

## PART 1 – CONDITIONS OF TENDER

## TENDER DETAILS SCHEDULE

<b>RFT Number:</b>	[INSERT NO.]						
<b>RFT Name:</b>	[INSERT NAME OF SERVICES]						
<b>Division 2 of CPRs:</b>	<p><b>Note to drafters: Select ‘do’ or ‘do not’ from the clause below as appropriate to the RFT. An electronic version of the CPRs can be accessed at:</b></p> <ul style="list-style-type: none"> <li><a href="https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules">https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules</a></li> </ul> <p>The additional rules detailed in Division 2 of the Commonwealth Procurement Rules (CPRs) <b>[DO / DO NOT]</b> apply to this procurement.</p>						
<b>Contact Officer:</b> (clause 2.3)	<table border="1"> <tr> <td>Name:</td> <td>[INSERT DETAILS]</td> </tr> <tr> <td>Address:</td> <td>[INSERT ADDRESS]</td> </tr> <tr> <td>Email:</td> <td>[INSERT EMAIL ADDRESS]</td> </tr> </table>	Name:	[INSERT DETAILS]	Address:	[INSERT ADDRESS]	Email:	[INSERT EMAIL ADDRESS]
Name:	[INSERT DETAILS]						
Address:	[INSERT ADDRESS]						
Email:	[INSERT EMAIL ADDRESS]						
<b>Industry briefing:</b> (Optional) (clause 2.6)	<p>An industry briefing will be conducted at <b>[INSERT PLACE]</b> commencing at <b>[INSERT TIME]</b> on <b>[INSERT DATE]</b>.</p> <p>Representatives of prospective tenderers at the briefing will be limited to <b>[INSERT NUMBER]</b> personnel. Nominations to attend the briefing are to be forwarded in writing to the Contact Officer by <b>[INSERT TIME / DATE]</b>.</p> <p><b>Option: To be used when a classified industry briefing is required.</b></p> <p>Representatives of prospective tenderers are to hold a current personnel security clearance at a minimum of <b>[INSERT CLASSIFICATION LEVEL]</b> level. Prospective tenderers are to provide the following additional details for their representatives:</p> <ol style="list-style-type: none"> <li>nationality;</li> <li>date and place of birth; and</li> <li>current personnel security clearance and the Department which issued the clearance.</li> </ol>						
<b>Closing Time:</b> (clause 2.7.3)	<p><b>Note to drafters: Closing Time must be between 10 am - 4pm ACT local time and not fall on a national or local ACT public holiday. This is to ensure that the AusTender Help Desk function is available to tenderers during the Closing Time.</b></p> <p><b>[INSERT TIME]</b> local time in the Australian Capital Territory (ACT) on <b>[INSERT DATE]</b>.</p>						
<b>Format:</b> (clause 2.7.4)	[INSERT FORMAT].						
<b>Tender Validity Period:</b> (clause 2.8)	[INSERT PERIOD] after the Closing Time (as extended under clause 2.8, if applicable).						
<b>Minimum Content and Format Requirements:</b> (clause 3.2)	<p>Tenders (including all attachments, annexes and supporting documentation), are to be written in English.</p> <p>All measurements in tenders are to be expressed in Australian legal units of measurement unless otherwise specified.</p> <p>Tenders are to include a PDF copy of the Tenderer’s Deed of Undertaking in the form of Annex B duly signed by the tenderer.</p> <p><b>Note to drafters: This Minimum Content and Format Requirement must be used when the Mandatory Minimum Requirements of the Indigenous Procurement Policy apply (refer to clause 1.7 and Annex H for further details).</b></p>						

