notice under paragraph (a).
     3. The Commonwealth may (in its absolute discretion):
        1. limit or restrict the number of Tenderer personnel; or
        2. exclude any or all Tenderer personnel from,

attending an industry briefing for any reason, including if the Tenderer:

* + - 1. exceeds the maximum number of Tenderer personnel specified in the Tender Administrator’s notice;
      2. fails to comply with paragraph (b); or
      3. substitutes or replaces Tenderer personnel after the time and date specified in the Tender Administrator’s notice under paragraph (a).
    1. All industry briefings will be conducted for the purpose of providing background information only. The Tenderer must not in any way rely upon any industry briefing (or any industry briefing materials provided in accordance with subparagraph (e)(i), if applicable) for the purposes of preparing, amending or negotiating its Tender or entry into any contract with the Commonwealth.
    2. The [Tenderer](#tenderer):
       1. may, at the discretion of the Tender Administrator, be provided with copies of industry briefing materials (including presentations) as an Information Document;
       2. is **not** permitted to take photographs or other electronic recordings of any industry briefing (including any presentation, Site visit or inspection) unless:
          1. the Tenderer submits a request under clause 2.2(a) and such request is approved by the Tender Administrator; or
          2. the Tender Administrator or the Commonwealth otherwise permit photography or other electronic recording,

and the Tenderer acknowledges and agrees that any such photographs and other electronic recordings are Confidential Information for the purposes of the Disclaimer and Confidentiality Agreement; and

* + - 1. must comply with all instructions of the Tender Administrator in connection with the conduct of any industry briefing, including in respect of any photographs and other electronic recordings taken to the extent permitted under subparagraph (e)(ii), under and in accordance with this clause 2.3(e).
    1. Without limiting any other provision of the Tender Conditions:
       1. subject to the Commonwealth Procurement Rules, neither the Commonwealth nor the Tender Administrator is obliged to respond to any or all questions, enquiries or other matters notified during an industry briefing; and
       2. the Commonwealth may (in its absolute discretion) publish or issue addenda under clause 2.2(d) or Information Documents to address any matters arising out of or in connection with an industry briefing.
  1. Governing Law

The Tender Conditions and other Tender Documents are subject to and are to be construed in accordance with the laws of the State or Territory of Australia specified in the Tender Particulars.

1. [TENDERS](#tender)
   1. Conforming Tender, including [Closing Date and Time](#ATMCloseDateandTime), Minimum Form and Content Requirements and Conditions for Participation

To lodge a conforming Tender:

* + 1. **the Tender must be:** 
       1. **lodged electronically via AusTender**; and
       2. **received before the Closing Date and Time**;
    2. the Tender must satisfy each **minimum form and content requirement** as follows:
       1. the Tender must remain valid for the duration of the Tender Validity Period, during which period the Tenderer cannot withdraw its Tender;
       2. if clause 27.1 applies, the Tenderer must complete and lodge Tender Schedule I - Statement of Tax Record; and
       3. the Tenderer must accept (without departure, qualification, amendment, limitation or exclusion) the Contract in Part 5, except:
          1. subject to subsubparagraph B, to the extent provided for under clause 3.2 and expressly set out by the Tenderer in Tender Schedule G - Alternative Proposals; and
          2. in respect of clauses 5.4 - 5.9 of the Conditions of Contract in Part 5only, as expressly set out by the Tenderer in item 1 of Tender Schedule H - Miscellaneous Matters For Evaluation; and
    3. the Tenderer must, at the time of lodging its Tender, satisfyeach **condition for participation** specified in the Tender Particulars (if any).
  1. Alternative Proposals
     1. The Commonwealth offers the Tenderer the opportunity to provide alternative proposals in the pursuit of greater value for money. **The Tenderer should note, however, that** (subject to the Commonwealth's absolute discretion under clause 3.3(b)) **it must lodge a conforming Tender before an alternative proposal will be considered.**
     2. **If the Tenderer wishes to provide any alternative proposal, it must be expressly set out in** Tender Schedule G - Alternative Proposals**.** **The Tenderer should note that this is a minimum form and content requirement for its Tender under clause 3.1(b)(iii)**.
     3. The Tenderer should note that it is not required to submit Tender Schedule G - Alternative Proposalsif it does not propose to submit an alternative proposal.
     4. If the Commonwealth (in its absolute discretion) selects or accepts any alternative proposal, the Commonwealth will make any necessary alterations to the Contract in Part 5.
  2. Non-Conforming Tender

The Tenderer acknowledges and agrees that:

* + 1. the Tenderer is responsible for lodging its Tender in accordance with clause 3.1(a) and managing all surrounding risks, including those associated with the use of AusTender and all information technology risks. If the Tender is not lodged in accordance with clause 3.1(a), the Tender will be non-conforming and will not be evaluated (or continue to be evaluated) unless the reason it was not lodged in accordance with clause 3.1(a) was solely due to mishandling by the Commonwealth;
    2. if the Tender does not satisfy each **minimum form and content requirement** specified under clause 3.1(b), the Tender will be non-conforming and will not be evaluated (or continue to be evaluated) unless the Commonwealth considers (in its absolute discretion) that the failure to satisfy a **minimum form and content requirement** was due to an unintentional error by the Tenderer. If the Commonwealth considers (in its absolute discretion) that the failure to satisfy a **minimum form and content requirement** may be due to an unintentional error by the Tenderer:
       1. the Tender Administrator will notify the Tenderer by email that there has been a failure to satisfy a **minimum form and content requirement** and that it requires the Tenderer to provide a response to the Tender Administrator by email by the time and date stated in the notice; and
       2. the Commonwealth may (in its absolute discretion) review and accept any correction of an unintentional error in respect of a **minimum form and content requirement** provided in the Tenderer's response; and
    3. if the Tenderer does not satisfy each **condition for participation** specified under clause 3.1(c) (if any), the Tender will be non-conforming and will not be evaluated (or continue to be evaluated).
  1. Administrative Arrangements
     1. The Tenderer is requested to:
        1. provide the details set out in the Tender Form in Part 3; and
        2. execute the Tender Form by:
           1. having a person or persons with full authority to bind the Tenderer for the purposes of the Tender, the Contractor's Activities and the Works duly execute the Tender Form; or
           2. if the Tenderer consists of more than one entity, having a person or persons from each entity with full authority to bind each entity for the purposes of the Tender, the Contractor's Activities and the Works duly execute the Tender Form,

and provide evidence of the full authority of the person or persons executing the Tender Form,

but these are **not** minimum form and content requirements for its Tender.

* + 1. The Tenderer is requested to:
       1. lodge:
          1. the Tender Form in Part 3;
          2. Tender Schedule A - Project Understanding;

* + - * 1. Tender Schedule B - Proposed Resources;
        2. if the Tender Particulars state that it applies, Tender Schedule C - [Relevant Previous Performance/Not Used];
        3. Tender Schedule D - Program;

* + - * 1. Tender Schedule E - Anti-Bribery, Corruption and Modern Slavery Statement;

* + - * 1. Tender Schedule F - Financial;
        2. subject to clause 3.1(b)(iii) (**minimum form and content requirement**) and only if it wishes to submit an alternative proposal, Tender Schedule G - Alternative Proposals;
        3. Tender Schedule H - Miscellaneous Matters For Evaluation; and
        4. ***[IF CLAUSE 27.1 APPLIES, INSERT:*** (**minimum form and content requirement**) Tender Schedule I - Statement of Tax Record***] [IF CLAUSE 27.1 DOES NOT APPLY, INSERT "NOT USED"]***,

in accordance with the Tender lodgement requirements in the Tender Particulars;

* + - 1. except where otherwise specified in the Tender Documents, express measurements in Australian legal units of measurement; and
      2. ensure all contents are clear, legible and readable by using appropriate print colours and font sizes (equivalent to at least Arial 10 point or Times New Roman 11 point),

but these are not, unless expressly stated above, minimum form and content requirements for its Tender.

* + 1. If the Tender Administrator (in its absolute discretion) notifies the Tenderer by email that the Tenderer is to provide clarification or authentication of material included in the Tender (including any scanned or imaged material such as the Tender Form or other documents or information), the Tenderer must provide the originals of such material:
       1. by post to the Tender Administrator at the postal address specified in the Tender Administrator's notice; and
       2. by the time and date specified in the Tender Administrator's notice.

1. Evaluation of Tenders

***[NOTE THAT THE EVALUATION CRITERIA SPECIFIED IN THIS CLAUSE 4 MUST BE CONSISTENT WITH THE APPROVED PROJECT DEVELOPMENT AND DELIVERY PLAN OR EVALUATION PLAN. IF THERE IS ANY AMENDMENT TO THE EVALUATION CRITERIA, THIS MUST BE COMMUNICATED TO TENDERERS BY WAY OF AN ADDENDUM.]***

Subject to the Tender Conditions, Tenders will be evaluated to determine the Tender which represents the best value for money to the Commonwealth. In considering the Tender, the Commonwealth:

* + 1. will apply the following evaluation criteria:
       1. **project understanding (*[INSERT]*%weighting)**. The extent to which the Tenderer has demonstrated that it comprehends key issues and will implement appropriate solutions and management strategies in performing the Contractor's Activities, achieving Completion of the Works and otherwise meeting its obligations under the Contract in Part 5 (noting that the type of information the Commonwealth is seeking is outlined in Tender Schedule A - Project Understanding);
       2. **proposed resources (*[INSERT]*%weighting)**. The extent to which the Tenderer has demonstrated that it has the resources and capacity to perform the Contractor's Activities, achieve Completion of the Works and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer (noting that the type of information the Commonwealth is seeking is outlined in Tender Schedule B - Proposed Resources);
       3. if the Tender Particulars state that it applies, **relevant previous performance (*[INSERT]*% weighting)**. The extent to which the [Tenderer](#tenderer) has demonstrated that it has the relevant experience and ability to perform the Contractor's Activities, achieve Completion of the Works and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer (noting that the type of information the Commonwealth is seeking is outlined in Tender Schedule C - [Relevant Previous Performance/Not Used]);
       4. **program (*[INSERT]*%weighting)**. The extent to which the [Tenderer](#tenderer) has demonstrated that it will satisfactorily program the Contractor's Activities, achieve Completion of the Works and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer (noting that the type of information the Commonwealth is seeking is outlined in Tender Schedule D - Program);
       5. **anti-bribery, corruption and modern slavery compliance** **(no weighting, the Tender will be evaluated with reference to whether or not this evaluation criterion is met)**. Whether or not the Tenderer has demonstrated that it has a satisfactory approach to, and will otherwise meet its compliance and reporting obligations under the Contract in Part 5 in respect of anti-bribery, corruption and modern slavery if it is the successful Tenderer (noting that the type of information the Commonwealth is seeking is outlined in Tender Schedule E - Anti-Bribery, Corruption and Modern Slavery Statement);
       6. **financial (no weighting, the Tender will be evaluated with reference to whether value for money has been demonstrated)**. The extent to which the Tenderer has demonstrated that its Contract Price and other financial information, when considered in conjunction with all other evaluation criteria and all other information, is value for money (noting that the type of information the Commonwealth is seeking is outlined in Tender Schedule F - Financial);
       7. subject to clause 3.2 (including the Commonwealth's absolute discretion with respect to alternative proposals), **alternative proposals** (if any) **(no weighting, the Tender will be evaluated with reference to whether value for money has been demonstrated)**. The extent to which the Tenderer has demonstrated greater value for money(noting that the type of information the Commonwealth is seeking is outlined in Tender Schedule G - Alternative Proposals); and
       8. **miscellaneous matters for evaluation**:
          1. **insurance details and levels and Tenderer's commercial-in-confidence information (no weighting, the Tender will be evaluated with reference to whether value for money has been demonstrated)** (noting that the type of information the Commonwealth is seeking is outlined in items 1 and 2 of Tender Schedule H - Miscellaneous Matters For Evaluation);
          2. **financial standing (no weighting, the Tender will be evaluated with reference to whether or not this evaluation criterion is met)**. Whether or not the Tenderer has demonstrated that it has the necessary financial viability to perform the Contractor's Activities, achieve Completion of the Works and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer (noting that the type of information the Commonwealth is seeking is outlined in item 3 of Tender Schedule H - Miscellaneous Matters For Evaluation); and
          3. **information security (no weighting, the Tender will be evaluated with reference to whether or not this evaluation criterion is met)**. Whether or not the Tenderer has demonstrated that it has the ability to meet its information security obligations under the Contract in Part 5 if it is the successful Tenderer (noting that the type of information the Commonwealth is seeking is outlined in item 4 of Tender Schedule H - Miscellaneous Matters For Evaluation);
    2. will apply any **additional evaluation criteria** specified in the Tender Particulars;
    3. may (in its absolute discretion) take into account the information which the Tenderer provides under clause 7.2 but not the information which the Tenderer provides under clause 7.1; and
    4. may (in its absolute discretion):
       1. obtain and take into account information from referees, enquiries and investigations, including:
          1. from referees on prior or current projects on which a Tenderer may have been involved (whether or not nominated by the Tenderer in, if a registration of interest process was used, its registration of interest or its Tender or if a registration of interest process was not used, its Tender);
          2. in connection with any other Commonwealth project; or
          3. from financial information or documents (whether provided by the Tenderer in its response to Tender Schedule H - Miscellaneous Matters For Evaluation, under clause 24 or otherwise and any Financial Viability Assessment under clause 24 or otherwise);
       2. take into account any information lodged by the Tenderer in any registration of interest process, tender process or similar procurement process in connection with the Project or any other Commonwealth project; and
       3. without limiting any other right or remedy of the Commonwealth (under the Tender Documents or otherwise at law or in equity):
          1. decide not to evaluate a Tender (or continue to evaluate a Tender); or
          2. decide to discontinue negotiations with any preferred Tenderer appointed under clause 7.2(d),

if:

* + - * 1. the Commonwealth considers (in its absolute discretion) that the Tenderer does not have the necessary financial viability to perform the Contractor's Activities, achieve Completion of the Works and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer, whether as a result of financial information or documents (whether provided by the Tenderer in its response to Tender Schedule H - Miscellaneous Matters For Evaluation, under clause 24 or otherwise) and any Financial Viability Assessment under clause 24 or otherwise;
        2. the Tenderer has:

failed to comply with any of its obligations in the Disclaimer and Confidentiality Agreement or the Tender Conditions; or

otherwise acted inconsistently with the tender process; or

* + - * 1. the Commonwealth considers (in its absolute discretion) that the Tender is incomplete or clearly not competitive against the evaluation criteria under paragraph (a) and is unlikely to represent value for money.

1. Tenderer's Due Diligence
   * 1. No representation has been or is made to the Tenderer by the Commonwealth, the Tender Administrator, the Contract Administrator or any of their employees, agents or consultants about the accuracy, completeness or sufficiency of the Works Descriptionor that the Works Descriptionrepresents a completed design of the Works which is suitable for construction purposes and the Commonwealth:
        1. has not assumed; nor
        2. does it assume,

a duty of care to the Tenderer concerning the Works Description.

* + 1. The Tenderer is required to do, and will be deemed to have done, everything that would be expected of a prudent, competent and experienced contractor in:
       1. assessing the risks which it is assuming under the Contract in Part 5; and
       2. ensuring that its tendered Contract Price contains allowances to protect it against any of these risks, including all those things, activities and tasks set out in the Tender Form.

1. Information Documents
   * 1. With respect to the Information Documents:
        1. the Information Documents referred to under clause 2.1(j)(i) are immediately available for the information only of the Tenderer;
        2. the Information Documents referred to under clause 2.1(j)(ii) may from time to time prior to the Closing Date and Time be published on AusTender or issued by the Tender Administrator by email or post (as applicable) (including attachments to the Information Document, as indicated in the Information Document) for the information only of the [Tenderer](#tenderer);
        3. they do not form part of the Tender Documents and will not form part of the Contract in Part 5; and
        4. this clause 6 applies notwithstanding that AusTender describes such documents as "addenda" or "ATM Documents".
     2. The Tenderer:
        1. acknowledges and agrees that the Commonwealth published on AusTender, or issued by the Tender Administrator by email or post (as applicable), the Disclaimer and Confidentiality Agreement;
        2. warrants that, to the extent that the Tender Documents and the Information Documents are:
           1. published on AusTender, before the Tenderer downloaded any of the Tender Documents or the Information Documents from AusTender; or
           2. not published on AusTender, before the Tender Administrator issued any of the Tender Documents or the Information Documents to the Tenderer by email or post,

the Tenderer duly completed, executed and returned the Disclaimer and Confidentiality Agreement by email to the Tender Administrator; and

* + - 1. acknowledges and agrees that, if requested by the Tender Administrator by email, the Tenderer must provide to the Tender Administrator by email the names and addresses of all persons to whom the Tenderer has issued the whole or any part of the Tender Documents and Information Documents by the time and date specified in the Tender Administrator's request.

