ANNEXES TO THE CONDITIONS OF TENDER

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TENDERER’S DEED OF UNDERTAKING (CORE)

Note to tenderers: Tenderers must provide a deed in the following format.

This deed poll is made on the **(INSERT DATE)**

BY:

|  |
| --- |
| **(INSERT NAME, ACN/ABN and ARBN If APPLICABLE)** (Tenderer) |

1. DECLARATIONS (CORE)
   1. The Tenderer declares that this deed poll is for the benefit of the Commonwealth of Australia as represented by the Department of Defence ABN 68 706 814 312 (**Commonwealth**).
   2. This deed poll is provided in connection with the Request for Tender **[INSERT RFT NUMBER]** (**RFT**) issued by the Commonwealth and the tender (**Tender**) submitted by the Tenderer in response to the RFT. Terms defined in the RFT will have the same meaning when used in this deed poll.
   3. The Tenderer submits its Tender to provide the Services solicited by the RFT at the prices tendered and, subject to the statement of non-compliance included as part of its Tender, in accordance with the draft Contract.
2. ACKNOWLEDGEMENTS (CORE)
   1. The Tenderer acknowledges and agrees:
      1. to the Commonwealth’s rights as set out in the RFT and this deed poll, including the Commonwealth's rights to exclude the Tender;
      2. that the Tender has been prepared in accordance with the RFT and is accurate, complete and not misleading;
      3. that the Commonwealth can utilise all relevant information about the Tenderer’s performance on Commonwealth procurement activities;
      4. that the Tenderer has conducted and will conduct itself during the RFT process in a manner that is at least consistent with:
         1. the Commonwealth’s obligations to act in accordance with the applicable Commonwealth procurement framework, for example to ensure certainty of costs and value for money; and
         2. the requirements set out in the ‘Promoting Confidence in Defence Procurement Processes’ section of the Defence publication *Defence and the Private Sector - Working With Integrity* which is available at <https://www.defence.gov.au/business-industry/industry-governance/industry-regulations/defence-and-private-sector-working-integrity>;
      5. that the Commonwealth can rely on the Tender in accurately assessing compliance with the RFT, risks and risk management options, and value for money in accordance with the RFT;
      6. that representations made in the Tender, when incorporated in any resultant Contract, will be fully complied with by the Tenderer;
      7. that the Tenderer has relied entirely upon its own inquiries and inspection in preparing its Tender;
      8. that the Tenderer has not relied on any representation, letter, document or arrangement, whether oral or in writing, or other conduct of the Commonwealth, as adding to or amending the RFT, except for any addendum issued by the Commonwealth that expressly add to or amend the RFT;
      9. that in any resultant Contract the Tenderer will not use ACM in providing the Services and no ACM will be taken onto Commonwealth Premises in connection with providing the Services;
      10. that the Tenderer does not have any judicial decisions against it (including overseas jurisdictions but excluding decisions under appeal or instances where the period for appeal or payment/settlement has not expired) relating to unpaid employee entitlements where the entitlements remain unpaid;
      11. that Defence may provide any information collected or provided during the course of the RFT process (including regarding breaches of workplace relations law, work health and safety law or worker’s compensation law) to other Commonwealth agencies or regulatory bodies;
      12. that Defence, as a Commonwealth agency, is subject to legislative and administrative accountability and transparency requirements of the Commonwealth, including disclosures to Ministers and other Government representatives, Parliament and its Committees and the publication of information in respect of the RFT process on the successful Tenderer and information on any resultant Contract in the AusTender website; and
      13. that the Tenderer is aware of the impact of the *Auditor-General Act 1997* (Cth) on its participation in the RFT and on any resultant Contract and any Subcontract under a resultant Contract.
   2. The Tenderer acknowledges and agrees that:
      1. the RFT and any communication or dealings of any kind in relation to the RFT (other than this deed poll) between the Commonwealth and the Tenderer, or between the Commonwealth and any other person with an interest in the RFT, do not constitute a contract between the Commonwealth and the Tenderer;
      2. no binding contract (including a process contract) or other understanding (including, without limitation, any form of contractual, quasi-contractual or restitutionary rights, or rights based upon similar legal or equitable grounds) will exist between the Commonwealth and the Tenderer unless and until a Contract is signed by the Commonwealth and the Tenderer; and
      3. the Commonwealth has no liability to pay the Tenderer, or any other person, and is not liable to the Tenderer for any compensation on the basis of any quantum meruit or any other contractual, quasi contractual or restitutionary grounds whatsoever as a consequence of any matter or thing relating to, or incidental to the Tenderer’s participation in the RFT.
3. ACCEPTANCE (CORE)
   1. The Tender submitted by the Tenderer in response to the RFT shall remain open for the Tender Validity Period specified in the Tender Details Schedule (as extended under clause 2.8 of the Conditions of Tender, if applicable).
   2. The Tenderer acknowledges and agrees that the Tender is an unconditional offer and, to the extent reasonably possible, the Tenderer will obtain any necessary Authorisations to enable it to enter into any resultant Contract on an unconditional basis.
4. UNDERTAKINGS AND WARRANTIES (CORE)
   1. The Tenderer represents and warrants that there has not been and will not be any collusive tendering, anti-competitive conduct, or any other similar conduct by it or its Related Bodies Corporate, or any officer, employee, agent or advisor of any of them, in relation to:
      1. the preparation or lodgement of tenders;
      2. the evaluation and clarification of tenders; and
      3. the conduct and content of negotiations, including final Contract negotiations,