	Tenders are to include a draft Indigenous Participation Plan.
<b>Conditions for Participation: (Optional)</b> (clause 3.3)	<p><b><i>Note to drafters: Clause 1.9 should be used if the procurement is undertaken as an open tender, subject to the CPRs and valued over \$4 million (GST inclusive). Clauses 2.4 and 2.5 should be used when the procurement is subject to the additional rules detailed in the CPRs. Conditions for Participation must be limited to those that will ensure that a potential supplier has the legal, commercial, technical and financial abilities to fulfil the requirements of the RFT.</i></b></p> <p>Clause 1.9 Statement of Tax Record;          Clause 2.4 Preparation and Transmission of Classified Tenders; and          Clause 2.5 Defence Security Requirements.</p>

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## 1 GENERAL CONDITIONS

### 1.1 Interpretation of Request for Tender (Core)

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- 1.1.1 The Request for Tender (RFT) comprises:
- Part 1 – Conditions of Tender (COT) (including the Tender Details Schedule), the TDRL at Attachment A to the COT and the annexes to the TDRL;
  - Part 2 - draft COC and attachments; and
  - Part 3 – draft SOW, annexes and schedules.
- 1.1.2 The RFT is an invitation to treat and, to the extent permitted by law, no binding contract (including a process contract) or other understanding on any basis whatsoever will exist between the Commonwealth and a tenderer unless and until a Contract is signed by the Commonwealth and the successful tenderer. To the extent permitted by law, the Commonwealth has no liability to the tenderer for any compensation on any basis whatsoever in connection with the tenderer's participation in this RFT.
- 1.1.3 Clause 1.1.2 does not apply to:
- the Tenderer's Deed of Undertaking executed by a tenderer;
  - a confidentiality deed executed by a tenderer; or
  - any other deed or contractual arrangement entered into by the tenderer, as required by the Commonwealth from time to time.
- 1.1.4 The Commonwealth will not be responsible for any costs or expenses incurred by any tenderer in preparation or lodgement of a tender or taking part in the RFT process.
- 1.1.5 In this RFT, unless the contrary intention appears, words, abbreviations and acronyms have the meaning given to them in the Tender Details Schedule or the draft Contract.
- 1.1.6 If there is any inconsistency between any part of the RFT, a descending order of precedence is to be accorded to the:
- COT (including the Tender Details Schedule);
  - TDRL and the annexes to the TDRL; and
  - draft Contract in accordance with clause 1.3 of the draft COC,
- so that the provision in the higher ranked document, to the extent of the inconsistency, prevails.

### 1.2 Amendment of RFT (Core)

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**Note to tenderers: When an amendment to the RFT is issued by the Commonwealth it will be through AusTender. Refer to clause 2.7 for more information on AusTender.**

- 1.2.1 The Commonwealth may amend this RFT by giving tenderers timely written notice of an amendment. If the Commonwealth amends this RFT under this clause 1.2.1 after tenders have been submitted, it may seek amended tenders.
- 1.2.2 Tenderers will have no claim against the Commonwealth or any Commonwealth Personnel for any failure to inform a tenderer of an amendment to the RFT, or any failure to seek amended tenders, or any other matter arising in connection with an amendment to the RFT.

### 1.3 Termination, Suspension or Deferral of RFT (Core)

**Option A: For when the procurement is not subject to the additional rules detailed in the CPRs.**

- 1.3.1 Without limiting its rights under this RFT, at law or otherwise, the Commonwealth may suspend, defer or terminate this RFT process at any time. The Commonwealth will notify tenderers to this effect.

**Option B: For when the procurement is subject to the additional rules detailed in the CPRs.**

- 1.3.2 Without limiting its rights under this RFT, at law or otherwise, the Commonwealth may suspend, defer or terminate this RFT process where the Commonwealth determines that:
- a. it is in the public interest to do so;
  - b. the Commonwealth is required by law to do so;
  - c. no tenderer represents value for money;
  - d. no tenderer satisfies the Conditions for Participation specified in the Tender Details Schedule, if any;
  - e. no tenderer meets the essential requirements, if any, at clause 3.4; or
  - f. no tenderer is fully capable of undertaking the Contract,
- and the Commonwealth will notify tenderers to this effect.