1. Proposed Procedure Before and After Closing Date and Time
   1. Procedure Before Closing Date and Time
      1. The Commonwealth requires the lodgement of fully competitive Tenders from each Tenderer, which will generally maximise the possibility of exceptional performance by the successful Tenderer in accordance with the terms of the Tender Documents. In light of this paragraph (a) (and without limiting any other provision of the Tender Conditions), before the Closing Date and Time, the Commonwealth may (in its absolute discretion) do one or more of the following from time to time with one or more Tenderers:
         1. at a time and place and in a manner notified by the Commonwealth, meet separately with representatives of each Tenderer to:
            1. obtain information in relation to, and discuss and clarify aspects of, the Tenderer's proposed Tender and the Contract in Part 5; and
            2. explain the intention of, and answer questions about, any aspect of the Tender Documents, including the Contract in Part 5;
         2. require the Tenderer to provide the Commonwealth with further information or clarification in relation to aspects of the Tenderer's proposed Tender; and
         3. because each Tenderer is likely to have a different approach to its Tender, the performance of the Contractor's Activities, the Completion of the Works and the Contract in Part 5, the Commonwealth may (in its absolute discretion):
            1. raise issues with a Tenderer which it does not raise with other Tenderers;
            2. raise issues with a Tenderer which improves the proposed Tender to be lodged by that Tenderer; and
            3. subject to paragraph (c), provide a Tenderer with opportunities to ask questions, provide information in relation to or clarify aspects of its proposed Tender, or improve its proposed Tender, which it does not provide to other Tenderers,

but the Commonwealth is not obliged to:

* + - 1. provide any information or explanation, answer any questions or otherwise act in any particular manner in or arising out of or in connection with any meeting convenedunder this paragraph (a); or
      2. amend the Tender Documents arising out of or in connection with any meeting under this paragraph (a).
    1. The Commonwealth may issue, and require Tenderer compliance with, protocols or other conditions which will govern any meeting convened in accordance with paragraph (a).
    2. The Tenderer must:
       1. attend and participate in all meetings required by the Commonwealth under paragraph (a);
       2. comply with any protocol or other condition issued by the Commonwealth under paragraph (b); and
       3. provide all information or clarifications required by the Commonwealth under paragraph (a):
          1. by the time and date specified by the Commonwealth; and
          2. by the form of communication specified by the Tender Documents or otherwise specified by the Commonwealth.
    3. At the time of any Tenderer meeting, the Tenderer may request that any matter raised by the Tenderer during the Tenderer meeting and any response by the Commonwealth remains confidential on the basis that the whole or any part of the matter raised contains commercial-in-confidence information. The Tenderer must provide justification if the Tenderer makes a request under this paragraph (d).
    4. If a request is made under paragraph (d), the Commonwealth will notify the Tenderer that the Commonwealth (in its absolute discretion) either:
       1. agrees that the whole or any part of the matter raised contains commercial-in-confidence information (in which case the relevant matter raised and any response will not be published on AusTender or issued to all Tenderers); or
       2. does not agree that the whole or any part of the matter raised contains commercial-in-confidence information.
    5. If the Commonwealth notifies the Tenderer under paragraph (e)(ii):
       1. the Tenderer must immediately notify the Commonwealth if it wishes to withdraw its request under paragraph (d); and
       2. if the Tenderer does not withdraw its request under subparagraph (i), the Commonwealth may (in its absolute discretion) disclose the matter raised and any response to the other Tenderers in the form of addenda under clause 2.2(d) or as an Information Document (in which case the relevant matter raised and any response will be published on AusTender or otherwise issued to all Tenderers).
    6. Without limiting any other provision of the Tender Conditions, the Commonwealth may (in its absolute discretion) publish or issue addenda under clause 2.2(d) or Information Documents to address any matters arising out of or in connection with any Tenderer meeting convened under paragraph (a).
  1. Procedure After Closing Date and Time
     1. After the Closing Date and Time the Commonwealth may (in its absolute discretion) do one or more of the following from time to time with one or more Tenderers:
        1. meet with representatives of the Tenderer to obtain further information, documents or evidence in relation to, and otherwise clarify, aspects of the Tenderer's Tender;
        2. require a Tenderer to present key elements of its Tender to such persons as may be nominated by the Tender Administrator;
        3. require the Tenderer to provide the Commonwealth with further information, documents, evidence or clarification in relation to any aspect of the Tenderer's Tender or as otherwise described in the Tender Documents; and
        4. set aside a Tender, pending negotiations with one or more preferred Tenderers under paragraph (d).
     2. The Commonwealth may issue, and require Tenderer compliance with, protocols or other conditions which will govern any meeting convened or presentation made in accordance with paragraph (a).
     3. The Tenderer must:
        1. attend and participate in all meetings and presentations required by the Commonwealth under paragraph (a);
        2. comply with any protocol or other condition issued by the Commonwealth under paragraph (b); and
        3. provide all information, documents, evidence or clarifications required by the Commonwealth under paragraph (a):
           1. by the time and date specified by the Commonwealth; and
           2. by the form of communication specified by the Tender Documents or otherwise specified by the Commonwealth.
     4. The Commonwealth may (in its absolute discretion) by notice by email or post appoint one or more Tenderers as preferred Tenderers:
        1. with whom the Commonwealth will enter into negotiations; and
        2. subject to the satisfaction of such conditions (if any) as may be stated in the notice, including:
           1. the Tenderer duly completing, executing and returning a preferred Tenderer negotiation protocol in the form specified by the Commonwealth (setting out the basis on which the Commonwealth will negotiate with the preferred Tenderer):

by the time and date specified by the Commonwealth; and

by the form of communication specified by the Commonwealth; and

* + - * 1. any Financial Viability Assessment under clause 24 or otherwise.
    1. Without limiting clause 8 or the legal effect of the preferred Tenderer's obligations under any preferred Tenderer negotiation protocol required under paragraph (d)(ii), the appointment of a Tenderer as a preferred Tenderer under paragraph (d) is not to be taken as a representation that the Commonwealth will award the Contract in Part 5 to the preferred Tenderer and does not bind the Commonwealth to do so.
    2. Negotiations with preferred Tenderers under paragraph (d):
       1. may be conducted on any basis which the Commonwealth (in its absolute discretion) considers will enable the Commonwealth to improve the value for money which it would obtain from acceptance of any preferred Tenderer's Tender;
       2. without limiting subparagraph (i), may involve the amendment of any aspect of the Tender Documents (including the Contract in Part 5) or a preferred Tenderer's Tender, regardless of how substantial the amendment or the fact that the amendment is only proposed to a particular preferred Tenderer; and
       3. do not require the Commonwealth to provide each preferred Tenderer (if more than one) with the same information, opportunity to negotiate, or proposed amendment of any aspect of the Tender Documents (including the Contract in Part 5) or the preferred Tenderer's Tender.
    3. Without limiting clause 2(a) of the Disclaimer and Confidentiality Agreement, the Commonwealth may (in its absolute discretion) by notice by email or post:
       1. discontinue negotiations at any time and for any reason with a preferred Tenderer; or
       2. without limiting paragraph (d), appoint one or more other preferred Tenderers with which to enter into negotiations.
  1. Tender Process Acknowledgements

The Tenderer acknowledges that:

* + 1. to the extent permitted by law:
       1. without limiting the legal effect of a Tenderer's obligations under any protocol required under clauses 7.1(c)(ii), 7.2(c)(ii) and 7.2(d)(ii), the Commonwealth does not intend to create any contract or other relationship under which the Commonwealth is legally obliged to conduct the tender process in any manner or at all and that there is in fact no such contract or other relationship in existence;
       2. there will be no procedural or substantive limitation upon the manner in which the Commonwealth may (in its absolute discretion) conduct the tender process;
       3. the Commonwealth does not make any warranty, guarantee or representation about:
          1. the relevance, completeness, accuracy or adequacy of any Information Document or whether or not any other information exists; or
          2. a Tenderer's Tender, the Commonwealth's requirements for the Contractor's Activities, the Works, the Project or the way in which it will evaluate Tenders arising out of or in connection with anything which the Commonwealth states or does or omits to state or do in, arising out of or in connection with any industry briefing, meeting or presentation under clause 2.3, 7 or 25.3 (**Meeting Conduct**);
       4. the Commonwealth does not owe any duty of care to the Tenderer in respect of any Information Document or any Meeting Conduct; and
       5. the Tenderer will not in any way rely upon any Information Document (or the relevance, completeness, accuracy or adequacy of any Information Document) or any Meeting Conduct for the purposes of preparing, amending or negotiating its Tender or entry into any contract with the Commonwealth;
    2. without limiting paragraph (a)(ii), the Commonwealth may (in its absolute discretion) vary, suspend or discontinue or terminate the tender process at any time and for any reason;
    3. the Commonwealth is proceeding with the tender process strictly on the basis of, and in reliance upon, the acknowledgements set out above; and
    4. the Commonwealth may exercise its rights under clauses 7.1 and 7.2 either itself or through the Tender Administrator acting on its behalf.

1. Acceptance of Tenders
   * 1. The Commonwealth is not bound or required to accept the lowest priced or any Tender.
     2. A Tenderer's Tender (as amended, if at all, under clause 7) will not be deemed to be accepted unless and until the Contract set out in Part 5 is completed and the Formal Agreement signed by the [Tenderer](#tenderer) and the Commonwealth, and for this purpose the successful Tenderer must take all necessary steps to execute the Formal Agreement when required by the Commonwealth.
     3. No other document issued or made available and no other representation made or conduct engaged in, by or on behalf of the Commonwealth (other than as set out under paragraph (b)) will be deemed to be acceptance of a Tenderer's Tender or to create any contractual or other legal relationship which is binding on the Commonwealth or otherwise oblige the Commonwealth to enter into a contract with the Tenderer.
2. Notification and debrief
   * 1. If the Tenderer:
        1. did not lodge a conforming Tender, the Commonwealth will notify the Tenderer by email or post and no debrief will be provided unless the Commonwealth considers, in its absolute discretion, that it would be appropriate in the particular circumstances to do so following a written request from the Tenderer; or
        2. did lodge a conforming Tender, the Commonwealth:
           1. may (in its absolute discretion) notify the Tenderer by email or post if its Tender has been set aside under clause 7.2(a)(iv); and
           2. will notify the Tenderer by email or post if its Tender was unsuccessful (regardless of whether or not its Tender was set aside under clause 7.2(a)(iv)).
     2. Within 14 days of:
        1. receipt of a notice from the Commonwealth under paragraph (a)(i) or (a)(ii)B; or
        2. the date upon which the Tenderer's Tender is accepted under clause 8,

the Tenderer may notify the Tender Administrator by email that a debrief is requested.

* + 1. If a request is made under paragraph (b):
       1. the Commonwealth will determine (in its absolute discretion) a suitable time, date and place for the debrief after the Award Date;
       2. the Tender Administrator will notify the Tenderer by email of the time, date and place for the debrief; and
       3. the Commonwealth will provide the debrief.
    2. The purpose of the debrief is to discuss the reasons why the Tenderer's Tender was non-conforming, successful or unsuccessful (as the case may be) and neither the Commonwealth nor the [Tender Administrator](#tenderadmin) is obliged to make any comparison with or provide any information about any other Tenderer or Tender at the debrief.

1. Costs and Claims

Without limiting any other provision of these Tender Documents, no payment will be made by the Commonwealth to the Tenderer or any other person or entity for any costs, expenses, losses, damages or liabilities incurred or suffered by the Tenderer or any other person or entity arising out of or in connection with:

* + 1. preparing a Tender;
    2. the tender process (including any industry briefing, Tenderer meeting or presentation, a debrief or any discussions, negotiations or enquiries or any work undertaken by the [Tenderer](#tenderer) before or after the Closing Date and Time, including in relation to anything that occurs under clauses 2.3 or 7); or
    3. any failure to comply with the Disclaimer and Confidentiality Agreement or the Tender Conditions.

1. JOINT BIDS
   1. If a Registration of Interest Process was Used
      1. If a registration of interest process was used and the Tenderer's registration of interest:
         1. was not lodged on a Joint Bid Basis (as defined under clause 8 of the Invitation to Register Interest), the Tenderer must not lodge its Tender on a Joint Bid Basis (whether with any one or more of the other tenderers for the Contractor's Activities and the Works or any other party); or
         2. was lodged on a Joint Bid Basis (as defined under clause 8 of the Invitation to Register Interest), the [Tenderer](#tenderer) must:
            1. subject to subsubparagraph B, lodge its Tender on the basis described in its registration of interest; or
            2. if the Tenderer wishes to lodge its Tender on a basis other than that described in its registration of interest, notify the Tender Administrator by email no later than 14 days prior to the Closing Date and Time, providing details of its request to lodge its Tender on any other basis.
      2. If a request is made under paragraph (a)(ii)B, the Tender Administrator will notify the Tenderer by email that the Commonwealth (in its absolute discretion) either:
         1. grants permission, whether with or without such conditions as the Commonwealth thinks fit; or
         2. refuses permission.
   2. If a Registration of Interest Process was Not Used

If a registration of interest process was not used, the Commonwealth offers the Tenderer the opportunity to lodge its Tender on a Joint Bid Basis.

* 1. Amendments to Contract

If the Commonwealth considers negotiating or accepting a Tender lodged on a Joint Bid Basis, the Commonwealth reserves the right to require such amendments to the Contract in Part 5 as the Commonwealth considers (in its absolute discretion) are necessary to:

* + 1. ensure the joint and several liability of the parties comprising the Contractor; and
    2. otherwise provide it with sufficient protection in the event of default or financial difficulty of any type (including the circumstances described in the definition of "Insolvency Event" under clause 1.1 of the Conditions of Contract in Part 5),

including in relation to the provision of cross guarantees, parent company guarantees, indemnities, collateral warranties, direct collateral covenants with subcontractors or otherwise.

1. RESTRICTION on USE OF PERSONNEL IN PREPARATION OF TENDER
   * 1. Subject to paragraph (c)(i), the Tenderer must ensure that its Tender is not prepared (in whole or in part) by any officer, employee, agent or adviser of the Tenderer who was:
        1. an employee of the Australian Department of Defence, or involved in any capacity in the planning or performance of the Contractor's Activities, the Works or the Project, at any time during the 12 months immediately preceding the date on which the Tender Documents were published on AusTender or otherwise issued to the Tenderer; or
        2. involved in any capacity in the management of the tender process or preparation of the Tender Documents at any time.
     2. If the Tenderer wishes to request permission to have a person described under paragraph (a) contribute to or participate in the preparation of the Tender, it must notify the Tender Administrator by email no later than 14 days prior to the Closing Date and Time, providing details of the person, the person's status under paragraph (a) and the person's proposed contribution to or participation in the preparation of the Tender.
     3. If a request is made under paragraph (b), the Tender Administrator will notify the Tenderer by email that the Commonwealth (in its absolute discretion) either:
        1. grants permission, whether with or without such conditions as the Commonwealth thinks fit (which may include requiring the relevant person to make a statutory declaration (or equivalent) or duly execute a deed); or
        2. refuses permission.
2. CONFLICT OF INTEREST
   * 1. The Tenderer must not place itself, and must ensure that its officers, employees, agents and advisers do not place themselves, in a position that may or does give rise to an actual, potential or perceived conflict of interest between the interests of the Commonwealth and the Tenderer during this tender process.
     2. If during this tender process a conflict of interest arises, or appears likely to arise, the Tenderer must immediately notify the Tender Administrator by email, providing details of such conflict of interest and the steps which the Tenderer has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the conflict of interest.
     3. If a notice is given under paragraph (b), the Tender Administrator will notify the Tenderer by email of any steps the Commonwealth requires the Tenderer to take to prevent, end, avoid, mitigate, resolve or otherwise manage the conflict of interest.
     4. Without limiting clause 4(d)(iii), the Commonwealth may (in its absolute discretion) decide not to evaluate (or continue to evaluate) a Tender if the Tenderer:
        1. has not complied with paragraph (a);
        2. fails to notify the Tender Administrator under paragraph (b); or
        3. fails to take the steps notified by the Tender Administrator under paragraph (c) to prevent, end, avoid, mitigate, resolve or otherwise manage the conflict of interest.
3. USE OF TENDERS

The Tenderer acknowledges that:

* + 1. its Tender and any other documents arising out of or in connection with this tender process become the property of the Commonwealth; and
    2. subject to the Commonwealth Procurement Rules, the Commonwealth may (in its absolute discretion) use, retain and copy the information contained in its Tender and any other documents arising out of or in connection with this tender process for any purpose arising out of or in connection with:
       1. the evaluation and selection of applicants and tenderers;
       2. the development and preparation of tender documents and any subsequent tender process conducted by the Commonwealth in respect of the Contractor's Activities, the Works or the Project;
       3. verifying the accuracy, consistency and adequacy of information provided under any other invitation to register interest process, tender process or similar procurement process conducted by the Commonwealth; or
       4. the development and preparation of invitation to register interest documents, tender documents or similar documents and any subsequent invitation to register interest process, tender process or similar procurement process conducted by the Commonwealth.

1. improper or UNLAWFUL CONDUCT
   1. No Understanding or Arrangement

The Tenderer must not, in preparing its Tender, communicate (verbally or otherwise) or make any arrangement or arrive at any understanding with any of the other Tenderers or with any employee of an association of which it or any other Tenderers are a member concerning the Tender Documents or any aspect of the Contractor's Activities or the Works and, without limitation, must not engage in any:

* + 1. discussion or correspondence with such entities concerning the prices included in its Tender;
    2. collusive tendering with any of the other Tenderers; or
    3. other conduct or make any other arrangement or arrive at any other understanding with any of the other Tenderers,

which in any way will reduce, or could have the effect of reducing, the competitiveness of the tender process for the Contractor's Activities and the Works.

* 1. Consequences of Improper or Unlawful Conduct

Without limiting clause 4(d)(iii), the Commonwealth may (in its absolute discretion) decide not to evaluate (or continue to evaluate) a Tender if the Tender has been prepared:

* + 1. in breach of or otherwise inconsistently with any Statutory Requirement regarding the offering of unlawful inducements in connection with the preparation of a tender or during a tender process;
    2. with the utilisation of information unlawfully obtained from the Commonwealth; or
    3. in breach of clause 15.1.

1. INFORMATION SECURITy - CONFIDENTIAL INFORMATION
   * 1. The Tenderer's attention is drawn to the Commonwealth's requirements in respect of Confidential Information in the Contract in Part 5.
     2. As part of its Tender, the Tenderer is requested to complete and lodge Tender Schedule H - Miscellaneous Matters For Evaluation. The Tenderer should also note the evaluation criterion under clause 4(a)(viii)C.
     3. If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to provide any information in Tender Schedule H - Miscellaneous Matters For Evaluation which it considers relevant to proposed joint bid arrangements (as applicable).
2. Information Security - Sensitive and Classified Information
   * 1. Clause 17 does not apply unless the Tender Particulars state that it applies.
     2. The Tenderer's attention is drawn to the Commonwealth's requirements in respect of Sensitive and Classified Information in the Contract in Part 5. As part of its Tender, the Tenderer is requested to complete and lodge Tender Schedule H - Miscellaneous Matters For Evaluation. The Tenderer should also note the evaluation criterion under clause 4(a)(viii)C.
     3. If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to provide any information in Tender Schedule H - Miscellaneous Matters For Evaluation which it considers relevant to proposed joint bid arrangements (as applicable).
3. Commonwealth Policies

The Commonwealth is and will be subject to a number of Commonwealth requirements and policies, which support internal and external scrutiny of its tendering and contracting processes and the objectives of transparency, accountability and value-for-money, including requirements to:

* + 1. publish details of agency agreements, Commonwealth contracts, amendments and variations to any agreement or contract and standing offers with an estimated value of $10,000 or more on AusTender (the Commonwealth's business opportunity website located at www.tenders.gov.au);
    2. report and post on the internet a list of contracts valued at $100,000 or more and identify confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts; and
    3. report and post on the internet information about its contracts in other ways pursuant to its other reporting and disclosure obligations, including annual reporting requirements and disclosure to any House or Committee of the Parliament of the Commonwealth of Australia.