in respect of the RFT process.

* 1. For the purposes of clause 4.1, collusive tendering, anti-competitive conduct, or any other similar conduct may include the disclosure, exchange and clarification of information (in any form) whether or not such information is confidential to the Commonwealth or any other tenderer or any other person or entity.
  2. The Tenderer represents and warrants:
     1. that the Tender has not been compiled:
        1. with the improper assistance of current or former Commonwealth Personnel or Defence Service Providers;
        2. with the utilisation of information improperly obtained from the Commonwealth; or
        3. in breach of an obligation of confidentiality to the Commonwealth;
     2. that it and any Related Bodies Corporate, and their officers, employees, agents and advisers have and will, during the RFT process, comply with any applicable laws (including foreign anti-corruption legislation) or Commonwealth policies regarding the offering of unlawful inducements in connection with their Tender;
     3. without limiting clause 4.3a that it and any Related Bodies Corporate have not and will not, without prior written approval from the Commonwealth, permit any current or former Commonwealth Personnel, or Defence Service Provider to contribute to, or participate in, any process or activity relating to the preparation of the Tender or the RFT process, if:
        1. the person was involved at any time in the planning of the procurement to which this RFT relates, the preparation of this RFT, or the management of the RFT process; or
        2. the person was at any time during the 12 months immediately preceding the date of issue of the RFT involved in a Defence procurement process or activity relevant or related to the RFT; and
     4. that the Tenderer is aware of the provisions of the *Australian Consumer Law* (Schedule 2 to the *Competition and Consumer Act 2010* (Cth))*,* and Division 137 of the *Criminal Code Act 1995* (Cth) and that its Tender does not contain any false, misleading or deceptive misrepresentations, claims or statements.
  3. Except to the extent identified in clause 4.6, the Tenderer represents and warrants that it and any Related Bodies Corporate, and their officers have not been convicted of bribery of Commonwealth, state, territory or foreign government officials during the last seven years.
  4. Except to the extent identified in clause 4.6, the Tenderer represents and warrants that it and its Related Bodies Corporate officers, employees, agents and advisers have no actual, potential or perceived conflict of interest between the interests of the Commonwealth and the Tenderer's interests in relation to the RFT process. The Tenderer agrees to take such steps as the Commonwealth may require to resolve or otherwise deal with a conflict notified under clause 4.6.
  5. The following conviction for bribery, or actual, potential or perceived conflict of interest currently exist:

**[INSERT ANY CONVICTION FOR BRIBERY OF COMMONWEALTH, STATE, TERRITORY OR FOREIGN GOVERNMENT OFFICIALS DURING THE LAST 7 YEARS; INSERT ANY ACTUAL, POTENTIAL OR PERCEIVED CONFLICT OF INTEREST; OR IF NONE EXIST INSERT THE WORDS ‘NOT APPLICABLE’]** .