### 1.4 Other Commonwealth Rights (Core)

- 1.4.1 Without limiting its rights under this RFT, at law or otherwise, the Commonwealth may at any stage of the RFT process, exclude a tenderer from further participation in the RFT process:
- a. if the tenderer is, or was, the contractor or an approved subcontractor under a contract that is, or becomes at any stage during the RFT process, a Project of Concern, For the purposes of this clause 1.4.1, 'tenderer' also encompasses any Related Body Corporate, proposed Subcontractors or their Related Bodies Corporate, or special purpose vehicle (in which any of these entities have been involved), and for the purposes of the COT, 'Project of Concern' means any project or sustainment activity identified by the Minister for Defence as a Project of Concern;
  - b. if an Insolvency Event occurs in relation to the tenderer or any of its Related Bodies Corporate;
  - c. if the tender is incomplete or clearly non-competitive; or
  - d. a representation or warranty given by the tenderer in its tender is false or misleading.
- 1.4.2 Any time or date in the RFT is for the convenience of the Commonwealth. The establishment of a time or date in the RFT does not create an obligation on the part of the Commonwealth to take any action or exercise any right established in the RFT or otherwise.

### 1.5 Australian Government Requirements (Core)

**Note to drafters: Prior to any RFT release, the Glossary should be updated to reflect the version of the following documents and policies current at the time of RFT release.**

**If there are other Commonwealth or Defence policies relevant to the procurement activity, that are not otherwise referenced in the RFT, they can be listed below.**

**Note to tenderers: Electronic copies of relevant Defence documents are available on the internet at:**

- <https://www.defence.gov.au/business-industry/procurement/contracting-templates/asdefcon-suite>

**Any other documents required can be provided by the Contact Officer.**

- 1.5.1 The Commonwealth will not enter into a Contract with a tenderer which has a judicial decision 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.
- 1.5.2 Tenderers should familiarise themselves with the following Commonwealth policies:

- a. DI and in particular:
  - (i) Administration and Governance Provision 4 AG4 – Incident reporting and management and the Incident Reporting and Management Manual;
  - (ii) Administration and Governance Provision 5, AG5 – Conflicts of interest and declarations of interest and the Integrity Policy Manual;
  - (iii) People Provision 3 PPL3 – Alcohol testing in the Australian Defence Force; and
  - (iv) People Provision 7, PPL 7 – Required behaviours in Defence and Chapter 3 of the Complaints and Alternative Resolutions Manual ;
- b. Financial Policy Gifts and Benefits;
- c. Financial Policy Sponsorship;
- d. Australian Defence Force alcohol policy as detailed in MILPERSMAN Part 4 Chapter 1;
- e. Public Interest Disclosure policy detailed at:  
<https://www.ombudsman.gov.au/complaints/public-interest-disclosure-whistleblowing>;
- f. Workplace Gender Equality Policy as detailed at:  
<https://www.wgea.gov.au/what-we-do/compliance-reporting/wgea-procurement-principles>;
- g. Indigenous Procurement Policy as detailed at:  
<https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>;
- h. Shadow Economy Procurement Connected Policy accessible at:  
<https://treasury.gov.au/policy-topics/economy/shadow-economy/procurement-connected-policy>; and
- i. **[DRAFTERS TO INSERT ANY OTHER RELEVANT COMMONWEALTH AND DEFENCE POLICIES THAT REGULATE DELIVERY OF THE SERVICES].**

## 1.6 Workplace Gender Equality (Optional)

**Note to drafters: The following clause must be used for procurements at or above the relevant procurement threshold and that do not meet the exemptions set out at Appendix A to the CPRs. If the procurement is specifically exempt from the additional rules detailed in the CPRs as a result of a Defence specific exemption (a list of Defence specific exemptions is found in the DPM) the procurement will still be subject to the Workplace Gender Equality Procurement Principles and this clause is to be used.**