1. Australian national audit office
   * 1. The Tenderer's attention is drawn to the *Auditor-General Act* *1997* (Cth), which provides the Auditor-General or an authorised person with certain rights to have access to information, documents and records.
     2. Without limiting the Contract Administrator's rights, or the Contractor's obligations or liabilities under clause 6.12 of the Conditions of Contract in Part 5, the Auditor-General or other authorised persons may be nominated by the Contract Administrator under clause 6.12 of the Conditions of Contract in Part 5 for the purpose of exercising their rights under the *Auditor-General Act* *1997* (Cth).
2. FREEDOM OF INFORMATION
   * 1. The *Freedom of Information Act 1982* (Cth) (**FOI Act**) gives members of the public rights of access to official documents of the Commonwealth Government and its agencies. The FOI Act extends, as far as possible, rights to access information (generally documents) in the possession of the Commonwealth Government, limited only by considerations for the protection of essential public interest and of the private and business affairs of entities in respect of whom information is collected and held by departments and public authorities.
     2. Commonwealth requirements and policies will require certain identifying details of the Contract in Part 5 to be made available to the public via the internet.
3. TENDERER'S Commercial-in-Confidence Information
   * 1. Subject to paragraph (b), the Commonwealth must keep confidential any information provided to the Commonwealth by a Tenderer after the Award Date when:
        1. a request to keep specific information confidential and the justification for keeping such information confidential is included in a Tender by a Tenderer in Tender Schedule H - Miscellaneous Matters For Evaluation;
        2. the Commonwealth agrees (in its absolute discretion) that such information is commercial-in-confidence information; and
        3. the Tender Administrator notifies the Tenderer by email that the Commonwealth (in its absolute discretion) agrees, including the terms of any agreement under subparagraph (ii),

(**Commercial-in-Confidence Information**).

* + 1. The Commonwealth's obligation under paragraph (a) does not apply if the Commercial-in-Confidence Information is:
       1. disclosed by the Commonwealth to its legal or other advisers, or to its officers, employees, contractors or agents by virtue of or in connection with evaluation of the Tender;
       2. disclosed by the Commonwealth to any responsible Minister or any Ministerial adviser or assistant;
       3. disclosed by the Commonwealth to any House or Committee of the Parliament of the Commonwealth of Australia;
       4. disclosed to any Commonwealth department, agency or authority by virtue of or in connection with its functions, or statutory or portfolio responsibilities;
       5. authorised or required by law to be disclosed; or
       6. in the public domain otherwise than due to a breach of paragraph (a).

1. PRIVACY
   * 1. The Tenderer agrees, when doing any act or engaging in any practice for the purposes of lodging a Tender under these Tender Conditions, to comply with the Australian Privacy Principles as if the Tenderer were an agency as defined in the Privacy Act.
     2. The Tenderer acknowledges that, in addition to the requirements of this clause 22, the Tenderer may also be obliged to comply with other obligations in relation to the handling of Personal Information, such as the Australian Privacy Principles or other Statutory Requirements.
     3. This clause 22 survives the expiration or earlier termination of the tender process for the Contract in Part 5.
2. EMPLOYEE ENTITLEMENTS

The Tenderer should note that it is a requirement of the Commonwealth Procurement Rules that the Commonwealth must not enter into a contract with a Tenderer who has a judicial decision (being a decision of any court, tribunal or other body with authority to make a decision or determination which is binding on the Tenderer) against it (not including a decision under appeal) relating to employee entitlements and has not paid the claim.

At the Award Date, the successful Tenderer must not:

* + 1. have a judicial decision against it (not including a decision under appeal) relating to employee entitlements; and
    2. have not paid the claim.

At any time before the Award Date, the Tender Administrator may (in its absolute discretion) notify the Tenderer by email that the Commonwealth requires the Tenderer to provide to the Tender Administrator by email by the time and date specified in the notice a declaration in a form approved by the Commonwealth:

* + 1. stating that it has not had any judicial decision against it (not including a decision under appeal) relating to any employee entitlements which requires the entitlement to have been paid, yet which remains unpaid at the date of the declaration; and
    2. providing details of any matter in respect of which the Tenderer is a party which is before any court, tribunal or authority referred to under paragraph (c) and which relates to any employee related entitlement (whether on appeal or otherwise).

If the Tenderer has lodged its Tender on a Joint Bid Basis, it must provide this declaration for each joint bid party (as applicable).

1. FINANCIAL VIABILITY
   1. Solvency Statement and Financial Information

Without limiting clauses 4(d) and 7 and Tender Schedule H - Miscellaneous Matters For Evaluation, at any time before the Award Date, the Tender Administrator may (in its absolute discretion) notify the Tenderer by email that the Commonwealth requires the Tenderer to provide to the Tender Administrator (or the Independent Financial Adviser engaged by the Commonwealth and notified to the Tenderer under clause 24.2, if specified in the request) by email by the time and date specified in the notice, any of the following:

* + 1. a duly executed solvency statement in the form attached to the Tender Administrator's notice; and
    2. such other financial information or documents specified in the notice,

for the purpose of assessing whether or not the Tenderer has the necessary financial viability to perform the Contractor's Activities, achieve Completion of the Works and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer.

The Tenderer acknowledges that:

* + 1. if the Tenderer lodged its Tender on a Joint Bid Basis, it must provide the information or documents in clause 24 for each joint bid party (as applicable); and
    2. the Tender Administrator may (in its absolute discretion) make a request under clause 24 to one or more Tenderers without making such a request to all Tenderers.
  1. [Independent Financial Adviser](#IndependentFinancialAdviser)

The Tenderer acknowledges that:

* + 1. the Commonwealth may (in its absolute discretion) engage an Independent Financial Adviser:
       1. to undertake a Financial Viability Assessment (including an assessment of the information or documents provided by the Tenderer under clause 24.1, Tender Schedule H - Miscellaneous Matters For Evaluation or otherwise); and
       2. in respect of one or more Tenderers without engaging the Independent Financial Adviser in respect of all Tenderers;
    2. the Independent Financial Adviser may (in its absolute discretion) contact the Financial Representative nominated by the Tenderer (whether under clause 24.1, Tender Schedule H - Miscellaneous Matters For Evaluation or otherwise) directly for the purpose of the Financial Viability Assessment; and
    3. it will ensure that its Financial Representative co-operates with and does everything necessary to assist the Commonwealth, the Tender Administrator and the Independent Financial Adviser in the Financial Viability Assessment process including providing such further financial information and documents and answering all such questions as the Commonwealth, the Tender Administrator and the Independent Financial Adviser may (in their absolute discretion) require for the purposes of the Financial Viability Assessment.

If the Commonwealth engages an Independent Financial Adviser, the Tender Administrator will notify the Tenderer by email of the identity of the Independent Financial Adviser.

1. MATERIAL CHANGE OR STRATEGIC INTEREST ISSUE
   1. Tenderer's Warranty

Subject to clause 25.2, the Tenderer warrants that, at the time of lodging its Tender, it is not aware of any:

* + 1. Material Change; or
    2. Strategic Interest Issue,

in relation to the Tenderer.

* 1. Notice of [Material Change](#MaterialChange) or [Strategic Interest Issue](#DefenceStrategicInterestIssue)

If:

* + 1. a registration of interest process was used, at any time after lodging its registration of interest; or
    2. if a registration of interest process was not used, at any time after lodging its Tender,

the Tenderer becomes aware of any:

* + 1. Material Change; or
    2. Strategic Interest Issue,

the Tenderer must immediately notify the Tender Administrator by email, providing details of:

* + 1. the Material Change or Strategic Interest Issue; and
    2. the steps which the Tenderer has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Material Change or Strategic Interest Issue on the interests of the Commonwealth.
  1. Acknowledgement, release and indemnity

Without limiting any other provision of the Tender Documents, the Tenderer:

* + 1. acknowledges and agrees that:
       1. the Commonwealth is proceeding with the tender process strictly on the basis of, and in reliance upon, the warranties, obligations, releases and indemnities under clause 25; and
       2. without limiting any other right or remedy of the Commonwealth (under the Tender Documents or otherwise at law or in equity), if:
          1. the Tenderer:

notifies the Tender Administrator under clause 25.2; or

has failed to strictly comply with clause 25; or

* + - * 1. the Commonwealth otherwise considers (in its absolute discretion) that there exists (or is likely to exist) a Material Change or Strategic Interest Issue in relation to the Tenderer,

the Commonwealth may (in its absolute discretion) do any one or more of the following:

* + - * 1. notify the Tenderer by email or post that it is required to:

meet with the Commonwealth to provide further information, documents or evidence in relation to, and otherwise clarify, the:

nature and extent of the Material Change or Strategic Interest Issue; and

steps which the Tenderer has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Material Change or Strategic Interest Issue on the interests of the Commonwealth,

by the time and date specified in the notice; or

provide the Tender Administrator by email with further information, documents or evidence in relation to, and otherwise clarify, the:

nature and extent of the Material Change or Strategic Interest Issue; and

steps which the Tenderer has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Material Change or Strategic Interest Issue on the interests of the Commonwealth,

by the time and date specified in the notice; and

* + - * 1. regardless of whether or not the Commonwealth has notified the Tenderer under subsubparagraph C:

notify the Tenderer by email or post that the Tenderer:

is specifically excluded from participating in the tender process and its Tender will not be evaluated (or continue to be evaluated); or

may continue to participate in the tender process, whether with or without such conditions as the Commonwealth thinks fit (in its absolute discretion) including the Tenderer:

implementing Separation Arrangements; or

completing, duly executing and returning to the Tender Administrator by email a deed in a form approved by the Commonwealth,

by the time and date specified in the notice; or

take such Material Change or Strategic Interest Issue or failure into account in any registration of interest process, tender process or similar procurement process in connection with the Project or any other Commonwealth project;

* + 1. releases the Commonwealth in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Tenderer or any other person or entity arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under clause 25 or a corresponding clause in respect of any other Tenderer; and
    2. indemnifies the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
       1. a Material Change or Strategic Interest Issue;
       2. the Tenderer's failure to strictly comply with clause 25; or
       3. the exercise of any of the Commonwealth's absolute discretions under clause 25 or a corresponding clause in respect of any other Tenderer.

1. ANTI-BRIBERY, CORRUPTION AND MODERN SLAVERY
   * 1. The Tenderer's attention is drawn to:
        1. sections 70.2 and 141.1 of the Criminal Code enacted by the *Criminal Code Act 1995* (Cth) which set out the offence of bribing a foreign public official and the offence of bribing a Commonwealth public official respectively; and
        2. the *Modern Slavery Act 2018* (Cth) which, among other things, requires the preparation of a modern slavery statement on actions that Commonwealth non-corporate entities are taking to identify and manage modern slavery risks in their operations and supply chains. More information on what the Government is doing in respect of modern slavery is available at https://modernslaveryregister.gov.au/resources.
     2. As part of its Tender, the Tenderer is requested to complete and lodge Tender Schedule E - Anti-Bribery, Corruption and Modern Slavery Statement.
     3. If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to complete and lodge the information requested for each joint bid party.
     4. Without limiting any other right or remedy of the Commonwealth (under the Tender Conditions or otherwise at law or in equity), if the Commonwealth considers (in its absolute discretion) that the Tenderer’s approach to, its record in respect of or ability to meet its compliance and reporting obligations in respect of, anti-bribery and corruption and modern slavery (including as informed by its response to Tender Schedule E - Anti-Bribery, Corruption and Modern Slavery Statement) is manifestly unsatisfactory, the Commonwealth may notify the Tenderer by email or post that the Tenderer is specifically excluded from participating in the Tender process and its Tender will not be evaluated (or continue to be evaluated).
     5. To assist the Commonwealth in making a determination under paragraph (d) the Tender Administrator may notify the Tenderer by email or post that the Tenderer is required to provide the Tender Administrator with (and the Commonwealth may consider) further information, documents or evidence in relation to, and otherwise clarify, any part of the Tenderer’s response to Tender Schedule E - Anti-Bribery, Corruption and Modern Slavery Statement by the time and date specified in the notice.
2. STATEMENT OF TAX RECORD
   1. Tenderer to provide valid and satisfactory STRs

Clause 27.1 applies unless the Tender Particulars state that it does not apply.

* + 1. The Tenderer’s attention is drawn to the Shadow Economy Procurement Connected Policy, which imposes obligations on the Commonwealth to obtain from tenderers valid and satisfactory STRs. More information about the requirements arising under the Shadow Economy Procurement Connected Policy is available from the Australian Department of Treasury at https://treasury.gov.au/policy-topics/economy/black-economy/procurement-connected-policy.
    2. As part of its Tender, the Tenderer must complete and lodge Tender Schedule I - Statement of Tax Record, which includes:
       1. subject to subparagraph (ii), providing all of the valid and satisfactory STRs required from the Tenderer under Tender Schedule I - Statement of Tax Record;
       2. if the Tenderer has requested any of the STRs required under Tender Schedule I - Statement of Tax Record but the STR has not been issued by the Australian Taxation Office prior to the Closing Date and Time, providing an STR receipt issued by the Australian Taxation Office demonstrating that the STR was requested from the Australian Taxation Office prior to the Closing Date and Time; and
       3. signing a Declaration in the form set out in item B.

The Tenderer should note that this is a **minimum form and content requirement** for its Tender **under clause 3.1(b)(ii) of the Tender Conditions**.

* + 1. **Note to Tenderers not registered or resident in Australia:** TheShadow Economy Procurement Connected Policy (including the requirements to obtain and provide valid and satisfactory STRs) applies to both Tenderers resident in Australia and to Tenderers who are non-residents/not registered in Australia. Tenderers are referred to section 8 of the Shadow Economy Procurement Connected Policy in this regard.
    2. If the Tenderer provides in its response to Tender Schedule I - Statement of Tax Record an STR receipt issued by the Australian Taxation Office demonstrating that any of the STRs required under Tender Schedule I - Statement of Tax Record were requested from the Australian Taxation Office prior to the Closing Date and Time, then:
       1. the Tenderer must provide all of the required valid and satisfactory STRs to the Tender Administrator by email within 4 business days after the Closing Date and Time; and
       2. if the Tenderer does not provide all of the required valid and satisfactory STRs to the Tender Administrator by email within 4 business days after the Closing Date and Time, the Commonwealth may (in its absolute discretion) decide not to evaluate (or continue to evaluate) the Tender.
    3. The Tenderer's attention is also drawn to the Declaration in item B of Tender Schedule I - Statement of Tax Record, which requires the Tenderer to declare that:
       1. it has complied with the requirements in Tender Schedule I - Statement of Tax Record to provide and attach each of the required valid and satisfactory STRs (or to provide and attach a receipt issued by the Australian Taxation Office demonstrating that any relevant STRs were requested from the Australian Taxation Office prior to the Closing Date and Time);
       2. it has obtained and holds valid and satisfactory STRs for each subcontractor that it will engage for the Contractor's Activities or the Works under a subcontract with an expected value of over $4 million (GST inclusive), if known as at the Closing Date and Time; and
       3. if it is the successful Tenderer, it will ensure that any subcontractor that it subsequently engages for the Contractor's Activities or the Works under a subcontract with an expected value of over $4 million (GST inclusive) provides it with a valid and satisfactory STR prior to entering into the relevant subcontract.
  1. Tenderer to confirm it holds valid and satisfactory STRs

Clause 27.2 does not apply unless the Tender Particulars state that it applies.

* + 1. The Tenderer’s attention is drawn to the Shadow Economy Procurement Connected Policy, which imposes obligations on the Commonwealth to obtain from tenderers valid and satisfactory STRs. More information about the requirements arising under the Shadow Economy Procurement Connected Policy is available from the Department of Treasury at https://treasury.gov.au/policy-topics/economy/black-economy/procurement-connected-policy.
    2. As part of its response to the Invitation to Register Interest, the Tenderer was required to provide all of the valid and satisfactory STRs applicable to it and as specified under Schedule G - Statement of Tax Record of the Invitation to Register Interest.
    3. If any STR provided by the Tenderer as part of any Invitation to Register Interest process in respect of the Project or otherwise as part of the tender process is or will be no longer valid and satisfactory at the time of the proposed Award Date (as notified by the Tender Administrator by email), the Tenderer must, if and within the time required by the Tender Administrator, provide the Tender Administrator with a copy of each STR as applicable to the Tenderer that will be valid and satisfactory on such proposed Award Date.
  1. Acknowledgement

This clause 27.3 applies where either of clause 27.1 or 27.2 applies.

The Tenderer acknowledges and agrees that (irrespective of any STR lodged by the Tenderer as part of any Invitation to Register Interest process in respect of the Project or otherwise as part of the tender process) the Commonwealth:

* + 1. will only enter into a contract with a Tenderer that, on the proposed Award Date whether as notified by the Tender Administrator under clause 27.2(c) or otherwise, holds and has provided to the Tender Administrator copies of all STRs as applicable to the Tenderer in accordance with the Shadow Economy Procurement Connected Policy that will be valid and satisfactory on such Award Date; and
    2. may (in its absolute discretion) exclude the Tenderer from further consideration if the Tenderer does not satisfy the requirement under paragraph (a).
  1. Definitions

For the purposes of this clause 27:

* + 1. an STR is taken to be:
       1. **satisfactory** if the STR states that the entity has met the conditions, as set out in the Shadow Economy Procurement Connected Policy, of having a satisfactory engagement with the Australian tax system; and
       2. **valid** if the STR has not expired as at the date on which the STR is required to be provided or held;
    2. **business day** meansa day other than a Saturday, Sunday or a public holiday in the Australian Capital Territory; and
    3. **Statement of Tax Record** or **STR** has the meaning given in the Shadow Economy Procurement Connected Policy.

1. Special Conditions OF Tender

These Tender Conditions also include any special conditions of tender specified in the Tender Particulars.