* 1. If in relation to the RFT a conflict of interest exists, arises, or appears likely to arise, that the Tenderer has not previously disclosed, the Tenderer must notify the Commonwealth promptly in writing. The Tenderer agrees to take such steps as the Commonwealth may require to resolve or otherwise deal with a conflict notified under this clause or which otherwise comes to the attention of the Commonwealth during the RFT process.
  2. The Tenderer acknowledges and agrees that the Commonwealth may exclude the Tender from further consideration if in the opinion of the Commonwealth:
     1. the Tenderer fails to take any steps required by the Commonwealth to resolve or deal with a conflict of interest;
     2. the Tenderer fails to comply in any other respect with this clause 4; or
     3. any representation or warranty of the Tenderer under this clause 4 is incorrect or misleading in any material respect.
  3. In addition to clause 4.8, the Tenderer acknowledges and agrees that the Commonwealth may exclude the Tender from further consideration if the Tenderer, any of its Related Bodies Corporate, or any officer of any of them has been convicted of bribery of Commonwealth, State, Territory or foreign government officials during the last seven years.
  4. The Tenderer represents and warrants that none of the Tenderer, its Related Bodies Corporate, or officers of either:
     1. have been found in the past 3 years to have committed a material breach; or
     2. are currently in material breach,

of any law, regulation or code that would be relevant to any resultant Contract, including those in relation to employment or workplace relations (including regulations relating to ethical employment practices), WHS or the environment, other than the following:

**[INSERT DETAILS OF PREVIOUS OR CURRENT BREACHES, OR IF NONE EXIST INSERT THE WORDS ‘NOT APPLICABLE’]**

and the following actions have been taken to remedy any such material breach:

**[INSERT DETAILS OF ACTIONSTAKEN (INCLUDING POLICIES IN PLACE) TO RESPOND TO EACH SUCH BREACH, OR IF NO BREACHES ARE LISTED ABOVE INSERT ‘NOT APPLICABLE’]**

1. Survival (CORE)
   1. This deed poll survives the termination or expiry of the RFT.
2. Applicable Law (CORE)

Note to drafters: Prior to release of the RFT drafters are to insert the same jurisdiction as selected under clause 10.1 of the draft COC and the Details Schedule.

* 1. The Tenderer agrees that the laws of **[INSERT JURISDICTION]** apply to this deed poll and the Tenderer submits to the non-exclusive jurisdiction of the courts of that State or Territory and of any court that may hear appeals from any of those courts, for any proceedings in connection with the RFT.

1. TERMINATION AND AMENDMENT (cORE)
   1. This deed poll shall not be unilaterally terminated or amended unless such termination or amendment is reduced to writing and agreed in writing by the Commonwealth.
2. Contact Details (CORE)
   1. The Tenderer’s contact details for the purpose of the RFT and this deed poll are set out below.

|  |  |  |
| --- | --- | --- |
| 1. NAME (Block Letters): |  | 1. TELEPHONE NUMBER: |
|  |  |  |
|  |  | 1. EMAIL ADDRESS: |
|  |  |  |

**Executed as a Deed Poll**

Note for Deed Signature: Guidance on executing agreements, including some statutory requirements to ensure the execution is effective, are detailed in the ‘Executing Agreements Fact Sheet’, found on the Procurement and Contracting intranet page at:

* <http://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/EBDAF9B0-2B07-45D4-BC51-67963BAA2394>

This guidance is developed for Commonwealth Personnel and should be used to assess the Tenderer’s execution of the Deed. The Tenderer should seek its own independent legal advice on its execution of the Deed.