**Note to tenderers: The Workplace Gender Equality Procurement Principles prevent the Commonwealth from entering into contracts with suppliers who are non-compliant under the Workplace Gender Equality Act 2012 (Cth) (WGE Act). In performing any resultant Contract, the tenderer is to comply with its obligations under the WGE Act. 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>

1.6.1 In accordance with the Workplace Gender Equality Procurement Principles, the Commonwealth will not enter into any resultant contract with a tenderer who is not compliant under the *Workplace Gender Equality Act 2012 (Cth)*.

## 1.7 Indigenous Procurement Policy (Optional)

**Note to drafters: The primary objective of the IPP is to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy. Include this clause 1.7 when the procurement is subject to the Indigenous Procurement Policy and Mandatory Minimum Requirements (MMRs) for Indigenous participation apply. The MMRs apply if the estimated value of the procurement is \$7.5 million or**

above (GST inclusive); and more than half of the value of the resultant Contract is to be spent in one or more of the specified industry sectors within Australia listed at:

- <http://drnet/casg/commercial/UndertakingProcurementinDefence/Pages/IPP-Minimum-Requirements.aspx>.

The MMRs will not apply and this clause 1.7 should not be used if the procurement:

- is being conducted by limited tender directly to an Indigenous Enterprise under a CPR Appendix A exemption;
- is exempt in accordance with paragraph 2.6 of the CPRs; or
- will not be wholly delivered in Australia.

Drafters should refer to the IPP website for the 'IPP Guide 1: Procuring Officials and Contract Managers' to help conduct procurement activities that are subject to Mandatory Minimum Requirements (MMRs) under the IPP at:

- <https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy-ipp-guide-1-procuring-officials-and-contract-managers>.

More information on the IPP can be found at:

- <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>.

Any queries seeking assistance in implementing the Indigenous Procurement Policy can be directed to: [indigenous.procurement@defence.gov.au](mailto:indigenous.procurement@defence.gov.au)

**Note to tenderers:** The objective of the Indigenous Procurement Policy (IPP) is to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy. More information on the IPP can be found at:

- <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>

1.7.1 The Mandatory Minimum Requirements for Indigenous participation specified within the IPP will apply to any resultant Contract.

## 1.8 Procurement Complaints (Core)

1.8.1 In the event tenderers wish to lodge a formal complaint regarding this procurement, the complaint is to be directed in writing to: [procurement.complaints@defence.gov.au](mailto:procurement.complaints@defence.gov.au). On the request of the Commonwealth, tenderers are to cooperate with the Commonwealth in the resolution of any complaint regarding this procurement.

**Option: For an RFT covered by a public interest certificate.**

1.8.2 A public interest certificate under the *Government Procurement (Judicial Review) Act 2018* (Cth) covering this procurement is in force.

## 1.9 Statement of Tax Record (Optional)

**Note to drafters:** This clause must be used when a procurement is conducted by open tender, is subject to the CPRs and has an estimated value over \$4 million (inc GST).

**Note to tenderers:** The Shadow Economy Procurement Connected Policy imposes obligations on the Commonwealth to obtain from tenderers satisfactory and valid STRs. Further information about the requirements arising under the Shadow Economy Procurement Connected Policy is available from the Department of Treasury at:

- <https://treasury.gov.au/publication/p2019-t369466>

1.9.1 In accordance with the Shadow Economy Procurement Connected Policy, and subject to clause 1.9.2, a tender is to include all of the satisfactory and valid Statement of Tax Records (STRs) required from a tenderer under Table A-1 of Annex A.

1.9.2 If the tender includes a Statement of Tax Record (STR) receipt issued by the Australian Taxation Office confirming that the STRs required under Table 1 of Annex A were requested prior to the Closing Time, then the tenderer may provide all of the required satisfactory and valid STRs to the Contact Officer within four Working Days after the Closing Time.