1. - Tender Particulars

**TENDER PARTICULARS**

|  |  |
| --- | --- |
| **Closing Date and Time:** (Part 1, clause 2.1(e)) | ***[INSERT CLOSING DATE (day-month-year)]*** 12.00pm (Australian Capital Territory Local Time) |
| **Tender Administrator:** (Part 1, clause 2.1(q)) | ***[INSERT THE NAME AND EMAIL ADDRESS OF THE TENDER ADMINISTRATOR]***  ***[E.G. External DIP Consultant Name - Attn: Individual Name xyz@xxx.com.xx]*** |
| **Governing law:**  (Part 1, clause 2.4) | (The law in the State of New South Wales, Australia applies unless otherwise stated) |
| **Conditions for Participation:** (Part 1, clause 3.1(c)) | The conditions for participation applicable to this tender process are that the Tenderer must:  None stated.  ***["None stated" IS THE DEFAULT POSITION. IF THE COMMONWEALTH OR TENDER ADMINISTRATOR WISH TO INSERT CONDITIONS FOR PARTICIPATION IN THIS TENDER PROCESS, INSERT THE CONDITIONS FOR PARTICIPATION AND THE FOLLOWING:***  ***The Tenderer should note that [this is a/these are] condition/s for participation in this tender process under clause 3.1(c) of the Tender Conditions and it is requested to lodge information in its Tender demonstrating that it meets each condition for participation. If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to lodge this information for each joint bid party (as applicable)]*** |
| **Tender Lodgement Requirements:** (Part 1, clause 3.4(b)(i)) | The Tenderer must lodge its Tender:   1. in accordance with the response lodgement procedures described in the Tender Documents and the procedures on AusTender. The Tender must be completely self-contained, without hyperlinks or other material incorporated by reference; 2. in separate stand-alone, unsecured, electronic documents/files in ***[INSERT E.G. Microsoft Word version X (or above), Microsoft Excel version X (or above), PDF format (text searchable)]***; 3. in respect of each of the Tender Form and Tender Schedules, with files that identify the Project, the Tenderer's name and the relevant Tender Form and Tender Schedule references; 4. [with files that do not exceed ***[INSERT e.g. 10MB]*** per file / 10MB per upload to AusTender (noting the Tenderer can upload its tender via more than one upload);] 5. with files that do not contain any virus, malicious code or any other matter or thing which might affect the integrity, useability, security or operation of the Commonwealth's or the Tender Administrator's systems; and 6. with files that do not contain macros, scripts or executable codes of any kind. |
| **Relevant Previous Performance:** (Part 1, clause 3.4(b)(i)D and 4(a)(iii) and Tender Schedule C - [Relevant Previous Performance/Not Used]) | Clauses 3.4(b)(i)D and 4(a)(iii) and Tender Schedule C - [Relevant Previous Performance/Not Used] [***DO/DO NOT***] apply.  (Clause 3.4(b)(i)D and 4(a)(iii) and Tender Schedule C - [Relevant Previous Performance/Not Used] apply unless stated otherwise)  *[****DELETE WHICHEVER OPTION DOES NOT APPLY****]*  ***[IF AN INVITATION TO REGISTER INTEREST PROCESS HAS ONLY VERY RECENTLY BEEN CONDUCTED, CONSIDER WHETHER PREVIOUS PERFORMANCE WILL ALSO BE EVALUATED AT TIME OF TENDER]*** |
| **Additional Evaluation Criteria:** (Part 1, clause 4(b)) | None stated.  ***["None stated" IS THE DEFAULT POSITION. IF THE COMMONWEALTH OR THE TENDER ADMINISTRATOR WISH TO INSERT ADDITIONAL EVALUATION CRITERIA, INSERT ADDITIONAL EVALUATION CRITERIA AND THE FOLLOWING:***  ***The Tenderer should note that [this is an/these are] additional evaluation criterion/a in this tender process under clause 4(b) of the Tender Conditions and that it should attach information in its Tender demonstrating that it satisfies each additional criteria. If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to provide any information which it considers relevant to any joint bid arrangements (as applicable).***  ***IF ADDITIONAL EVALUATION CRITERIA IS INSERTED, ANY WEIGHTING PLACED ON THE EVALUATION CRITERIA MUST ALSO BE SPECIFIED. IF THERE IS NO APPLICABLE WEIGHTING, INSERT:***  ***There is no weighting for [this/these] additional evaluation [criterion/criteria]. The Tender will be evaluated with reference to [whether or not this evaluation criteria is met/whether value for money is achieved]]*** |
| **Information Security - Sensitive and Classified Information:** (Part 1, clause 17) | Clause 17 ***[DOES/DOES NOT]*** apply.  (Clause 17 does not apply unless stated otherwise)  ***[DELETE WHICHEVER OPTION DOES NOT APPLY]*** |
| **Shadow Economy Procurement Connected Policy:**  (Part 1, clause 27.1) | Clause 27.1 ***[DOES/DOES NOT]*** apply.  (Clause 27.1 applies unless stated otherwise)  ***[DELETE WHICHEVER OPTION DOES NOT APPLY]***  ***[CLAUSE*** ***27.1 WILL APPLY IF NO INVITATION TO REGISTER INTEREST PROCESS HAS BEEN CONDUCTED AND THE PROCUREMENT IS AN OPEN TENDER WITH AN ESTIMATED VALUE OVER $4 MILLION (GST INCLUSIVE)]*** |
| **Shadow Economy Procurement Connected Policy:**  (Part 1, clause 27.2) | Clause 27.2 ***[DOES/DOES NOT]*** apply.  (Clause 27.2 does not apply unless stated otherwise)  ***[DELETE WHICHEVER OPTION DOES NOT APPLY]***  ***[CLAUSE 27.2*** ***WILL APPLY WHERE AN INVITATION TO REGISTER INTEREST PROCESS HAS BEEN CONDUCTED AND THE PROCUREMENT IS AN OPEN TENDER WITH AN ESTIMATED VALUE OVER $4 MILLION (GST INCLUSIVE)]*** |
| **Special conditions of Tender:**  (Part 1, clause 28) | None stated.  ***["None stated" IS THE DEFAULT POSITION. NOTE THAT SPECIAL CONDITIONS OF*** [***TENDER***](#tender) ***ARE NOT THE SAME AS SPECIAL CONDITIONS OF CONTRACT WHICH MAY BE INCLUDED IN THE CONTRACT IN PART 5]*** |
| **Program format:** (Part 4, Tender Schedule D - Program, item 1) | Microsoft Projector equivalent approved by the Tender Administrator. |

1. - Tender Form

TENDER FORM

To: Commonwealth of Australia (Commonwealth)

By: [INSERT NAME OF TENDERER INCLUDING ABN (IF APPLICABLE)]

1. THE OFFER
   * 1. We tender to perform the Contractor's Activities and the Works in accordance with the Tender Documents and the enclosed Tender Schedules.
     2. We confirm that our tender has been lodged in accordance with the Tender Conditions, including:
        1. the lodgement requirements in clause 3.1(a) of the Tender Conditions;
        2. the minimum form and content requirements in clause 3.1(b) of the Tender Conditions; and
        3. the conditions for participation requirements (if any) in clause 3.1(c) of the Tender Conditions.
     3. In consideration of the Commonwealth promising to pay us the sum of One Dollar ($1.00) we unconditionally accept and agree to be bound by the Tender Conditions and this Tender Form, including:
        1. in respect of the consequences of a non-conforming tender as set out in the Tender Conditions, including in clause 3.3 of the Tender Conditions;
        2. after the Closing Date and Time, to comply with all obligations and participate in all processes set out in clause 7.2 of the Tender Conditions;
        3. if applicable, the requirements of clause 27 of the Tender Conditions in relation to Statements of Tax Record;
        4. to be bound by this Tender for the duration of the Tender Validity Period and agree that this Tender may be accepted by the Commonwealth at any time before the expiration of that period; and
        5. providing the acknowledgements, agreements, releases, indemnities, warranties and other assurances as set out in the Tender Conditions and this Tender Form.
     4. We:
        1. prepared our Tender, and will enter into any contract with the Commonwealth, based on our own investigations, interpretations, deductions, information and determinations;
        2. calculated our tendered Contract Price to cover, in addition to all other obligations under the Contract, the assumption of the risks described under clause 5 of the Tender Conditions;
        3. obtained independent legal advice as to the effect of the provisions of these Tender Conditions and the Contract in Part 5 as to the assumption by the successful Tenderer of the risks described under clause 5 of the Tender Conditions;
        4. examined all information relevant to the risks, contingencies and other circumstances having an effect on our Tender including (without limitation) the Information Documents, the material contained in the Tender Documents, any relevant technical advice made available by the Commonwealth and the terms and conditions of all Statutory Requirements;
        5. [***INCLUDE THE FOLLOWING, IF TENDERERS WILL BE PROVIDED WITH AN OPPORTUNITY TO EXAMINE THE SITE:*** examined the Site and its surroundings, conditions and characteristics and made an appropriate allowance in our Tender for any effect on our Tender;]
        6. satisfied ourselves as to the correctness and sufficiency of our Tender for the Contractor's Activities and the Works and that our tendered Contract Price covers the cost of complying with all the Contractor's obligations under the Contract in Part 5;
        7. examined all Statutory Requirements relevant to any part of the Contractor's Activities and the Works which may restrict or inhibit the execution of any part of the Contractor's Activities or the Works and satisfied ourselves of our capacity to perform the Contractor's Activities, achieve Completion of the Works and otherwise meet our obligations under the Contract in Part 5 without breaching any such Statutory Requirement; and
        8. are aware that the Commonwealth will be relying upon each of the promises, representations and warranties given by us in this Tender if we are selected as the successful Tenderer.
     5. We acknowledge and agree that:
        1. the entire tender process (including the process for meeting with any Tenderers under clause 2.3, 7 or 25.3 of the Tender Conditions, obtaining, evaluating and (if applicable) negotiating Tenders) (**Process**) is, as between the Tenderer and the Commonwealth, being conducted solely for the benefit of the Commonwealth;
        2. notwithstanding subparagraph (i), we are submitting to the Process because we consider that this represents a valuable commercial opportunity for us;
        3. we release the Commonwealth in respect of any claim that we may have for costs, expenses, losses, damages or liabilities suffered or incurred by us arising out of or in connection with the Process, the rejection of, failure to evaluate or failure to accept our Tender, any failure to comply with the Tender Documents, any Meeting Conduct, any debrief, any variation or suspension of the Process or any discontinuance or termination of the Process;
        4. the Commonwealth is proceeding with the Process strictly on the basis of, and in reliance upon, the acknowledgements and releases set out above; and
        5. we indemnify the Commonwealth in respect of all costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth arising out of or in connection with any breach of any acknowledgement or release given by us under this paragraph (e).
     6. We acknowledge that each party constituting the Tenderer is bound jointly and severally by this Tender.
2. UNACCEPTABLE TENDERING PRACTICES

We warrant that, in preparing our Tender, we did not communicate (verbally or otherwise) or have any arrangement or arrive at any understanding with any of the other tenderers or with any employee of an association of which we or any of the other Tenderers are a member concerning the Tender Documents or any aspect of the Contractor's Activities or the Works and, without limitation, further warrant that we did not engage in unacceptable tender practices which in any way reduced, or could have the effect of reducing, the competitiveness of the tender process for the Contractor's Activities and the Works, including:

* + 1. **collusive tendering**:
       1. neither the Tenderer nor any of its servants or agents had knowledge of the tender price of any other Tenderer prior to the Tenderer lodging its Tender for the Contractor's Activities; and
       2. neither the Tenderer nor any of its servants or agents disclosed the tender price lodged by the Tenderer to any other Tenderer who lodged a Tender for the Contractor's Activities or to any other person or organisation prior to the Closing Date and Time;
    2. **cover bidding**:
       1. neither the Tenderer nor any of its servants or agents provided information to any Tenderer, person or organisation, to assist another tenderer for the Contractor's Activities to prepare a Tender known in the building and construction industry as a "cover bid", whereby the Tenderer was of the opinion or belief that another Tenderer did not intend to genuinely compete for the contract; and
       2. the Tenderer is genuinely competing for the contract for the Contractor's Activities and its Tender is not a "cover bid";
    3. **industry association agreements**: prior to the Tenderer lodging its Tender for the Contractor's Activities, neither the Tenderer nor any of its servants or agents entered into any contract, agreement, arrangement or understanding, other than as disclosed to the Commonwealth, that the successful Tenderer would pay any money to, or would provide any other benefit or other financial advantage to, an industry association (being any organisation of building or construction contractors including the Master Builders' Association and the Australian Federation of Construction Contractors) in respect of the Tender; and
    4. **unsuccessful tenderers' fees**: prior to the Tenderer lodging its Tender for the Contractor's Activities, neither the Tenderer nor any of its servants or agents entered into any contract, agreement, arrangement or understanding that the successful Tenderer for the Contractor's Activities would pay any money, or would provide any other benefit or other financial advantage, to or for the benefit of any other Tenderer who unsuccessfully tendered.

1. ADDENDA

We have allowed in our Tender for the requirements contained in all addenda under clause 2.2(d) of the Tender Conditions and identify each addendum by its number and date as follows:

Number **[INSERT]** Dated **[INSERT]**

Number **[INSERT]** Dated **[INSERT]**

1. DETAILS OF TENDERER

Full Name

|  |
| --- |
|  |

ABN/ACN (if applicable)

|  |
| --- |
|  |

Street address (not PO Box)

|  |
| --- |
|  |

Email address

|  |
| --- |
|  |

Street address (not PO Box) for the serving of notices upon the Contractor (if different to the address listed above)

|  |
| --- |
|  |

Email address for the serving of notices upon the Contractor (if different to the address listed above)

|  |
| --- |
|  |

Person for attention for the serving of notices upon the Contractor

|  |
| --- |
|  |

Builders' registration or licence number (if applicable)

|  |
| --- |
|  |

Name of contact person

|  |
| --- |
|  |

|  |  |  |
| --- | --- | --- |
| Contact person - telephone (office) |  | Contact person - telephone (mobile) |
|  |  |  |

Name of the Executive Negotiator (the Tenderer is requested to note that its proposed Executive Negotiator should not be the same person as the Contractor's Representative nominated in Tender Schedule B - Proposed Resources)

|  |
| --- |
|  |

The Tenderer is requested to provide:

* + 1. the full name and address of the tendering entity;
    2. full details of the tendering entity's corporate structure, including trading or business names, related bodies corporate, details of its registration and place of business and details of relevant trust or fiduciary arrangements; and
    3. details of:
       1. the basis on which the Tenderer gives the warranty under clause 25.1 of the Tender Conditions; and
       2. to the extent applicable, the steps which the Tenderer has taken to prevent, end avoid, mitigate, resolve or otherwise manage the risk of any Material Change or Strategic Interest Issue on the interests of the Commonwealth (if applicable).

|  |
| --- |
|  |

If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, the Tenderer confirms that each party to the joint bid will be jointly and severally liable to the Commonwealth if they are the successful Tenderer.

1. FINANCIAL VIABILITY

The Tenderer declares that it has the necessary financial viability to perform the Contractor's Activities, achieve Completion of the Works and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer.

1. EXECUTION OF THE TENDER FORM

In accordance with clause 3.4(a)(ii), the Tenderer is requested to provide evidence of the full authority of the person or persons executing the Tender Form.

The person or persons executing this Tender Form warrant to the Commonwealth that they are duly authorised by the Tenderer to do so.

**DATED** this day of 20

[THE BELOW ARE EXAMPLE EXECUTION CLAUSES ONLY. IF SUBMITTING ON A JOINT BID BASIS, ONLY ONE TENDER FORM IS TO BE SUBMITTED BUT ALL JOINT BID PARTIES MUST EXECUTE THAT TENDER FORM. IF THE TENDERER IS INCORPORATED OVERSEAS, INSERT APPROPRIATE EXECUTION CLAUSE FOR THE RELEVANT JURISDICTION]

**[THE TENDERER IS REQUESTED TO ENSURE THAT THE TENDER FORM IS COMPLETE, ACCURATE, DULY EXECUTED AND VALID - SEE CLAUSE 3.4(a)(ii) OF THE** [**TENDER CONDITIONS**](#tenderconditions)**]**

[S 127 OF CORPORATIONS ACT]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Executed** by **[INSERT NAME]** in accordance with section 127 of the *Corporations Act* *2001* (Cth): |  |  |  |  |
|  |  |  |  |  |
| Signature of director |  |  |  | Signature of company secretary/director ***[delete position as appropriate]*** |
|  |  |  |  |  |
| Full name of director who states that they are a director of **[INSERT NAME]** |  |  |  | Full name of company secretary/director ***[delete position as appropriate]*** who states that they are a company secretary/director ***[delete position as appropriate]*** of **[INSERT NAME]** |

[OR - AUTHORISED SIGNATORY OF COMPANY]

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of **[INSERT NAME]** by its authorised signatory in the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of authorised signatory |
|  |  |  |  |
| Full name of witness |  |  | Full name of authorised signatory |

1. - Tender Schedules
2. Project Understanding

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(i) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to prepare and provide the information requested below.

The Tenderer should ensure that the information provided in this Tender Schedule A - Project Understanding is consistent with information given in other parts of its Tender (as applicable).

If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to provide any information in this Tender Schedule A - Project Understanding which it considers relevant to proposed joint bid arrangements (as applicable).

1. METHODOLOGY STATEMENT

Tenderers are referred to the following in the Conditions of Contract in Part 5:

* + 1. the definition of Methodology Statement in clause 1.1; and
    2. clause 6.17.

The Tenderer is requested to:

* + 1. complete each item in the Methodology Statement outline attached to this Tender Schedule A - Project Understanding;
    2. to the extent possible, not include in the Methodology Statement the matters included in the draft Project Plans provided by the Tenderer with its Tender (as specified in item 2 of this Tender Schedule A - Project Understanding);
    3. ensure that the Methodology Statement provides approaches, solutions and methodologies that comply with the terms of the Conditions of Contract in Part 5; and
    4. include in the Methodology Statement such additional items as the Tenderer considers necessary,

to clearly demonstrate:

* + 1. the Tenderer's detailed understanding of what the Contract requires the Tenderer to do in respect of all aspects of the Contractor's Activities and the Works; and
    2. all aspects of the way in which the Tenderer proposes to perform the relevant Contractor's Activities and the Works which could distinguish the Tenderer's approach from that of other Tenderers.

The Tenderer should note that:

* + 1. subject to paragraph (j), the Methodology Statement provided by the successful Tenderer will become the Methodology Statement for the purposes of the Conditions of Contract in Part 5; and
    2. the Commonwealth reserves the right to negotiate the Methodology Statement provided by any Tenderer with a view to amending the terms of the Methodology Statement before entering into any Contract with the successful Tenderer.

1. PANDEMIC MANAGEMENT PLAN AND WORK HEALTH AND SAFETY

The Tenderer's attention is drawn to the following in the Conditions of Contract in Part 5:

* + 1. the definitions of Project Plans, Pandemic Management Plan and Work Health and Safety Plan under clause 1.1; and
    2. clauses 9.2, 8.17 and 8.30.

The Tenderer is requested to prepare and provide:

* + 1. a **draft** Pandemic Management Plan, such draft to be focused on the Contractor's Activities and the Works described in the Contract in Part 5 and the current circumstances of the Pandemic as at the date of submission of the Tenderer’s Tender (including relevant Statutory Requirements);
    2. a **draft** Work Health and Safety Plan, such draft to be focused on the Contractor's Activities and the Works described in the Contract in Part 5; and
    3. a statement demonstrating the Tenderer's capacity to manage the Contractor's Activities in a manner which ensures the Contractor and the Contractor's Activities comply with the requirements of clause 8.17 of the Conditions of Contract, including the Contractor's approach to the preparation and ongoing review of the Work Health and Safety Plan.