**(INSERT APPROPRIATE TENDERER'S EXECUTION CLAUSE)**

STATEMENT OF NON-COMPLIANCE (CORE)

1. STATEMENT OF NON-COMPLIANCE (CORE)
   1. If a tenderer does not fully comply with any clause of the annexes to the COT (excluding Annex A) and the draft COC and attachments, it is to state its non-compliances in a Statement of Non-Compliance Format at Table 1. Tenderers are to include details of:
      1. the extent, justification and impact of non-compliance;
      2. details of any proposed drafting amendments; and
      3. the location in the tender where further non-compliance details and comments (if any) can be found.
   2. Responses are to be in the order in which the clauses appear and refer to the relevant clause number, annex or attachment.
   3. A tenderer will be deemed to be fully compliant with any clause not listed in the Statement of Non-Compliance.

Note to tenderers: Failure to indicate all non-compliances in Table 1 may constitute false, misleading or deceptive conduct for the purposes of Australian Consumer Law (Schedule 2 to the Competition and Consumer Act 2010 (Cth)) or Division 137 of the Criminal Code Act 1995 (Cth).

**Table 1: Statement of Non-Compliance Format**

|  |  |  |
| --- | --- | --- |
|  | Clause Number | Comments |
| 1. Annexes (excluding Annex A) to the Conditions of Tender |  |  |
| 1. Draft Conditions of Contract |  |  |
| 1. Attachments to the draft Conditions of Contract |  |  |

INFORMATION TO BE PROVIDED BY TENDERERS (CORE)

1. TENDERer’s PROFILE (CORE)
   1. Tenderers are to provide the following information:
      1. detail of how they would complete the Commonwealth’s requirements as outlined in the Statement of Work at Attachment A to the draft Contract;
      2. the tenderer’s background, experience and resources relevant to its ability to meet the requirement;
      3. details of the personnel the tenderer proposes to use i.e. names of the individuals, intended extent of involvement in the assignment, and the individuals’ qualifications and experience;
      4. information on other assignments or any other matter which the tenderer considers to be relevant to its competence; and
      5. the following details of the tenderer, as applicable:
         1. the full name of the tenderer;
         2. any trading or business name;
         3. if a company or corporation, the registered office, principal place of business and an outline of the company structure;
         4. the date and place of incorporation;
         5. for a foreign firm or company, details of its registration, incorporation and place of business in Australia, the name of any Australian representative and its ACN/ARBN and its ABN as applicable;
         6. if an Australian company, its ACN/ARBN and its ABN as applicable;
         7. if the company has any third party quality certification (i.e. International Standards Organisation compliance), details of that certification;
         8. if the tenderer is a Small Business; and

Note to drafters: If a tenderer states in its tender that it is participating in the Approved Contractor Viability Program (ACVP), the Defence tender evaluation team should refer to the ACVP register to confirm the statement.

A tenderer which has ACVP status is prequalified as being financially viable for the purposes of tender evaluation. If a tender submitted by a tenderer with ACVP status has a tendered price below the threshold of $50 million (ex GST) for acquisition contracts and $10 million (ex GST) per annum for support or services contracts, the tender evaluation team will not need to request an enhanced financial viability assessment (FVA) from Financial Investigation Service (FIS) or consider financial viability any further. If a tender submitted by a tenderer with ACVP status has a tendered price at or above the threshold, the tender evaluation team should evaluate the tenderer as financially viable and will also need to request an enhanced FVA so that FIS can fully advise the project of any financial viability risks for higher value contracts.

Further information on the ACVP, including eligibility criteria and the registers of participating suppliers is available at:

* htttp://drnet.defence.gov.au/casg/commercial/SpecialistCommercialServices/Pages/FIS-Viability-Assessments.aspx .