- 1.9.3 Tenderers are to obtain and hold as at the Closing Time all of the satisfactory and valid STRs required under Table 1 of Annex A (or an STR receipt confirming that the STRs required under Table 1 of Annex A were requested prior to the Closing Time) of any entity that the tenderer proposes to engage as a direct Subcontractor, if the total value of all work under the Subcontract is expected to exceed \$4 million (inc GST).
- 1.9.4 For the purposes of the RFT, an STR is taken to be:
- a. **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
  - b. **valid** if the STR has not expired as at the date on which the STR is required to be provided or held.

## 2 TENDER PREPARATION AND LODGEMENT

### 2.1 Tenderers to Inform Themselves (Core)

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- 2.1.1 The tenderer may rely on information in this RFT or any information communicated or provided to tenderers during this RFT process, for the purposes of preparing its response to this RFT.
- 2.1.2 Subject to clause 2.1.1, the Commonwealth makes no representations or warranties that the information is, or will be, accurate, current or complete.
- 2.1.3 Tenderers are solely responsible for:
- a. examining the RFT, any documents referenced in or attached to the RFT and any other information made available by the Commonwealth to tenderers in connection with the RFT process;
  - b. obtaining and examining all further information which is obtainable by the making of reasonable inquiries and inspections relevant to the risks, contingencies, and other circumstances having an effect on their tenders;
  - c. seeking clarification where further information has been communicated or provided to tenderers, or otherwise communicated by the Commonwealth which is or appears to be inconsistent with the information in this RFT; and
  - d. satisfying themselves that their tender (including tendered prices) is accurate, complete and not misleading.
- 2.1.4 Tenderers are to prepare and lodge their tenders based on the acknowledgements and agreements at the Tenderer's Deed of Undertaking.

**Note to tenderers: Requests for advice on the control status of Australian goods and/or services should be forwarded to Defence Export Controls via email at [ExportControls@defence.gov.au](mailto:ExportControls@defence.gov.au). Further information on Australian export controls may be found at:**

- <https://www.defence.gov.au/business-industry/export/controls>.

- 2.1.5 Tenderers are solely responsible for informing themselves of the export control status of the tendered Services and for ensuring their compliance with Australian and foreign government controls related to the export of defence and dual-use goods, including if the export is from an Australian contractor to an overseas Subcontractor or Related Body Corporate for the purposes of providing the Services to the Commonwealth.

### 2.2 Tender Preparation (Core)

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- 2.2.1 Tenderers are to complete and provide the information requested in the annexes to the TDRL and do so in the manner requested in the annexes.
- 2.2.2 Supporting documentation may be provided to enhance the tender. Supporting documentation relevant to a particular volume is to be indicated in that volume.

### 2.3 Contact Officer and RFT Inquiries (Core)

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- 2.3.1 Tenderers are to direct any questions or concerns regarding the RFT in writing to the Contact Officer specified in the Tender Details Schedule.
- 2.3.2 Tenderers may submit questions or concerns to the Contact Officer up until five Working Days prior to the Closing Time specified in the Tender Details Schedule.



- 2.3.3 Any question or concern submitted by tenderers is submitted on the basis that the Commonwealth may circulate it and the Commonwealth's response to all other tenderers without disclosing the source of the question or concern, Confidential Information or the substance of the proposed tender.

## 2.4 Preparation and Transmission of Classified Tenders (Core)

**Note to drafters: Classified information should not be included as part of a RFT except in exceptional circumstances. Where the RFT is to include classified information, drafters should consult with their Project Security Officer.**

**Note to tenderers: For information on preparation and transmission of classified tenders and for access to the DSPF, tenderers should contact the Contact Officer.**

- 2.4.1 Classified information in tenders is to be avoided where possible. If this cannot be achieved, tenders containing classified information are to be prepared and transmitted as follows:
- for Australian tenders, in accordance with Principle 71 of the DSPF; and
  - for overseas tenders, in accordance with the applicable industry security information system regulations issued by the appropriate government security authority in their country. If transmission involves transmission by diplomatic bag, the overseas tenderer is to use the diplomatic bag of its own government.