The Tenderer should note that:

* + 1. subject to paragraph (g), the draft Pandemic Management Plan and draft Work Health and Safety Plan provided by the successful Tenderer will become the draft Pandemic Management Plan and draft Work Health and Safety Plan for the purposes of clause 9.2(a)(ii)A of the Conditions of Contract in Part 5; and
    2. the Commonwealth reserves the right to negotiate the draft Pandemic Management Plan and draft Work Health and Safety Plan provided by the Tenderer, with a view to amending the terms of the draft Pandemic Management Plan and draft Work Health and Safety Plan, before entering into any Contract with the successful Tenderer.

1. COLLATERAL WARRANTIES

The Tenderer's attention is drawn to clause 8.6 of the Conditions of Contract and clause 2 of Annexure 1 to the Contract in Part 5.

The Tenderer is requested to provide details of the minimum warranties which the Tenderer proposes for the purposes of clause 2 of Annexure 1 to the Contract in Part 5, in the table format set out below.

| **DESCRIPTION** | **MINIMUM WARRANTY PERIOD** |
| --- | --- |
| Mechanical Services |  |
| Electrical Services |  |
| Fire Services |  |
| Security |  |
| Plumbing |  |
| Drainage |  |
| Hardware |  |
| Tiling |  |
| Painting |  |
| Carpet |  |
| Access Floor |  |
| Lifts |  |
| Benches & Cupboards |  |
| Windows & Glazing |  |
| Metal Roof & Walling |  |
| Membrane Roofing & Tanking |  |
| External Coating Systems |  |
| Sun Control Louvres |  |
| Toilet Partitions |  |
| Partitions |  |
| Resilient finishes, e.g. Vinyl |  |
| Suspended Ceilings |  |
| Doors |  |
| Internal Signage |  |
| External Signage (signwriting and lettering) |  |
| External Signage (excluding signwriting and lettering) |  |
| Façade |  |
| ***[INSERT OTHER WARRANTIES. THE WARRANTIES REFERRED TO ABOVE ARE EXAMPLES ONLY]*** |  |
| **[TENDERER TO INSERT ANY ADDITIONAL PROPOSED COLLATERAL WARRANTIES]** |  |

The Tenderer should note that:

* + 1. subject to paragraph (b), the minimum warranties proposed by the successful Tenderer will become the minimum warranties for the purposes of clause 2 of Annexure 1 to the Contract in Part 5; and
    2. the Commonwealth reserves the right to negotiate the minimum warranties proposed by any Tenderer with a view to amending these before entering into any Contract with the successful Tenderer.

1. PAGE LIMITS

***[CONSIDER WHETHER OR NOT THERE IS TO BE ANY PAGE LIMITS. IF NOT, DELETE THIS ITEM IN ITS ENTIRETY. ANY PAGE LIMITS MUST BE REASONABLE AND SUFFICIENT TO ALLOW A COMPETENT TENDERER TO RESPOND ADEQUATELY TO THE CRITERION]***

The Tenderer may lodge up to (but no more than) ***[INSERT]*** pages in response to item 1 of this Tender Schedule A - Project Understanding.

The Tenderer should note that the Commonwealth may (in its absolute discretion) decide not to evaluate or continue to evaluate any material provided in excess of the page limit specified (including where more than the number of pages is provided in respect to any item).

Tenderers are reminded of the formatting and other requirements set out in clause 3.4 of the Tender Conditions.

**Attachment to Tender Schedule A -  
Methodology Statement Outline**

1. PROJECT SPECIFIC RISKS

In this section, the Tenderer is requested to provide its understanding of, and approach to addressing, Project specific issues or risks, including the following identified by the Commonwealth and such others as the Tenderer may identify:

* + 1. ***[THE COMMONWEALTH AND THE TENDER ADMINISTRATOR TO CONSIDER AND INSERT ANY PROJECT SPECIFIC MATTERS TO BE ADDRESSED IN THE METHODOLOGY STATEMENT.]***
    2. **[TENDERER TO INCLUDE OTHER KEY RISKS OR ISSUES UNIQUE TO THE PROJECT, CONTRACTOR'S ACTIVITIES OR THE WORKS IDENTIFIED BY THE TENDERER]**.

1. APPROVALS

In this section, the Tenderer is requested to provide its specific approach to engaging with the Commonwealth, external authorities and the local community to obtain all necessary national, regional and local certificates, permits and other Approvals (including all relevant Approvals of the Host Nation, including Approvals with regard to occupational health and safety, building standards and environmental standards).

1. LOCAL INDUSTRY
2. In this section, the Tenderer is requested to provide its specific approach to maximising:
   1. the purchase of goods and services from Australian suppliers and suppliers resident in the Host Nation; and
   2. involvement of the Australian industry and the Host Nation's local industry, including employment of local residents,

including:

* 1. any innovative solutions to maximising Australian industry and Host Nation local industry opportunities, involvement and capability (both directly and indirectly) and how such innovative solutions will be implemented; and
  2. its approach to maximising:
     1. both direct and indirect benefits to the Australian industry and the local industry of the Host Nation; and
     2. the longer-term impacts on the local industry of the Host Nation, including facilitating capability development, education and training of local residents. The use of the Australia Pacific Training Coalition (APTC) should be considered.

Tenderers should also include an assessment of the availability of local materials and skills.

1. PROGRAMMING AND PROGRAM MANAGEMENT

In this section, the Tenderer is requested to provide its specific approach to programming tasks and activities (including by subcontractors), including:

* + 1. progressive development of the Delivery Phase Program in the Planning Phase, by reference to the development of the Planning Phase Design Documentation;
    2. proactively managing and co-ordinating subcontractors; and
    3. programming and controlling the Contractor's Activities for the duration of the Project, in both the Planning Phase and the Delivery Phase.

1. COST PLANNING AND COST MANAGEMENT

In this section, the Tenderer is requested to provide its specific approach to cost planning tasks and activities, including the progressive development of the cost plan in the Planning Phase and ensuring an "open book" approach.

1. DELIVERY PHASE APPROVAL

In this section, the Tenderer is requested to provide its specific approach to achievement of Delivery Phase Approval, including:

* + 1. undertaking the relevant Contractor’s Activities during the Planning Phase to achieve Delivery Phase Approval and providing all required information in a timely, current, complete and fully co-ordinated manner in light of the Date for Delivery Phase Approval; and
    2. undertaking genuine and good faith negotiations with the Commonwealth for the purposes of achieving Delivery Phase Approval.

1. GENDER EQUALITY

In this section, the Tenderer is requested to provide its specific approach to promoting and improving workplace gender equality, including any specific gender diversity targets or other procedures, policies or measures that the Tenderer has or proposes to put in place, and the Tenderer's approach to:

* + 1. removing barriers to the full and equal participation of women in the Project and the Contractor's Activities;
    2. equal remuneration between women and men; and
    3. fostering consultation with employees on issues concerning gender equality in the workplace.

1. ENVIRONMENTAL MANAGEMENT

In this section, the Tenderer is requested to provide its specific approach to environmental management, including having regard to the Environmental Objectives.

1. QUALITY MANAGEMENT

In this section, the Tenderer is requested to provide its specific approach to quality management, including through:

* + 1. approach to workmanship;
    2. selection of materials;
    3. compliance with Statutory Requirements;
    4. inspection and test plans of the Project;
    5. identifying hold points, witness points and activity checklists; and
    6. identifying and managing quality culture and local industry education needs regarding quality.

1. LOGISTICS MANAGEMENT

In this section, the Tenderer is requested to provide its specific approach to logistics management including:

* + 1. proposed domestic and international procurement activities;
    2. lead times and approvals;
    3. materials delivery and storage;
    4. building methodology and construction sequencing; and
    5. logistical and procurement risks.

This section should also address the extent to which the Tenderer proposes to rely on clauses 12.8 and 12.9 of the Conditions of Contract (but noting that pricing information in respect of these clauses should not be included).

1. COMMISSIONING, TRAINING, HANDOVER AND DEFECTS

In this section, the Tenderer is requested to provide its specific approach to:

* + 1. the provision of Works Information and other Project Documents in accordance with the Contract in Part 5;
    2. commissioning, Completion, training and handover related tasks and activities; and
    3. defect rectification and, to the extent required under the Contract in Part 5, maintenance during the Defects Liability Period.

1. PREPARATION OF PROJECT PLANS

In this section, the Tenderer is requested to provide its specific approach to preparation of the Project Plans required under the Conditions of Contract in Part 5 (excluding the Work Health and Safety Plan and Pandemic Management Plan) so as to ensure timely and compliant completion.

1. DESIGN DOCUMENTATION

In this section, the Tenderer is requested to provide its specific approach to the proactive preparation, submission, review and development of design documentation and all other design tasks and activities, including:

* + 1. proactively integrating and co-ordinating the design documentation across disciplines, and as against existing documentation and information;
    2. identifying, scoping and arranging for and conducting all necessary site investigations and risk reduction studies;
    3. approach to the method of construction of the Works and selecting materials;
    4. engaging with the Commonwealth, external authorities and the community to achieve all necessary Approvals and engagement;
    5. engaging with Other Contractors on and near the Site***[;/ ; and]***
    6. ensuring the design documentation:
       1. is complete, fully co-ordinated and free from discrepancies, ambiguities, errors and omissions;
       2. incorporates buildability knowledge, experience and lessons learned;
       3. complies with all Statutory Requirements, including the WHS Legislation; and
       4. addresses "safe design" principles***[; and/.]***
    7. ***[IF THERE ARE MULTIPLE SITES. IF NOT, DELETE THIS ITEM***] ensuring consistency in design at each relevant Site (to the extent necessary and required by the Commonwealth).

1. SUSTAINABILITY

In this section, the Tenderer is requested to provide its specific approach to climate change and promoting environmental sustainability in relation to the Contractor's Activities and the Works, including having regard to:

* + 1. energy efficiency;
    2. reducing environmental impact;
    3. the use of recycled products;
    4. the Sustainable Procurement Guide (as published by the Department of Agriculture, Water and the Environment); and
    5. any proposed:
       1. technically feasible and cost-effective options to reduce investment related greenhouse gas emissions; and
       2. incentives that will increase people’s ability to adapt to climate change and disaster risks, such as water and energy conservation mechanisms.

1. Proposed Resources
2. PROPOSED RESOURCES (INCLUDING CONTRACTOR'S REPRESENTATIVE AND OTHER KEY PEOPLE)

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(ii) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide details of its proposed key people for the Contractor's Activities and the Works, including the key people for the roles described in the table below.

Such information should include, in respect of each key person:

* + 1. their current and proposed future location (including identifying whether the key person is located within the general geographical location/s of the Works and, where not, details of how the key person will perform the relevant part of the Contractor's Activities and the Works in the location/s of the Works);
    2. details of how the key person is proposed to perform the relevant part of the Contractor's Activities and the Works, including their proposed scope of duties;
    3. the estimated number of hours per week that they will be dedicated to the relevant part of the Contractor's Activities and the Works (the Tenderer should assume that 37.5 hours comprises one week for this purpose);
    4. their current and potential future workload, capacity and availability and involvement in other current and potential future projects, and how the key person is proposed to perform the relevant part of the Contractor's Activities and the Works in light of the key person’s commitments to those other projects;
    5. details of their involvement in projects identified in Tender Schedule C - [Relevant Previous Performance/Not Used] (if applicable) and other experience relevant to their proposed scope of duties (with such experience to be linked to the details included in the curriculum vitae provided under paragraph (i) below);
    6. their relevant qualifications / licences / accreditations / certifications / memberships of professional bodies / associations (or similar) (with such qualifications (etc) to be linked to the details included in the curriculum vitae provided under paragraph (i) below); and
    7. details of a referee for that key person (including name and contact number).

Such details should be provided in the table format as set out below and include details of the resources the Tenderer proposes for each of the Planning Phase and the Delivery Phase.

| **ROLE** | **NAME** | **LOCATION**  **(CURRENT AND PROPOSED) AND HOW MANAGED** | **DETAILS OF PROPOSED INVOLVE-MENT AND PROPOSED SCOPE OF DUTIES** | **ESTIM-ATED HOURS PER WEEK** | **CURRENT AND POTENTIAL FUTURE WORKLOAD, CAPACITY, AVAILABILITY AND HOW MANAGED** | **INVOLVEME-NT IN TENDER SCHEDULE C PROJECTS AND OTHER RELEVANT EXPERIENCE** | **RELEVANT QUALIFICA-TIONS ETC** | **REFEREE DETAILS** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **CONTRACTOR'S REPRESENTATIVE** |  |  |  |  |  |  |  |  |
| ***[OTHER ROLES DESCRIBED IN THE CONTRACT PARTICULARS]*** |  |  |  |  |  |  |  |  |
| **[TENDERER TO PROPOSE ADDITIONAL KEY PEOPLE]** |  |  |  |  |  |  |  |  |

If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to provide any information in this item 1 of Tender Schedule B - Proposed Resources which it considers relevant to proposed joint bid arrangements (as applicable).

**IMPORTANT NOTE TO TENDERERS**

If the Tenderer has lodged a registration of interest for this Project, the Tenderer is also requested to provide details of any changes to its nominated key personnel (and the reasons for these changes) as against those nominated in the corresponding schedule in the Tenderer's registration of interest.

**[INSERT]**

The Tenderer is also requested to provide:

* + 1. a proposed organisational chart; and
    2. curriculum vitae for the Contractor's Representative and each key person for the roles specified in the table above, which should provide details of all relevant projects in the last 5 years. The Tenderer must not exceed **2 pages** for each curriculum vitae.

The information provided by a Tenderer in this item 1 of Tender Schedule B - Proposed Resources is for evaluation purposes only and will not limit or affect the scope of the Contractor's Activities, the Works or the Contract in Part 5.

1. PROPOSED SUBCONTRACTORS (INCLUDING CONSULTANTS, MATERIAL SUPPLIERS AND SERVICE PROVIDERS)

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(ii) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide details of its proposed subcontractors (including consultants, material suppliers and service providers) and each subcontractor's key people for the Contractor's Activities and the Works if it is the successful Tenderer. In preparing its response to this item 2 of Tender Schedule B - Proposed Resources, Tenderers should have regard to:

* + 1. the definition of Local Industry Capability Plan in clause 1.1 and to clause 8.29 of the Conditions of Contract in Part 5; and
    2. the Tenderer's approach to local industry as set out in the Tenderer's Methodology Statement in response to Tender Schedule A - Project Understanding.

Such information should include, in respect of each subcontractor (and its key people):

* + 1. their current and future proposed location (including identifying whether the subcontractor is (and its key people are) located in the general geographical location/s of the Works and, where not, details of how they will perform the relevant part of the Contractor's Activities and the Works in the location/s of the Works);
    2. details of how the subcontractor (and its key people) is proposed to perform the relevant part of the Contractor's Activities and the Works, including their proposed scope of duties;
    3. the estimated number of hours per week to be dedicated to the relevant part of the Contractor's Activities and the Works (the Tenderer should assume that 37.5 hours comprises one week for this purpose);
    4. their current and potential future workload, capacity and availability and involvement in other current and potential future projects, and how the subcontractor is (and its key people are) proposed to perform the relevant part of the Contractor's Activities and the Works, in light of their commitments to those other projects;
    5. details of their involvement in projects identified in Tender Schedule C - [Relevant Previous Performance/Not Used] (if applicable) and other experience relevant to their proposed scope of duties (with such experience to be linked to the details included in the curriculum vitae provided under paragraph (k) below);
    6. their relevant qualifications / licences / accreditations / certifications / memberships of professional bodies / associations (or similar) (with such qualifications (etc) to be linked to the details included in the curriculum vitae provided under paragraph (k) below); and
    7. details of a referee for each key person from each subcontractor (including name and contact number).

Such details should be provided in table format as set out below.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **DISCIPLINE, TRADE, ITEM, GOODS OR MATERIAL DESCRIPTION** | **SUBCON-TRACTOR NAME**  **AND KEY PEOPLE**  **(ROLE AND NAME)** | **LOCATION (CURRENT AND PROPOSED) AND HOW MANAGED** | **DETAILS OF PROPOSED INVOLVE-MENT AND PROPOSED SCOPE OF DUTIES** | **ESTIM-ATED HOURS PER WEEK** | **CURRENT AND POTENTIAL FUTURE WORK-LOAD, CAPACITY, AVAILAB-ILITY AND HOW MANAGED** | **INVOLVE-MENT IN TENDER SCHEDULE C PROJECTS AND OTHER RELEVANT EXPERIENCE** | **RELEVANT QUALIFIC- ATIONS ETC** | **REFEREE DETAILS** |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |

If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to provide any information in this item 2 of Tender Schedule B - Proposed Resources which it considers relevant to proposed joint bid arrangements (as applicable).

The Tenderer is also requested to provide:

* + 1. a proposed organisational chart; and
    2. curriculum vitae for each key person from each subcontractor which should provide details of all relevant projects worked on (including roles on those projects similar to those roles proposed for this project) in the last 5 years. The Tenderer must not exceed **2 pages** for each curriculum vitae.

The information provided by a Tenderer in this item 2 of Tender Schedule B - Proposed Resources is for evaluation purposes only and will not limit or affect the scope of the Contractor's Activities, the Works or the Contract in Part 5.

1. [Relevant Previous Performance/Not Used]

This Tender Schedule C - [Relevant Previous Performance/Not Used] applies unless the Tender Particulars state that it does not apply.

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(iii) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide details of previous performance by reference to any relevant projects being carried out or completed in the ***[INSERT]*** years prior to the Closing Date and Time up to a maximum of ***[INSERT E.G. 5]*** projects in the table format as set out below.

RELEVANT PROJECTS BEING CARRIED OUT OR COMPLETED IN THE *[INSERT]* YEARS PRIOR TO THE [CLOSING DATE AND TIME](#ATMCloseDateandTime) UP TO A MAXIMUM OF *[INSERT]* PROJECTS

|  | **[PROJECT AND LOCATION]** | **[PROJECT AND LOCATION]** | **[ETC]** |
| --- | --- | --- | --- |
| **CLIENT** |  |  |  |
| **NATURE AND EXTENT OF INVOLVEMENT OF THE TENDERER** |  |  |  |
| **DETAILS OF NON-COMPLIANCE/S WITH QUALITY PROCEDURE/SYSTEM/FRAMEWORK AND RECTIFICATION OF SAME** |  |  |  |
| **CONTRACT PRICE (AGREED)** |  |  |  |
| **CONTRACT PRICE (ADJUSTED)** |  |  |  |
| **REASONS FOR DIFFERENCE IN CONTRACT PRICE (AGREED) AND CONTRACT PRICE (ADJUSTED) (IF ANY) AND IF THE REASON IS BY VARIATION, WHO INITIATED THAT VARIATION** |  |  |  |
| **DATE FOR COMPLETION (AGREED)** |  |  |  |
| **DATE FOR COMPLETION (ADJUSTED)** |  |  |  |
| **DATE OF COMPLETION (ACTUAL)** |  |  |  |
| **NUMBER OF EXTENSION OF TIME CLAIMS AND REASONS FOR EACH EXTENSION OF TIME** |  |  |  |
| **DETAILS OF ANY CALLS ON SECURITY** |  |  |  |
| **DETAILS OF OTHER INNOVATIONS AND VALUE ADDING** |  |  |  |
| **DETAILS OF PROBLEMS AND SOLUTIONS WHICH RESOLVED PROBLEMS** |  |  |  |
| **CLIENT REFEREE ‑ NAME AND CURRENT TELEPHONE NUMBER** |  |  |  |
| **PROJECT MANAGER** |  |  |  |
| **PROJECT MANAGER REFEREE ‑ NAME AND CURRENT TELEPHONE NUMBER** |  |  |  |

If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to provide any information in this Tender Schedule C - [Relevant Previous Performance/Not Used] which it considers relevant to proposed joint bid arrangements (as applicable). The maximum number of projects listed for the Tenderer to provide details of in the above table applies to the Joint Bid parties cumulatively.