Note to Tenderers: The Approved Contractor Viability Program (ACVP) prequalifies as financially viable a small number of key suppliers to Capability Acquisition and Sustainment Group. Further information on the Approved Contractor Viability Program (ACVP), including eligibility criteria and the register of participating suppliers is available at:

* <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/program-guidelines>.
  + - 1. whether the company is a participant in the Approved Contractor Viability Program (ACVP) (i.e. those that are listed in the ACVP register as at the time of tender lodgement).
  1. Tenderers are to provide a written statement as to whether or not they, and their officers, employees, agents or any proposed subcontractors, have had any non-compliances with the Commonwealth Supplier Code of Conduct. The statement is to include a description of the circumstances of any such non-compliance.

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| Option: Include this clause if the procurement is at or above the relevant procurement threshold, and does not meet the exemptions set out at Appendix A to the CPRs.  Note that if a Defence specific exemption from Division 2 of the CPRs applies, this option is still to be used.  Note to tenderers: In performing any resultant Contract, the tenderer is to comply with its obligations under the Workplace Gender Equality Act 2012 (Cth). Information about the coverage of the Workplace Gender Equality Procurement Principles is available from the Workplace Gender Equality Agency at:   * <https://www.wgea.gov.au/what-we-do/compliance-reporting/wgea-procurement-principles>   1. If the tenderer is a Relevant Employer, the tenderer is to:      1. provide a current letter of compliance issued by the Workplace Gender Equality Agency (WGEA) as part of its tender; or      2. advise that it is a Relevant Employer as part of its tender and provide a current letter of compliance issued by WGEA prior to executing any resultant Contract with the Commonwealth.      3. For the purposes of clause 1.3, Relevant Employer means an employer who has been a Relevant Employer under the Workplace Gender Equality Procurement Principles for a period of not less than 6 months. The Supplier will continue to be obligated as a Relevant Employer until the number of its employees falls below 80.. |

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| Option: These clauses must be included if the procurement is valued at over $200,000 (GST Inclusive).  Note to tenderers: In accordance with the Buy Australian Plan and to support transparency in Australian Government procurement, tenderers for Australian Government contracts worth over $200,000 (GST Inclusive) are required to disclose their country of tax residency. For further information, see the Department of the Treasury, Department of Finance and the Australian Tax Office:   * <https://treasury.gov.au/policy-topics/taxation/country-tax-residency-disclosures>; * <https://www.finance.gov.au/business/buyaustralianplan>; and * <https://www.ato.gov.au/businesses-and-organisations/international-tax-for-business/working-out-your-residency>.   This information will not be used to exclude a potential tenderer from further participation in the RFT process. Queries relating to the collection and use of data identifying an entity’s country of tax residency can be directed to the Department of the Treasury at [MNETaxTransparency@treasury.gov.au](mailto:MNETaxTransparency@treasury.gov.au).   * 1. Tenderers are to provide:      1. the tenderer’s country of tax residency; and      2. the tenderer’s ultimate parent entity’s country of tax residency.   2. In responding to clause 1.4, if the tenderer or the tenderer’s ultimate parent entity has multiple tax residencies, each of the countries of which they are a tax resident shall be disclosed.   3. Tie-breaker rules (where an entity is considered a resident of one treaty country only for the purposes of that treaty) are not relevant in determining how to respond to clauses 1.4 and 1.5. |

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| Option: This clause must be used when a procurement has an estimated value above $4 million (inc GST) and is not subject to a Defence exemption under paragraph 2.6 of the CPRs.  Note to tenderers: The Payment Times Procurement Connected Policy imposes obligations on large businesses with an annual income of over $100 million who enter into a contract with the Commonwealth to pay invoices under their subcontracts (up to $1 million (inc GST)) within 20 days. Further information about the Payment Times Procurement Connected Policy is available from the Department of Treasury at:   * <https://treasury.gov.au/small-business/payment-times-procurement-connected-policy>.   1. Tenderers are to include the boxes below in their tender, and identify whether or not the Tenderer is a ‘Reporting Entity’ for the purposes of the Payment Times Procurement Connected Policy (PT PCP) by ticking the appropriate box.   The tenderer **is** a Reporting Entity.  The tenderer **is not** a Reporting Entity.  Note: A Reporting Entity means a ‘Reporting Entity’ within the meaning of the Payment Times Reporting Act 2020 (Cth) (PTR Act). |

1. PAYMENT (CORE)

Draft conditions of contract reference: clause 5.1

* 1. Tenderers are to provide a statement of proposed price based on the tenderer’s intended approach and basis for pricing. To assist evaluation of the offer the statement should distinguish between service fees (that include overheads and profits) and other costs that might be associated with conduct of the assignment, such as travel and accommodation costs to which overhead and profit is not to be applied. These associated costs should be identified as separate line items. Separate line items should include the amount of GST associated with each item.
  2. Prices for tendered Services are to be tendered in Australian dollars, and the Commonwealth will make contractual payments on that basis.
  3. Tendered prices are to be inclusive of all costs of complying with the conditions of tender and associated with providing the Services and carrying out all matters and doing all things necessary for the due and proper performance and completion of the draft Contract. These include licence fees, royalty payments, arranging customs clearance and services of representatives. Tenderers are to apply the Defence Cost Principles, as amended from time to time, when preparing tendered prices.

Note to tenderers: The successful tenderer will be responsible for ensuring that it is registered in accordance with the requirements of the GST Act (as amended). Tenderers who are non-residents of Australia and are not currently registered for GST, are advised to obtain independent advice on whether they will be required to be registered for GST purposes in accordance with the GST Act.

If the successful tenderer fails to quote an A.B.N. in its dealings with the Commonwealth, the Commonwealth may be required to withhold a percentage of all payments under any resultant Contract in accordance with Australian taxation legislation.

* 1. Tenderers are to submit tender prices inclusive of all overseas taxes, duties and charges and all Australian (Federal, State and Local Government) taxes, duties and charges including GST and customs duty.

|  |
| --- |
| Option: This clause should only be included in single supplier limited tender RFTs.   * 1. To facilitate any cost investigation conducted by the Commonwealth for the purposes of establishing, in respect of a single supplier limited tender, that the tendered price is fair and reasonable and constitutes value for money, tenderers are to provide a cost break-down showing all elements included in the tendered price. |

1. INSURANCE (CORE)

Draft conditions of contract reference: clause 7

Note to tenderers: The ACIP Initiative permits tenderers with ACIP status to rely on the ACIP pre-qualification process as evidence of the tender’s compliance with the draft COC insurance requirements that will be covered by a tenderer’s ACIP. Information on the ACIP Initiative and the list of companies with current ACIP status is at:

* <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/acip-initiative>

For tenderers without ACIP status, evidence of the tender’s compliance with the draft COC insurance requirements should not be returned with the tender. This evidence will be sought only from the preferred tenderer(s) prior to negotiations.

Tenderers should note that on the basis of the details and pricing information provided by a tenderer, the Commonwealth may require that the tenderer’s current insurance policies (or for tenderer’s with ACIP status, those policies falling outside the tenderer’s ACIP) be maintained or extended and any proposed insurance policies be obtained. The Commonwealth may also require that additional insurance policies be obtained following negotiations with a preferred tenderer.

***Tenderers without ACIP Status:***

* 1. Prior to negotiations, tenderers without ACIP status that are selected as a preferred tenderer are to provide all relevant details of current or proposed insurance policies required by the draft Contract, including:
     1. name of the insurer;
     2. type of insurance;
     3. terms and coverage of the insurance including person(s) insured, conditions and exclusions;
     4. limits of indemnity per claim or occurrence and details of any aggregate limits or relevant sublimits which apply;
     5. for a current policy, whether or not any past or current claims made under the policy have materially affected, or are likely to materially affect, the tenderer’s ability to meet its obligations under any resultant Contract;
     6. coinsurance, self-insured retention or deductible amounts; and
     7. period of insurance.