1. Program
2. PROGRAM

The Tenderer's attention is drawn to the definitions of "Planning Phase Program", "Outline Delivery Phase Program" and "Delivery Phase Program" in clause 1.1 and to clauses 2.3, 2.4 and 10.2 of the Conditions of Contract in Part 5.

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(iv) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide:

* + 1. a detailed program for the Planning Phase:
       1. based on an assumed Award Date of ***[INSERT]***;
       2. based on achieving:
          1. each Planning Phase Milestone by the relevant Planning Phase Milestone Date; and
          2. Delivery Phase Approval by the Date for Delivery Phase Approval; and
       3. otherwise reflecting all relevant Contractor’s Activities; and
    2. a detailed indicative program for the Delivery Phase, for the completion of design (to the extent applicable and not completed during the Planning Phase), commencement, construction, commissioning, completion and handover of the Works,

in each case showing its order of work, periods for carrying out (as applicable) alldesign, documentation andconstruction activities, including off‑site activities and key dates.

Each program should also:

* + 1. show all individual design activities, including co-ordination and design development meetings (both internal and with [the](#defence) Commonwealth), design submissions and design review periods;
    2. allow for all necessary meetings (internal and external), reviews, consents and approvals;
    3. be in a format compatible with the software specified in the Tender Particulars, which otherwise shows all worksheets and calculations; and
    4. otherwise satisfy the requirements for the program described in the Contract in Part 5, including to be prepared as a computerised "Critical Path Method" network precedence diagram.

The programs should be based on achieving Completion of the Works or each Stageby the relevant Indicative Date for Completion.

The Tenderer should note that:

* + 1. the programs referred to in this Tender Schedule D - Program will not form part of the Contract but will, subject to any negotiation of those programs prior to the Award Date, form the basis of:
       1. in respect of the program referred to in paragraph (a) above, the initial Planning Phase Program referred to in clause 2.3(a) of the Conditions of Contract in Part 5; and
       2. in respect of the program referred to in paragraph (b) above, the Outline Delivery Phase Program (as defined in clause 1.1 of the Conditions of Contract in Part 5); and
    2. the assumed Award Date provided in paragraph (a) above is for the purposes of assisting the Tenderer to prepare a proposed program for the Planning Phase. This is not to be taken as a representation that the Commonwealth will enter into a contract on this date or any other date with the Tenderer. The Tenderer is also referred to clause 8 of the Tender Conditions.

1. PLANNING PHASE MILESTONE DATE/S [IF THE TENDERER IS TO TENDER PROPOSED PLANNING PHASE MILESTONE DATE/S ONLY. IF NOT, DELETE THIS ITEM.]

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(iv) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide ***[a proposed Planning Phase Milestone Date] [proposed Planning Phase Milestone Dates]*** (as defined in clause 1.1 of the Conditions of Contract in Part 5) which must be no later than the Date for Delivery Phase Approval (as defined in clause 1.1 of the Conditions of Contract in Part 5) in the table below:

1. INDICATIVE DATE/S FOR COMPLETION *[IF THE TENDERER IS TO TENDER THE INDICATIVE DATE/S FOR COMPLETION ONLY. IF NOT, DELETE THIS ITEM.]*

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(iv) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide ***[a proposed Indicative Date for Completion] [proposed Indicative Dates for Completion]*** (as defined in clause 1.1 of the Conditions of Contract in Part 5) which must be no later than the "latest indicative date for Completion" in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| **IF THERE ARE NO STAGES, FOR THE WORKS *[DELETE ROW IF NOT APPLICABLE]*** | **INDICATIVE DATE FOR COMPLETION** | | **LATEST INDICATIVE DATE FOR COMPLETION** |
|  | | ***[INSERT LATEST INDICATIVE* *DATE FOR COMPLETION]*** |
| **IF THERE ARE STAGES, FOR EACH STAGE *[DELETE ROW IF NOT APPLICABLE]*** | **STAGE** | **INDICATIVE DATE FOR COMPLETION** | **LATEST INDICATIVE DATE FOR COMPLETION** |
| ***[INSERT DESCRIPTION OF STAGE]*** |  | ***[INSERT LATEST INDICATIVE* *DATE FOR COMPLETION]*** |
| ***[INSERT DESCRIPTION OF STAGE]*** |  | ***[INSERT LATEST INDICATIVE* *DATE FOR COMPLETION]*** |

1. Anti-Bribery, Corruption and Modern Slavery Statement

The Tenderer's attention is drawn to clause 26 of the Tender Conditions. To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(v) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to complete and lodge Tender Schedule E - Anti-Bribery, Corruption and Modern Slavery Statement by:

* + 1. in item A, describing its general approach to anti-bribery and corruption including the Tenderer’s anti-bribery and corruption related policy, procedure and training documents including details of:
       1. the Tenderer's compliance and internal audit function;
       2. the Tenderer's record keeping processes;
       3. the Tenderer's whistle-blower hotline or other reporting mechanism;
       4. any relationships the Tenderer has with any public officials in the Host Nation, Australia and/or any other country;
       5. any instances where the Tenderer (including management or key employees) have been subject to any enforcement proceedings or inquiries in relation to bribery or corruption;
       6. any instances where the Tenderer has been investigated, or subject to adverse regulatory action or criminal sanction, for bribery or corruption anywhere in the world;
       7. any subcontractors the Tenderer proposes to use, including the name and ultimate beneficial owner (noting this information should be consistent with the information provided in its response to Tender Schedule B - Proposed Resources); and
       8. how, if successful, the Tenderer would manage the risk of their subcontractors engaging in bribery or corruption; and
    2. completing the Questionnaire in item B.

If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to complete and lodge the information requested in this Tender Schedule E - Anti-Bribery, Corruption and Modern Slavery Statement for each joint bid party.

A GENERAL APPROACH TO ANTI-BRIBERY AND CORRUPTION

**[INSERT]**

B QUESTIONNAIRE

The Tenderer must provide answers to all of the following questions:

1. Does your company have a code of conduct for employees (or similar policy or standard)?

**❑ YES ❑ NO**

If Yes, please provide a copy.

1. How does your company communicate your human rights/ethical expectations with suppliers (this includes suppliers for services and products used by your company, for example: cleaning services, catering, uniform manufacturer)?

Please provide details and evidence:

**[INSERT]**

1. Does your company consider human rights and labour standards in the selection of suppliers and contractors?

If Yes, please provide details and evidence:

**[INSERT]**

1. Does your company retain any workers' original personal identification documentation, including passports or work papers?

**❑ YES ❑ NO**

If Yes, please provide details of what is retained, why it is retained and how workers can access the documents:

**[INSERT]**

1. What process does your company have in place to verify workers' (including subcontractors and subconsultants) legal eligibility and entitlement to work in the country of employment?

Please provide details and evidence:

**[INSERT]**

1. How does your company ensure that workers (including subcontractors and subconsultants) meet or exceed the minimum legal working age?

Please provide details and evidence:

**[INSERT]**

1. Does your company ensure that all workers (including subcontractors and subconsultants) are provided with a written contract covering conditions of employment, which is provided in a language understood by the workers?

Please provide details and evidence:

**[INSERT]**

1. How does your company ensure that the wages paid to workers (including subcontractors and subconsultants) comply with the local law and are sufficient to meet workers' basic needs including some discretionary spending?

Please provide details and evidence:

**[INSERT]**

1. Does your company keep an accurate record of all employees and workers directly employed by you, including permanent, casual, temporary and seasonal and those on contracts?

**❑ YES ❑ NO**

If Yes, please provide details and evidence:

**[INSERT]**

1. How does your company ensure labour hire and/or subcontracted workers receive the same pay and conditions as direct employees?

Please provide details and evidence:

**[INSERT]**

1. How does your company ensure that no one in its direct employment or sub-contracted work exceeds the legal maximum number of hours?

Please provide details and evidence:

**[INSERT]**

1. Is overtime voluntary and compensated at a premium rate?

**❑ YES ❑ NO**

If Yes, please provide details and evidence:

**[INSERT]**

1. Does the company have a system or process in place to ensure employees are aware of their right to freedom of association?

**❑ YES ❑ NO**

If Yes, please provide details and evidence:

**[INSERT]**

1. Are workers provided with a healthy and safe working environment including adequate rest periods, and leave according to applicable laws?

**❑ YES ❑ NO**

If Yes, please provide details and evidence:

**[INSERT]**

1. Does your company provide training on non-discrimination for all staff involved in recruitment, promotion and other employment decisions?

**❑ YES ❑ NO**

If Yes, please provide details and evidence:

**[INSERT]**

1. Does your company currently conduct any independent human rights/social assessments or checks of your operations and suppliers?

**❑ YES ❑ NO**

If Yes, please provide details and evidence:

**[INSERT]**

1. Does your company have a grievance mechanism for registering, tracking and responding to human rights related complaints?

**❑ YES ❑ NO**

If Yes, please provide details of how this works in practice:

**[INSERT]**

1. Does your company agree to work towards meeting and/or exceeding the IPACE Supplier Code of Conduct?

**❑ YES ❑ NO**

1. Financial

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(vi) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide the information described in Tender Schedule F - Financial.

The Tenderer should note that, except where otherwise stated, all amounts are not and will not be subject to rise and fall, or adjustment or gross up on account of any Tax. The Tenderer should ensure that all amounts are **exclusive** **of GST and all Taxes specified in the Contract Particulars in Part 5** **for which the Commonwealth bears the risk** but must otherwise include all Taxes (see clauses 12.19 and 12.20 of the Conditions of Contract in Part 5).

**The Tenderer should also note that:**

* + 1. **it is a minimum form and content requirement for its Tender under clause 3.1(b)(iii) of the Tender Conditions that the Tenderer must accept (without departure, qualification, amendment, limitation or exclusion) the Contract in Part 5, except to the extent completed and lodged in Tender Schedule G - Alternative Proposals (subject only to the exception for departures in respect of clauses 5.4 - 5.9 of the Conditions of Contract in Part 5 only, in accordance with clause 3.1(b)(iii)B of the Tender Conditions);**
    2. **if it does not do so, its Tender may be regarded as non-conforming and clause 3.3 of the Tender Conditions will apply; and**
    3. **accordingly, if the Tenderer wishes to depart from, qualify, amend, limit or exclude any part of the Contract (including the Works Description) in Part 5 (subject only to the exception for departures in respect of clauses 5.4 - 5.9 of the Conditions of Contract referred to in paragraph (a)), it must complete and lodge Tender Schedule G - Alternative Proposals and not set out or describe such matters in this Tender Schedule F - Financial.**

For example, the Tenderer must ensure that any provisional sum amounts included in the Contract Price only relate to those items identified as Provisional Sum Work (see clause 8.7 of the Conditions of Contract in Part 5).

The Commonwealth reserves the right to negotiate the information provided by any Tenderer in this Tender Schedule F - Financial with a view to amending the terms of the Contract before entering into any Contract with the successful Tenderer.

**IMPORTANT NOTE TO TENDERERS - CURRENCIES**

The Tenderer is invited to nominate the currency or currencies in which it proposes the Contract Price be paid. Each component of its Contract Price should be clearly expressed in the tables below in such currency or currencies as may be proposed by the Tenderer (for example, the local currency of the Host Nation). It is the Commonwealth's expectation that, generally, the proposed currencies will reflect the local currency of where the goods and services will be sourced or provided so that the Tenderer is not assuming a foreign currency exchange rate risk.

**IMPORTANT NOTE TO TENDERERS - COVID-19 PANDEMIC**

The Tenderer's attention is drawn to the definitions of Pandemic and Pandemic Adjustment Event in clause 1.1 and to clause 8.30 of the Conditions of Contract in Part 5.

Tenderers are requested to ensure that breakdown of the ***[lump sum / lump sum forming part of the]*** Planning Phase Price and Indicative Delivery Phase Price provided in items 1 and 3 below clearly identify and, where possible, itemise amounts referable to the current circumstances of the Pandemic in the context of the Contractor's Activities and the Works. Such items should be:

* + 1. based on the current circumstances of the Pandemic as at the date of submission of the Tenderer's Tender (including relevant Statutory Requirements); and
    2. consistent with the draft Pandemic Management Plan provided in Tender Schedule A - Project Understanding.

1. PLANNING PHASE PRICE

**LUMP SUM PLANNING PHASE PRICE**

The Tenderer's attention is drawn to the definition of "Planning Phase Price" in clause 1.1 of the Conditions of Contract in Part 5.

The Tenderer should provide a lump sum Planning Phase Price (broken down, where relevant, by currency) as follows:

|  |  |
| --- | --- |
| **PLANNING PHASE PRICE:** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** (GST exclusive). |

The lump sum Planning Phase Price should not include any allowance for the successful Tenderer to undertake the negotiations under clause 2.8 of the Conditions of Contract in Part 5 (as it is not entitled to any payment for the time taken to undertake such negotiations) and will not limit the scope of the Contractor's obligations during the Planning Phase under clause 2 of the Conditions of Contract in Part 5 or otherwise.

**BREAKDOWN OF PLANNING PHASE PRICE**

The Tenderer should provide a breakdown of the lump sum Planning Phase Price which fully and clearly provides details of how the lump sum Planning Phase Price has been calculated (broken down, where relevant, by currency). The breakdown should clearly itemise and identify each amount in respect of at least the following:

|  |  |
| --- | --- |
| **CONTRACTOR’S REPRESENTATIVE** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** (GST exclusive). |
| **QUALITY MANAGER** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** (GST exclusive). |
| **DESIGN MANAGER** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** (GST exclusive). |
| ***[OTHER ROLES]*** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** (GST exclusive). |
| **PLANNING PHASE INSURANCES** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** (GST exclusive). |
| ***[THE LIST ABOVE IS INTENDED TO BE A STARTING POINT ONLY. THE COMMONWEALTH AND THE TENDER ADMINISTRATOR MUST CONSIDER AND AMEND THE LIST AS APPROPRIATE HAVING REGARD TO THE PLANNING PHASE AND THE PROJECT, WITH INPUT (WHERE APPROPRIATE) FROM THE TENDER ADMINISTRATOR OR THE PROJECT’S INDEPENDENT QUANTITY SURVEYOR.]*** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** (GST exclusive). |
| **[TENDERER TO INSERT ADDITIONAL ITEMS]** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** (GST exclusive). |
| **PLANNING PHASE PRICE** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** (GST exclusive). |

The breakdown:

* + 1. is for evaluation purposes; and
    2. will not limit or affect the scope of the Contractor’s Activities, the Works or the Contract in Part 5.

1. PAYMENT OF THE PLANNING PHASE PRICE

The Tenderer should provide a proposal for payment of the Planning Phase Price in accordance with the Fee Payment Schedule for the Planning Phase in the Contract in Part 5 as follows:

|  |  |
| --- | --- |
| **MILESTONE FOR PAYMENT IN THE PLANNING PHASE** | **AMOUNT (GST EXCLUSIVE)** |
| ***[INSERT MILESTONE FOR PAYMENT FROM CONTRACT IN PART 5]*** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |
| ***[INSERT MILESTONE FOR PAYMENT FROM CONTRACT IN PART 5]*** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |
| ***[INSERT MILESTONE FOR PAYMENT FROM CONTRACT IN PART 5]*** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |
| ***[INSERT MILESTONE FOR PAYMENT FROM CONTRACT IN PART 5]*** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |
| ***[INSERT MILESTONE FOR PAYMENT FROM CONTRACT IN PART 5]*** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |
| ***[INSERT MILESTONE FOR PAYMENT FROM CONTRACT IN PART 5]*** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |
| **[TENDERER TO INSERT PROPOSED ADDITIONAL MILESTONES FOR PAYMENT IN THE PLANNING PHASE]** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |
| **PLANNING PHASE PRICE** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |

The Tenderer should clearly identify any additional proposed milestones for payment and the proposed amount of each instalment of the Planning Phase Price payable following achievement for each additional proposed milestone for payment in the Planning Phase. The Tenderer should note that any additional proposed milestones for payment should be significant milestones which represent the completion of discrete activities and should not comprise monthly milestones.

1. INDICATIVE DELIVERY PHASE PRICE

**LUMP SUM INDICATIVE DELIVERY PHASE PRICE**

The Tenderer's attention is drawn to the definitions of "Indicative Delivery Phase Price" and "Delivery Phase Price" in clause 1.1 of the Conditions of Contract in Part 5.

The Tenderer should provide a lump sum Indicative Delivery Phase Price as follows:

|  |  |
| --- | --- |
| **INDICATIVE DELIVERY PHASE PRICE**: | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** (GST exclusive). |

BREAKDOWN OF INDICATIVE DELIVERY PHASE PRICE

The Tenderer should provide a **detailed** **breakdown and explanation** of how the lump sum Indicative Delivery Phase Price has been developed, which fully and clearly provides details of how the lump sum Indicative Delivery Phase Price has been calculated. The breakdown should be provided in the format of the Excel spreadsheet provided with the Tender Documents with the file name "***[INSERT]***"and should clearly itemise and identify each amount in respect of at least the items specified in the worksheet (with the Tenderer to insert additional items as may be required).