***Tenderers with ACIP Status:***

* 1. Tenderers with ACIP status are not required to provide the information under paragraph 3.1, to the extent that the insurance policies they intend to rely upon in respect of the draft Contract are within the scope of their ACIP status. However, tenderers with ACIP status who intend to rely on any insurance policy which falls outside the scope of their ACIP status, are to comply with the requirements of paragraph 3.1 in respect of such insurance.
  2. Tenderers with ACIP status are to indicate in their Statement of Non-Compliance against Annex C-3 that they have ACIP status and they are to identify any insurance policy which falls outside the scope of their ACIP status that they intend to rely upon in respect of the draft Contract.

***All tenderers:***

* 1. All tenderers are to identify in their tendered prices detailed in Annex C-2 details of all costs associated with the insurance policies covered in the tenderer’s insurance response.

1. SUBCONTRACTORS (CORE)

Draft conditions of contract reference: clause 9.8

* 1. Tenderers are to provide details of any Subcontractors that the tenderer proposes to use under the Contract where the value of the work to be subcontracted exceeds **[...DRAFTER TO INSERT PRIOR TO RELEASE OF RFT...]**. Such detail is to include (for each proposed Subcontractor) the name and A.C.N./A.R.B.N. and A.B.N. of the company, the elements of work to be subcontracted, the technical significance of the work and the cost of the Subcontract.

1. GOVERNMENT FURNISHED MATERIAL (OPTIONAL)

Draft conditions of contract reference: clause 3.4

* 1. Tenderers are to provide details of any GFM they require for the performance of the Services. If the use of GFM is proposed, tenderers are to provide details (including, but not limited to, the impact on the tendered price) of the effect of non-provision of GFM.
  2. The decision as to whether or not GFM will be provided will be made at the sole discretion of the Commonwealth.

1. Contract Material Rights (CORE)

Draft conditions of contract reference: clause 4

* 1. Tenderers are to provide a draft CMR Schedule in the form of Attachment C to the draft COC by specifying any proposed restrictions that will apply to the Commonwealth's right to sublicence the specified Contract Material under clause 4.2 of the draft COC.

1. CONFIDENTIAL INFORMATION (CORE)

Draft conditions of contract reference: clause 9.3

* 1. Tenderers are to provide at Attachment D to the draft conditions of contract, a list of all draft Contract clauses and Contract outputs that they consider to be Confidential Information. For each clause or output, tenderers are to justify their identification of the information as Confidential Information, explaining how it meets all four criteria listed in Attachment D of the draft conditions of contract.

1. liability (optional)

Draft conditions of contract reference: clause 8.4

Note to drafters: A Liability Risk Assessment (LRA) is to be undertaken by the Commonwealth in accordance with the Defence Liability Principles and the standard Defence methodology described in the Liability Risk Assessment template, both of which can be accessed at:

* http://drnet.defence.gov.au/casg/commercial/UndertakingProcurementinDefence/Pages/Liability-Risk-Management.aspx.

The LRA provides the basis for determining the limitation of liability amount and insurance requirements in clauses 8.4 and 7 respectively of the draft COC.

Note to tenderers: Tenderers should familiarise themselves with the limitation of liability amount and insurance requirements in clauses 8.4 and 7 respectively of the draft COC. The liability caps and insurance requirements were determined by the Commonwealth based on a liability risk assessment conducted in accordance with the Defence Liability Principles, and the standard Defence methodology described in the Liability Risk Assessment template, both of which can be accessed at:

* <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/liability-risk-management>
  1. Tenderers are to specify the basis for Contractor liability that they propose will apply to any resultant Contract.
  2. If a tenderer proposes to limit its liability on an alternative basis to that set out in clauses 8.3 – 8.5 of the draft COC (eg. by proposing a liability limitation or exclusion additional to those set out in clauses 8.3 and 8.4), the tenderer is to conduct its own liability risk assessment applying the Defence Liability Principles and the standard Defence methodology described in the Liability Risk Assessment template, and provide the following details:
     1. the terms of the tenderer’s proposed limitation of liability (if different to those set out in clause 8.4 of the draft COC), including their proposed monetary cap for clause 8.4.1 of the draft COC;
     2. an explanation of why the tenderer requires a limitation of its liability regime different to that proposed in clauses 8.3 – 8.5 of the draft COC; and
     3. the impact (if any) of these changes on the insurance requirements of the draft COC.