***[NOTE TO COMMONWEALTH AND TENDER ADMINISTRATOR: THE BREAKDOWN SPREADSHEET MUST BE CAREFULLY PREPARED BY THE INDEPENDENT COST PLANNER TO ENSURE IT IS COMPREHENSIVE AND AS DETAILED AS POSSIBLE. THE COMMONWEALTH'S INTENTION IS THAT THIS SHOULD BE EQUIVALENT IN DETAIL TO AN UNPRICED BILL OF QUANTITIES. IT IS ALSO INTENDED TO INCLUDE THE TENDERER'S PRELIMINARIES, MARGIN, PROFIT AND ON/OFF SITE OVERHEADS]***

The breakdown:

* + 1. is for evaluation purposes;
    2. will form part of the Outline Cost Plan for the purposes of Annexure 5 of the Contract in Part 5;
    3. may also be used, in part, for the purposes of assessing the Contractor’s entitlement (if any) and the adjustment to the Delivery Phase Price (if any) under clause 8.30(d)(i)B and (ii) of the Conditions of Contract in Part 5, as contemplated in clause 8.30(f)(iii) of the Conditions of Contract in Part 5; and
    4. will not limit or affect the scope of the Contractor’s Activities, the Works or the Contract in Part 5.

The Tenderer should note that the obligations in clause 2.5of the Conditions of Contract in Part 5 in respect of cost planning, including that the Contractor is required to adopt an "open book" approach to preparing each cost plan.

1. PAYMENT OF INDICATIVE DELIVERY PHASE PRICE

The Tenderer should provide a proposal for payment of the Indicative Delivery Phase Price in accordance with the Fee Payment Schedule for the Delivery Phase in the Contract in Part 5 as follows.

To the extent that payment of the Indicative Delivery Phase Price is not milestone-based in the Delivery Phase, the Tenderer is requested to provide an anticipated monthly cash flow for payment of the Indicative Delivery Phase Price. The cashflow is for evaluation purposes and will not limit or affect the scope of the Works, Contractor's Activities in the Delivery Phase nor the Contract in Part 5.

The Tenderer's response to this item 4 of Tender Schedule F - Financial will form part of the Outline Cost Plan for the purposes of Annexure 5 of the Contract in Part 5.

|  |  |  |  |
| --- | --- | --- | --- |
| **MILESTONE/TIME IN THE DELIVERY PHASE** | | | **AMOUNT (GST EXCLUSIVE)** |
| ***[INSERT MILESTONE FOR PAYMENT FROM CONTRACT IN PART 5]*** | | | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |
| ***[INSERT MILESTONE FOR PAYMENT FROM CONTRACT IN PART 5]*** | | | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |
| **[INSERT ANTICIPATED MONTHLY CASH FLOW]**  **(Note: These rows do not form part of and are not to be included in the Fee Payment Schedule for the Delivery Phase)** | **MONTH** | **AMOUNT** | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |
|  |  |
|  |  |
|  |  |
| ***[INSERT MILESTONE FOR PAYMENT FROM CONTRACT IN PART 5]*** | | | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |
| ***[INSERT MILESTONE FOR PAYMENT FROM CONTRACT IN PART 5]*** | | | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |
| ***[THE ABOVE IS INTENDED TO BE A STARTING POINT ONLY. THE COMMONWEALTH AND THE TENDER ADMINISTRATOR MUST CONSIDER AND AMEND AS APPROPRIATE HAVING REGARD TO THE MILESTONES AND THE DELIVERY PHASE.]*** | | | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |
| **[TENDERER TO INSERT PROPOSED ADDITIONAL MILESTONES FOR PAYMENT IN THE DELIVERY PHASE]** | | | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |
| **INDICATIVE DELIVERY PHASE PRICE** | | | **[INSERT AMOUNT/S AND CURRENCY / CURRENCIES]** |

The Tenderer should clearly identify any additional proposed milestones for payment and the proposed amount of each instalment of the Indicative Delivery Phase Price payable following achievement of each additional proposed milestone for payment in the Delivery Phase. The Tenderer should note that any additional proposed milestones for payment should be significant milestones which represent the completion of discrete activities and should not comprise monthly milestones.

1. TABLE OF VARIATION RATES AND PRICES

The Tenderer's attention is drawn to the definition of "Table of Variation Rates and Prices" in clause 1.1 of the Conditions of Contract in Part 5. The Tenderer should provide a Table of Variation Rates and Prices which is to apply for the purposes of clause 11.3 of the Conditions of Contract in Part 5 as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **ROLE/POSITION/ITEM** | **UNIT** | **APPLICABLE CURRENCY** | **RATE/PRICE (GST EXCLUSIVE)** |
| **CONTRACTOR'S REPRESENTATIVE** | HOUR | ***[INSERT]*** | **[INSERT]** |
| ***[OTHER ROLES]*** | HOUR | ***[INSERT]*** | **[INSERT]** |
| ***[WORK, ITEMS, MATERIALS, GOODS]*** | ***[INSERT]*** | ***[INSERT]*** | **[INSERT]** |
| **[TENDERER TO INSERT ADDITIONAL ITEMS]** | ***[INSERT]*** | ***[INSERT]*** | **[INSERT]** |

The rates and prices should not include any allowance for non-time related on-site overheads and preliminaries or off-site overheads and profit.

The Tenderer should also provide the percentage or percentages of the amount determined under clauses 11.3(b)(i), 11.3(c) and 11.6(f) of the Conditions of Contract in Part 5 for Variations to the Works in the Delivery Phase as follows:

|  |  |
| --- | --- |
| **PERCENTAGE OF AMOUNT DETERMINED FOR NON-TIME RELATED ON SITE OVERHEADS AND PRELIMINARIES** | **[INSERT]**% |
| **PERCENTAGE OF AMOUNT DETERMINED FOR OFF SITE OVERHEADS AND PROFIT** | **[INSERT]**% |

The Tenderer should also provide the percentage of wages for the purpose of clause 11.6(b) of the Conditions of Contract in Part 5 as follows:

|  |  |
| --- | --- |
| **PERCENTAGE OF WAGES** | **[INSERT]**% |

1. MAXIMUM AMOUNT OF DELAY DAMAGES

The Tenderer's attention is drawn to clause 10.10 of the Conditions of Contract in Part 5. The Tenderer is requested to provide the maximum daily delay damages as follows:

|  |  |  |
| --- | --- | --- |
| **IF THERE ARE NO STAGES, THE MAXIMUM DELAY DAMAGES FOR THE WORKS *[DELETE ROW IF NOT APPLICABLE]*** | **[INSERT AMOUNT AND CURRENCY]** per working day | |
| **IF THERE ARE STAGES, THE MAXIMUM DELAY DAMAGES FOR EACH STAGE *[DELETE ROW IF NOT APPLICABLE]*** | **STAGE** | **MAXIMUM DELAY DAMAGES** |
| ***[INSERT DESCRIPTION OF STAGE]*** | **[INSERT AMOUNT AND CURRENCY]** per working day |
| ***[INSERT DESCRIPTION OF STAGE]*** | **[INSERT AMOUNT AND CURRENCY]** per working day |

1. ACCELERATION

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(vi) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide the percentage of extra costs reasonably incurred due to acceleration for the purposes of clause 10.14(b)(ii) of the Conditions of Contract in Part 5 as follows:

|  |  |
| --- | --- |
| **PERCENTAGE OF EXTRA COSTS REASONABLY INCURRED DUE TO ACCELERATION** | **[INSERT]**% |

1. MAXIMUM CUMULATIVE AMOUNT FOR LONG LEAD TIME AND SPECIALISED ITEMS

The Tenderer's attention is drawn to clause 12.8 of the Conditions of Contract in Part 5. The Tenderer is requested to nominate the maximum total amount that it proposes (if it is the successful Tenderer) to include in the value of work in a payment claim for:

* + 1. the procurement of long lead time, custom or specialised items; or
    2. deposits to subcontractors (where necessary to acquire the relevant goods or services).

The Tenderer is also requested to provide a breakdown of these amounts indicating what each component amount relates to. Amounts should be specified in the currency in which the Tenderer will need to pay them (if successful).

|  |  |
| --- | --- |
| **MAXIMUM CUMULATIVE AMOUNT FOR LONG LEAD TIME AND SPECIALISED ITEMS:** | **AMOUNT AND CURRENCY (GST EXCLUSIVE)** |
| **[INSERT]** |

Breakdown of maximum cumulative amount for long lead time and specialised items:

|  |  |
| --- | --- |
| **DESCRIPTION OF COMPONENT** | **AMOUNT AND CURRENCY (GST EXCLUSIVE)** |
| [**INSERT**] | **[INSERT]** |
| [**INSERT**] | **[INSERT]** |

1. Alternative Proposals

**The Tenderer's attention is drawn to clauses 3.1(b)(iii) and 3.2 of the Tender Conditions.** The Tenderer should also note the evaluation criterion under clause 4(a)(vii) of the Tender Conditions.

**The Tenderer should also note that it is a minimum form and content requirement for its Tender under clause 3.1(b)(iii) of the Tender Conditions that the Tenderer must accept (without departure, qualification, amendment, limitation or exclusion) the Contract in Part 5, except:**

* + 1. **subject to paragraph (b), to the extent completed and lodged in Tender Schedule G - Alternative Proposals; and**
    2. **in respect of clauses 5.4 - 5.9 of the Conditions of Contract in Part 5 only, as expressly set out by the Tenderer in item 1 of Tender Schedule H - Miscellaneous Matters For Evaluation.**

The Commonwealth offers the Tenderer the opportunity to provide alternative proposals in pursuit of greater value for money. The Tenderer should note that (subject to the Commonwealth's absolute discretion under clause 3.2 of the Tender Conditions), it must lodge a conforming Tender before an alternative proposal will be considered.

The Tenderer should note that it is not required to submit this Tender Schedule G - Alternative Proposals if it does not propose to submit an alternative proposal.

The Tenderer must demonstrate how an alternative proposal will achieve greater value for money. The Tenderer is requested to note that providing detailed comments from insurers, brokers and legal advice (without more information, including any effect on pricing) will be unlikely to meet this requirement.

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(vii) of the Tender Conditions and to assist the Commonwealth in evaluating an alternative proposal, the Tenderer must provide a brief explanation of each alternative proposal and provide supporting evidence (for example, details of the alternative, technical descriptions, costing information, program information, technical specifications, testing information, data and any other relevant information).

The Tenderer must also clearly explain the impact that any alternative proposal provided in this Tender Schedule G - Alternative Proposals will have on the information provided in any other Tender Schedule lodged with its Tender. This explanation must be set out in this Tender Schedule G - Alternative Proposals.

The Commonwealth reserves the right to negotiate the information provided by any Tenderer in this Tender Schedule G - Alternative Proposals with a view to amending the terms of the Contract before entering into any Contract with the successful Tenderer.

Any decision by the Commonwealth regarding any alternative proposal will be final. The Tenderer lodges its Tender on the basis that it will make no, and the Commonwealth will not be liable upon, any Claim by the Tenderer arising out of or in any way in connection with any decision by the Commonwealth in respect of any alternative proposal.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **CONDITIONS OF CONTRACT** | | | | |
| **CLAUSE** | **ALTERNATIVE** | **SUPPORTING INFORMATION** | **EFFECT ON OTHER TENDER SCHEDULES (IF ANY)** | **VALUE FOR MONEY** |
|  |  |  |  |  |
| **SPECIAL CONDITIONS** | | | | |
| **CLAUSE** | **ALTERNATIVE** | **SUPPORTING INFORMATION** | **EFFECT ON OTHER TENDER SCHEDULES (IF ANY)** | **VALUE FOR MONEY** |
|  |  |  |  |  |
| **WORKS DESCRIPTION** | | | | |
| **DOCUMENT TITLE, REFERENCE ETC** | **ALTERNATIVE** | **EXPLANATION AND SUPPORTING EVIDENCE** | **EFFECT ON OTHER TENDER SCHEDULES (IF ANY)** | **VALUE FOR MONEY** |
|  |  |  |  |  |
| **TENDER SCHEDULES** | | | | |
| **REFERENCE** | **ALTERNATIVE** | **SUPPORTING INFORMATION** | **EFFECT ON OTHER TENDER SCHEDULES (IF ANY)** | **VALUE FOR MONEY** |
|  |  |  |  |  |
| **OTHER** | | | | |
| **REFERENCE** | **ALTERNATIVE** | **SUPPORTING INFORMATION** | **EFFECT ON OTHER TENDER SCHEDULES (IF ANY)** | **VALUE FOR MONEY** |
|  |  |  |  |  |

1. Miscellaneous Matters For Evaluation

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(viii) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide the following information.

The Commonwealth reserves the right to negotiate the information provided by any Tenderer in this Tender Schedule H - Miscellaneous Matters For Evaluation with a view to amending the terms of the Contract (including the Contract Particulars) before entering into any Contract with the successful Tenderer.

The Tenderer should ensure that the information provided in this Tender Schedule H - Miscellaneous Matters For Evaluation is consistent with information given in other parts of its Tender (as applicable).

If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to provide any information in this Tender Schedule H - Miscellaneous Matters For Evaluation which it considers relevant to proposed joint bid arrangements (as applicable).

1. INSURANCES

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(viii)A of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide details of the insurances which it has or proposes to put in place for the purposes of the Contract in Part 5.

The Tenderer's attention is drawn to clause 5of the Conditions of Contract in Part 5.

The Tenderer is requested to provide details of the terms and levels of the insurances which the Tenderer has or proposes to put in place for the purpose of clauses 5.4 - 5.9 of the Conditions of Contract in Part 5, including as set out below.

In addition, the Tenderer should set out below any additional insurances it proposes to maintain for the Contractor's Activities. In particular, if the personnel will be subject to Host Nation-based Workers Compensation coverage, the Tenderer should set out details for any top up insurance cover it proposes to maintain to cover the costs of injury etc to those personnel.

| **INSURANCE TYPE** | **INSURER AND BROKER** | **INSURER RATING** | **POLICY NO** | **IS THE TENDERER A NAMED INSURED?** | **COVER LIMIT (AMOUNT AND CURRENCY E.G. AUD, LOCAL HOST NATION CURRENCY)** | | **POLICY PERIOD** | **DEDUCTIBLE** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **CONSTRUCTION RISKS INSURANCE**  **(DELIVERY PHASE)** |  |  |  | **[YES/NO]**  **[IF NO, PROVIDE DETAILS]** | (a) | $**[INSERT]**  (the Contract Price if no amount is specified) |  |  |
| (b) | $**[INSERT]** or **[INSERT]** % of the Contract Price to cover the costs of demolition and removal of debris |
| (c) | $**[INSERT]** or **[INSERT]** % of the Contract Price to cover the Commonwealth's consultant fees |
| (d) | $**[INSERT]** for the value of materials or things to be supplied by the Commonwealth |
| (e) | **[INSERT]** % of the total of the amounts in (a) to (d) to cover escalation costs. |
| **PUBLIC LIABILITY INSURANCE** |  |  |  | **[YES/NO]**  **[IF NO, PROVIDE DETAILS]** | **IF WRITTEN ON OCCURRENCE BASIS:**  $**[INSERT]** each and every occurrence  **IF WRITTEN ON CLAIMS MADE BASIS:**  $**[INSERT]** per claim  $**[INSERT]** in aggregate  Worldwide limits:  Jurisdictional limits: | |  |  |
| **WORKERS COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY INSURANCE** |  |  |  | **[YES/NO]**  **[IF NO, PROVIDE DETAILS]** | Workers Compensation Insurance: Amount of Cover prescribed by statute in each State or Territory or international jurisdiction in which the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside.  Relevant States, Territories and international jurisdictions: [**INSERT**]  Employers Liability Insurance: The amount that a prudent, competent and experienced contractor undertaking the Contractor's Activities would purchase which must not be less than $**[INSERT]** | |  |  |
| **PROFESSIONAL INDEMNITY INSURANCE** |  |  |  | ***[YES/NO]***  ***[IF NO, PROVIDE DETAILS]*** | *[$****[INSERT]*** *per claim*  *$****[INSERT]*** *in aggregate*  *Worldwide limits:*  *Jurisdictional limits:*  *Retroactive Date: ]* | |  |  |
| ***[IF APPLICABLE - MARINE TRANSIT INSURANCE]*** |  |  |  | ***[YES/NO]***  ***[IF NO, PROVIDE DETAILS]*** | *[Amount of cover: An amount of not less than the full replacement value of the relevant item of property being transferred, plus a provision for the costs of freight, insurance, taxes and duties as may be applicable.]* | |  |  |
| ***[IF APPLICABLE - INSERT OTHER INSURANCES REQUIRED UNDER CLAUSE 5.4(a) OF THE CONDITIONS OF CONTRACT IN PART 5]*** |  |  |  | ***[YES/NO]***  ***[IF NO, PROVIDE DETAILS]*** |  | |  |  |
| **[TENDERER TO INSERT ANY ADDITIONAL INSURANCES IT PROPOSES TO MAINTAIN]** |  |  |  | **[YES/NO]**  **[IF NO, PROVIDE DETAILS]** |  | |  |  |

Do the terms and levels of all insurances which the Tenderer has or proposes to put in place for the purpose of the Contract comply with all requirements in clauses 5.4 - 5.9 of the Conditions of Contract in Part 5?

**❑ YES ❑ NO**

The Tenderer is requested to provide evidence from the insurer or a reputable broker stating the extent to which the relevant insurance complies with clauses 5.4 - 5.9 of the Conditions of Contract in Part 5. Such evidence may include certificates of currency (no more than 20 days old), current policy wordings (except where such insurances are prescribed by Statutory Requirement) and other written confirmation stating the extent to which the relevant insurance complies with clauses 5.4 - 5.9 of the Conditions of Contract in Part 5.

To the extent that the Tenderer's proposed insurance does not comply with clauses 5.4 - 5.9 of the Conditions of Contract in Part 5, the Tenderer may propose a departure from clauses 5.4 - 5.9 only. To do so the Tenderer is requested to clearly set out, in the table format below, the relevant clause reference and the proposed departure (including the proposed drafting amendment in mark up against the relevant clause) together with an explanation of and justification for the proposed departure.

|  |  |  |
| --- | --- | --- |
| **CLAUSE REFERENCE**  **(Clauses 5.4 - 5.9 and corresponding Contract Particulars only)** | **PROPOSED DEPARTURE (including drafting mark-up of amendment proposed)** | **EXPLANATION AND JUSTIFICATION OF THE PROPOSED DEPARTURE** |
| **[INSERT]** | **[INSERT]** | **[INSERT]** |

Tenderers are reminded that the Tenderer's insurance details are an evaluation criteria as specified in clause 4(a)(viii)A of the Tender Conditions. The Commonwealth is not bound to accept any departure proposed by the Tenderer. Further, the Commonwealth reserves the right to negotiate the insurance proposed by any Tenderer (including any proposed departure) in this Tender Schedule H - Miscellaneous Matters For Evaluation before entering into any Contract with the successful Tenderer.