1. PROBLEMATIC SUBSTANCES (CORE)

Draft conditions of contract reference: clause 10.5

Note to tenderers: Commonwealth policy on Problematic Substances is detailed in Defence WHS Manual. Inclusion of any Problematic Substances in the Services will require the approval of the Commonwealth Representative. Such approval will not be granted if the inclusion of the substance infringes any Australian Commonwealth, State or Territory legislation.

* 1. Tenderers are to indicate whether they propose to include any Problematic Substances in the Services. If so, tenderers are to indicate what these Problematic Substances are, the purposes for which they will be used and how they will be managed in accordance with any resultant Contract.

1. Economic Benefit to the Australian Economy (OPTIONAL)

Note to drafters: This clause must be used if the expected value of any resultant Contract is above $1 million (including GST).

***Note to tenderers: For an explanation of economic benefits, refer to the Department of Finance:***

* <https://www.finance.gov.au/sites/default/files/2024-07/consideration-of-broader-economic-benefits-in-procurement_july-2024.pdf>
  1. Tenderers are to provide details of the direct economic benefits that any resultant Contract would achieve for the Australian economy.

EMPLOYER SPONSORED SUPERANNUATION (CORE)

Note to drafters: Further advice on how to determine the Commonwealth’s liability with respect to Superannuation may be found in the Expert Engagement Agreement Handbook.

The Superannuation Guarantee (Administration) Act 1992 (Cth) provides that employees not otherwise covered by employer-sponsored superannuation shall, from 1 July 1992, receive an appropriate level of employer contribution. If the tenderer is an individual, they must provide information required for eligibility assessments. The Superannuation liability of the Commonwealth in respect of the Contractor will be considered as part of the tendered price.

A response to each question below is required to determine the liability of the Commonwealth to contribute to a Regulated Superannuation Fund.

Table 1: Questions to determine Eligibility

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| Questions to Determine Eligibility | Tenderer’s Response |
| 1. 1. Are you contracting as a natural person rather than a company or trust? |  |
| 1. 2. If you are a partner in a partnership, do you tender for the Contract in your own personal capacity rather than on behalf of the partnership? |  |
| 1. 3. Is the value of the labour component of this tender more than 50% of the total value of this tender? |  |
| 1. 4. Do you already have employer-sponsored superannuation of any type for this tender? |  |
| 1. 5. Is the value of the labour component of the tender more than $450 in any month when payments are made? Superannuation entitlements are only to be paid when the payment for a single calendar month equals or exceeds $450. If the total payment is less than $450 for a calendar month, the contractor is not eligible to receive superannuation entitlements for that month. Monthly payments of less than $450 do not accumulate with successive monthly payments. |  |
| 1. 6. What is the full name of the person to whom the superannuation benefit will accrue and into whose fund the benefit will be paid if a Contract is awarded in response to this tender? |  |
| 1. 7. Please state that person’s address. |  |
| 1. 8.    1. Are you a member of either the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme, or are you eligible to have contributions made to either of these superannuation funds? Persons who are eligible to have contributions paid into either of the Commonwealth schemes should do so.    2. Do you have an account with the Australian Government Employees Superannuation Trust (AGEST)? If the answer is yes please provide details. AGEST is the default fund for a person who does not make an election about where their Superannuation Guarantee contribution is to be placed. |  |
| 1. 9. What is the name and business address of the preferred Regulated Superannuation fund into which the benefit is to be paid? Does the fund accept electronic transfer of contributions? The payment of contributions may not be acceptable to Defence unless they can be processed electronically. |  |