***[ENSURE THAT ABOVE INSURANCES CORRESPOND WITH THOSE SET OUT IN THE CONTRACT PARTICULARS]***

**[NOTE TO TENDERER: THE TENDERER IS REQUESTED TO IDENTIFY THE CURRENCY OR CURRENCIES IN WHICH IT PROPOSES TO HOLD ITS PROPOSED INSURANCE POLICIES FOR THE CONTRACT]**

1. TENDERER'S COMMERCIAL-IN-CONFIDENCE INFORMATION

The Tenderer's attention is drawn to clause 21 of the Tender Conditions and clause 20 of the Conditions of Contract in Part 5 and the Commonwealth's policy on the identification of Commercial-in-Confidence Information (including the requirements set out in paragraph (c)).

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(viii)A of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer:

* + 1. may identify any specific information provided by the Tenderer to the Commonwealth that it wishes the Commonwealth to keep confidential; and
    2. must provide justification, in accordance with paragraph (c), why the information identified under paragraph (a) should be kept confidential.

The Tenderer is referred to the Commonwealth's guidance on the identification of Commercial-in-Confidence Information available at <https://www.finance.gov.au/government/procurement/buying-australian-government/confidentiality-throughout-procurement-cycle>.

The Tenderer should note that the Commonwealth policy principles of transparency and accountability promote the disclosure of contractual information to the maximum extent and that a Tenderer's information is only kept confidential where there are sound reasons for doing so.

The Commonwealth reserves the right to negotiate the information provided by any Tenderer in this item 2 of Tender Schedule H - Miscellaneous Matters For Evaluation with a view to amending the terms of the Contract (including the Contract Particulars) before entering into any Contract with the successful Tenderer.

Without limiting the Commonwealth's absolute discretion under clause 21(a)(ii) of the Tender Conditions, Tenderers are requested to note that:

* + 1. information must have all of the following characteristics before it may be considered to be Commercial-in-Confidence Information:
       1. the information to be protected must be specifically identified;
       2. the information must be commercially sensitive and not already in the public domain;
       3. disclosure would cause unreasonable detriment to the owner of the information or another party; and
       4. the information was provided with an express or implied understanding that it would remain confidential;
    2. without limiting paragraph (c), the following types of information in, or provided in relation to, contracts would generally not be considered Commercial-in-Confidence Information:
       1. performance and financial guarantees;
       2. indemnities;
       3. the price of an individual item, or groups of items of goods or services;
       4. rebate, liquidated damages and service credit clauses;
       5. performance measures applicable to the Contract;
       6. clauses which describe how Intellectual Property Rights are to be dealt with;
       7. payment arrangements; and
       8. the performance of the Contractor against the requirements of the Contract and agreed assessment criteria; and
    3. the following types of information may (in the Commonwealth's absolute discretion) meet the criteria of being protected as Commercial-in-Confidence Information:
       1. trade secrets;
       2. proprietary information (this could be information about how a particular technical or business solution is to be provided);
       3. internal costing information or information about profit margins; and
       4. pricing structures (if this information would reveal whether there was a profit or loss on the supply of a particular good or service).

Details of any specific information that the Tenderer wishes the Commonwealth to keep confidential should be provided in table format as set out below:

|  |  |  |
| --- | --- | --- |
| **SPECIFIC INFORMATION** | **JUSTIFICATION** | **PERIOD OF CONFIDENTIALITY** |
| **[INSERT (IF APPLICABLE)]** | **[INSERT (IF APPLICABLE)]** | **[INSERT (IF APPLICABLE)]** |

1. FINANCIAL STANDING

To assist the Tenderer to demonstrate its ability to satisfy the criteria described in clause 4(a)(viii)B of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide details of its financial standing in order to demonstrate its financial viability and capability to undertake the Project.

Such information should include the following:

* + 1. audited Annual Financial Reports for the last three financial years if they are required to be prepared by law or pursuant to a contractual arrangement to which the Tenderer is a party (and if the Tenderer does not have at least three years of audited Annual Financial Reports, the Tenderer must provide details as to why this is the case);
    2. if paragraph (a) does not apply, audited or unaudited financial accounts and records for the last three financial years (and if the Tenderer does not have at least three years of financial accounts and records, the Tenderer must provide details as to why this is the case);
    3. where the period covered by the financial reports provided under paragraph (a) or (b) (as applicable) is more than 6 months from the Closing Date and Time, Tenderers must also provide a set of current management accounts showing at a minimum assets, liabilities, profit and loss, net equity position, debts and annual gross turnover;
    4. if the Tenderer is an individual, firm, corporation or otherwise that is not incorporated in Australia, details of all assets and liabilities in Australia;
    5. if the Tenderer is a company and forms part of a corporate group, details of the structure of the corporate group, including whether or not there are any deeds of cross-guarantee in place and the information described under paragraph (a) or (b) and paragraph (c) (as applicable) for the ultimate holding company of the corporate group;
    6. if substantial inter-group or inter-associated company or other loans exist, the information described under paragraph (a) or (b) and paragraph (c) (as applicable) for the companies or entities to which those loans have been provided or from whom they have been obtained;
    7. details of any pending, threatened or actual litigation, arbitration or other forms of dispute resolution involving the Tenderer;
    8. details of all securities provided by the Tenderer (including details of the type of security, the issuer of the security, details as to whom the security has been provided, the assets secured and the amounts secured);
    9. an outline of key management control systems (including budgetary control systems, inventory management systems and cost estimating processes);
    10. details of any contingent liabilities;
    11. details of all finance facilities that the Tenderer has in place, including the dates upon which the facilities expire;
    12. full contact details for its Financial Representative for the purpose of providing further financial information and documents (including internal monthly management accounts), answering questions, co-operating with and doing everything necessary to assist the Commonwealth, the Tender Administrator and (if applicable) the Independent Financial Adviser; and
    13. details of any other matters known as at the date of submission of its Tender which could affect the solvency or going concern of the Tenderer or any associated entity (including any related bodies corporate within the meaning of the *Corporations Act* *2001* (Cth)).

1. INFORMATION SECURITY

The Tenderer's attention is drawn to clause 16 and, if it applies, clause 17 of the Tender Conditions.

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion under clause 4(a)(viii)C of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to:

* + 1. describe its general approach to ensuring the security of Confidential Information and, if clause 17 of the Tender Conditions applies, Sensitive and Classified Information, in accordance with the Contract in Part 5 if it is the successful Tenderer; and
    2. complete the Questionnaire in item B.

The Commonwealth reserves the right to negotiate the information provided by any Tenderer in this item 4 of Tender Schedule H - Miscellaneous Matters For Evaluation with a view to amending the terms of the Contract (including the Contract Particulars) before entering into any Contract with the successful Tenderer.

A GENERAL APPROACH TO INFORMATION SECURITY

**[INSERT]**

B QUESTIONNAIRE

The following questions apply to ***[INSERT*** [***ATM***](#tender) ***ID, PROJECT NUMBER, PROJECT NAME AND DESCRIPTION OF WORKS, AS APPLICABLE]***, described in the Tender Documents:

1. Does the Tenderer (and any proposed Recipient) have information security procedures, policies and measures in place that are or may be relevant to the requirements, if it is the successful Tenderer, in the Contract in Part 5 in respect of Confidential Information and, if clause 17 of the Tender Conditions applies, Sensitive and Classified Information?

**❑ YES ❑ NO**

If Yes, please provide details:

**[INSERT]**

1. Do the Tenderer's (and any proposed Recipient's) information security procedures, policies and measures comply with the requirements, if it is the successful Tenderer, in the Contract in Part 5 in respect of Confidential Information and, if clause 17 of the Tender Conditions applies, Sensitive and Classified Information?

**❑ YES ❑ NO**

If No, please provide details:

**[INSERT]**

If No, please provide details of the steps that the Tenderer (and any proposed Recipient) will take to ensure compliance with these requirements before the Award Date, including timeframes:

**[INSERT]**

1. What is the Tenderer's (and any proposed Recipient's) approach to preventing, detecting, reporting on, responding to and closing out:
   * 1. new and emerging threats to information security procedures, policies and measures:

**[INSERT]**

* + 1. observed or suspected security weaknesses/threats to information security procedures, policies and measures:

**[INSERT]**

* + 1. information security procedures, policies and measures not operating as effectively as intended:

**[INSERT]**

* + 1. hardware or software malfunctions:

**[INSERT]**; and

* + 1. if it is the successful Tenderer, any breach of the requirements in the Contract in Part 5, whether the breach is caused by it or its personnel:

**[INSERT],**

in respect of Confidential Information and, if clause 17 of the Tender Conditions applies, Sensitive and Classified Information?

1. Has the Tenderer (and any proposed Recipient) been the subject of any notices, investigations, proceedings, consequences or sanctions during a procurement process, in connection with any alleged or actual breach of contract or otherwise in relation to an unauthorised disclosure of confidential, sensitive or classified information during the past 5 years?

**❑ YES ❑ NO**

If Yes, please provide details:

**[INSERT]**

If Yes, is the Tenderer (and any proposed Recipient) fully complying with the outcomes of such investigations, proceedings, consequences or sanctions?

**❑ YES ❑ NO**

If No, please provide details:

**[INSERT]**

1. If clause 17 of the Tender Conditions applies, what is the Tenderer's (and any proposed Recipient's) approach to preventing, detecting, reporting on, responding to and closing out malicious code and other Cyber Security Incidents or Cyber Security Events (as defined in the Contract in Part 5) (e.g. countermeasures, intrusion detection strategies, audit analysis, system integrity checking, vulnerability assessments)?

**[INSERT/NOT APPLICABLE]**

1. If clause 17 of the Tender Conditions applies, what is the Tenderer's (and any proposed Recipient's) approach to quantifying and monitoring the types, volumes and costs of hardware and software malfunctions, malicious code and other Cyber Security Incidents or Cyber Security Events?

**[INSERT/NOT APPLICABLE]**

1. If clause 17 of the Tender Conditions applies, has the Tenderer (and any proposed Recipient) been subject to a hardware and software malfunction, malicious code or other Cyber Security Incidents or Cyber Security Events in the past 5 years?

**❑ YES ❑ NO ❑ NOT APPLICABLE**

If Yes, please provide details:

**[INSERT]**

1. If clause 17 of the Tender Conditions applies, does each proposed Recipient of Sensitive and Classified Information (or any part of it) hold a current security clearance at or above the level/s specified by the Commonwealth in the Contract Particulars in Part 5?

**❑ YES ❑ NO ❑ NOT APPLICABLE**

If Yes, please provide details:

**[INSERT]**

If No, please provide details of your understanding of the clearance process and steps that the Tenderer (and each proposed Recipient) will take to properly apply for, obtain and hold a current security clearance at or above the level/s specified by the Commonwealth in the Contract Particulars in the Contract in Part 5 if it is the successful Tenderer, including timeframes, having regard to the information available at https://www1.defence.gov.au/security/clearances.

**[INSERT]**

1. Does the Tenderer currently hold Defence Industry Security Program (**DISP**) membership (see https://www1.defence.gov.au/security/industry/eligibility)?

**❑ YES ❑ NO**

If Yes, please provide details of the level of membership:

**[INSERT]**

If No, please provide details as to why, including whether the Tenderer is:

* + - 1. in the process of obtaining DISP membership;
      2. otherwise "Defence-ready" for the purposes of the DISP; or
      3. not eligible to obtain DISP membership, including reasons (e.g. the Applicant is not registered as a legal business entity in Australia).

**[INSERT]**.

The Tenderer should note that:

* + 1. the above is not a comprehensive list of information security matters; and
    2. if the Tenderer is unsure of whether any aspect of the Tenderer's (and any proposed Recipient's) current or proposed arrangements comply, if it is the successful Tenderer, with the requirements in the Contract in Part 5 in respect of Confidential Information and if clause 17 of the Tender Conditions applies, Sensitive and Classified Information, it is preferable that the relevant arrangements be noted in this Tender Schedule H - Miscellaneous Matters For Evaluation so that an assessment can be made.

1. Statement of Tax Record

***[THIS TENDER SCHEDULE L - STATEMENT OF TAX RECORD WILL ONLY APPLY IF CLAUSE 27.1 OF THE TENDER CONDITIONS APPLIES. OTHERWISE DELETE THE CONTENTS OF THIS TENDER SCHEDULE AND MARK IT "NOT USED"]***

The Tenderer’s attention is drawn to clause 18.6 of the Conditions of Contract in Part 5 and clause 27 of the Tender Conditions.

The Tenderer’s attention is also drawn to the Shadow Economy Procurement Connected Policy, which imposes obligations on the Commonwealth to obtain from tenderers valid and satisfactory STRs. More information about the requirements arising under the Shadow Economy Procurement Connected Policy is available from the Department of Treasury at https://treasury.gov.au/policy-topics/economy/black-economy/procurement-connected-policy.

The Tenderer must complete and lodge Tender Schedule I - Statement of Tax Record. This is a minimum form and content requirement under clause 3.1(b)(ii) of the Tender Conditions.

As noted in clause 27.1(c) of the Tender Conditions, even **if the Tenderer is not registered or resident in Australia, the Shadow Economy Procurement Connected Policy does still apply** (see section 8 of the policy). More information with regards to the STR process for non-residents is also available from the Australian Tax Office website at https://www.ato.gov.au/business/bus/statement-of-tax-record/#NonresidentthatisunregisteredwiththeATO.

**A. STATEMENT OF TAX RECORD**

1. Subject to paragraph 2 below, the Tenderer is to provide and attach each of the valid and satisfactory STRs referred to in the table below as applicable to the Tenderer.

|  |  |
| --- | --- |
| **If the Tenderer is:** | **STRs required:** |
| * + - 1. a body corporate or natural person | a valid and satisfactory STR in respect of that body corporate or person |
| * + - 1. a partner acting for and on behalf of a partnership | a valid and satisfactory STR:  (i) on behalf of the partnership; and  (ii) in respect of each partner in the partnership that will be directly involved in the delivery of any resultant contract or subcontract (as applicable) |
| * + - 1. a trustee acting in its capacity as trustee of a trust | a valid and satisfactory STR in respect of the:  (i) trustee; and  (ii) the trust |
| * + - 1. a joint venture participant | a valid and satisfactory STR in respect of:  (i) each participant in the joint venture; and  (ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator |
| * + - 1. a member of a Consolidated Group | a valid and satisfactory STR in respect of:  (i) the relevant member of the Consolidated Group; and  (ii) the head company in the Consolidated Group |
| * + - 1. a member of a GST Group | a valid and satisfactory STR in respect of the:  (i) the GST Group member; and  (ii) the GST Group representative |

1. If the Tenderer has requested any of the STRs required under paragraph 1 above but the STR has not been issued by the Australian Taxation Office prior to the Closing Date and Time, the Tenderer must provide and attach the STR receipt issued by the Australian Taxation Office demonstrating that the STR was requested from the Australian Taxation Office prior to the Closing Date and Time.
2. The Tenderer is requested to note that, in accordance with clause 27.1(b) of the Tender Conditions, if the Tenderer provides and attaches in its response to this Tender Schedule I - Statement of Tax Record an STR receipt issued by the Australian Taxation Office demonstrating that any of the STRs required under this Tender Schedule I - Statement of Tax Record were requested from the Australian Taxation Office prior to the Closing Date and Time, then:
   * 1. the Tenderer must provide all of the required valid and satisfactory STRs to the Tender Administrator by email within 4 business days after the Closing Date and Time; and
     2. if the Tenderer does not provide all of the required valid and satisfactory STRs to the Tender Administrator by email within 4 business days after the Closing Date and Time, the Commonwealth may (in its absolute discretion) decide not to evaluate (or continue to evaluate) the Tender.

**B. DECLARATION**

***[INSERT ATM ID, PROJECT NUMBER, PROJECT NAME AND DESCRIPTION OF WORKS, AS APPLICABLE]***

**[INSERT NAME OF TENDERER, ABN AND ACN, AS APPLICABLE]** (**Tenderer**)

The Tenderer declares that:

1. it has complied with the requirements in item A of Tender Schedule I - Statement of Tax Record to provide and attach:
   * 1. each of the valid and satisfactory STRs referred to in the table in paragraph 1 of item A as applicable to the Tenderer; or
     2. if the Tenderer has requested any of the STRs required under paragraph 1 of item A but the STR has not been issued by the Australian Taxation Office prior to the Closing Date and Time, each STR receipt issued by the Australian Taxation Office demonstrating that the relevant STRs were requested from the Australian Taxation Office prior to the Closing Date and Time;
2. it has obtained and holds valid and satisfactory STRs for each subcontractor that it will engage for the Contractor's Activities or the Works under a subcontract with an expected value of over $4 million (GST inclusive), if known as at the Closing Date and Time;
3. if it is the successful Tenderer, it will ensure that any subcontractor that it subsequently engages for the Contractor's Activities or the Works under a subcontract with an expected value of over $4 million (GST inclusive) provides it with a valid and satisfactory STR prior to entering into the relevant subcontract; and
4. if any STR provided by it as part of any Invitation to Register Interest process in respect of the Project or otherwise as part of the tender process is or will be no longer valid and satisfactory at the time of the proposed Award Date (as notified by the Tender Administrator by email), the Tenderer must, if and within the time required by the Tender Administrator, provide the Tender Administrator with a copy of each STR as applicable to the Tenderer that will be valid and satisfactory on such proposed Award Date.

The Tenderer acknowledges and agrees that the Commonwealth:

1. will only enter into a contract with a Tenderer that, on the proposed Award Date as notified by the Tender Administrator under paragraph 4, holds and has provided to the Tender Administrator copies of all STRs as applicable to the Tenderer in accordance with the Shadow Economy Procurement Connected Policy that will be valid and satisfactory on such Award Date; and
2. may (in its absolute discretion) exclude the Tenderer from further consideration if the Tenderer does not satisfy the requirement under paragraph 5.

**[INSERT DATE]**

**[S 127 OF CORPORATIONS ACT]**

|  |  |  |  |
| --- | --- | --- | --- |
| **Declared and executed** by **[INSERT NAME]** in accordance with section 127 of the *Corporations Act* *2001* (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director ***[delete position as appropriate]*** |
|  |  |  |  |
| Full name of director who states that they are a director of **[INSERT NAME]** |  |  | Full name of company secretary/director ***[delete position as appropriate]*** who states that they are a company secretary/director ***[delete position as appropriate]*** of **[INSERT NAME]** |

[OR - AUTHORISED SIGNATORY OF COMPANY]

|  |  |  |  |
| --- | --- | --- | --- |
| **Declared and signed** for and on behalf of **[INSERT NAME]** by its authorised signatory in the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of authorised signatory |
|  |  |  |  |
| Full name of witness |  |  | Full name of authorised signatory |

[THESE ARE EXAMPLE EXECUTION CLAUSES ONLY]

[THE TENDERER MUST ENSURE THAT THE DECLARATION IS COMPLETE, ACCURATE, DULY EXECUTED AND VALID]

1. - Contract