**Option: For an RFT involving classified information.**

- 2.4.2 Tenderers are to classify information in their tenders in accordance with the Security Classification and Categorisation Guide at Attachment H to the draft COC.

- 2.4.3 If only part of a tender contains classified information, that part may be segregated from the remainder of the tender for separate transmission. However, both parts of the tender are subject to the Closing Time. Care should therefore be taken to ensure that sufficient time is allowed for tenders to be received by the Closing Time when secure means of transmission are used.

## 2.5 Defence Security Requirements (Core)

**Note to drafters: Where the procurement involves weapons or explosive ordnance, drafters must obtain DSVS's approval for the security-related aspects of the request documentation prior to release.**

- 2.5.1 On request by the Commonwealth, the tenderer is to comply with the Commonwealth security clearance and accreditation process as detailed in Principles 23, 40, 72 and 73 of the DSPF, including obtaining the level of security clearance and accreditations required by the Commonwealth.

## 2.6 Industry Briefing (Optional)

- 2.6.1 An industry briefing will be conducted in accordance with the details specified in the Tender Details Schedule.
- 2.6.2 Industry briefings are conducted for the purpose of providing background information only. Tenderers should note the effect of clauses 1.2.1 and .2.1.5. Tenderers should not rely on a statement made at an industry briefing as amending or adding to this RFT unless that amendment or addition is confirmed by the Commonwealth in writing.

## 2.7 Lodgement of Tenders (Core)

**Note to tenderers: The Closing Time will also be displayed in the relevant AusTender webpage together with a countdown clock that displays in real time the amount of time left until Closing Time (for more information please see AusTender Terms of Use). For the purposes of determining whether a tender response has been lodged before the Closing Time, the countdown clock will be conclusive.**

- 2.7.1 AusTender is the Australian Government's procurement information system. Access to and use of AusTender is subject to terms and conditions. In participating in the RFT (Approach to Market (ATM)), tenderers are to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender at:

<https://help.tenders.gov.au/terms-of-use/>.

- 2.7.2 All queries and requests for AusTender technical or operational support are to be directed to:

AusTender Help Desk  
 Telephone: 1300 651 698  
 International: +61 2 6215 1558  
 Email: [tenders@finance.gov.au](mailto:tenders@finance.gov.au)

The AusTender Helpdesk is available between 9am and 5pm Australian Capital Territory (ACT) local time, Monday to Friday (excluding ACT and national public holidays).

- 2.7.3 Tenders are to be lodged electronically via AusTender (<https://www.tenders.gov.au>) before the Closing Time specified in the Tender Details Schedule, in accordance with the tender lodgement procedures set out in the RFT and on AusTender.
- 2.7.4 Tenders are to be lodged in the format specified in the Tender Details Schedule. All file names should:
- a. sufficiently identify the tenderer by including their name; and
  - b. reflect the parts of the tender they represent, where the response comprises multiple files.
- 2.7.5 Tender files should not exceed a combined file size of 500 megabytes per upload.

## **2.8 Tender Validity Period (Core)**

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- 2.8.1 The Commonwealth requires that tenders submitted in response to the RFT remain open for acceptance during the Tender Validity Period specified in the Tender Details Schedule.

**Note to drafters: If this extension period is inappropriate, specify another period of extension.**

- 2.8.2 If this procurement is suspended under the *Government Procurement (Judicial Review) Act 2018* (Cth), the Tender Validity Period is extended by the period of suspension, up to **[twice the period of the Tender Validity Period specified in the Tender Details Schedule]**.
- 2.8.3 Without limiting clause 2.8.2, the Commonwealth may request an extension of the Tender Validity Period.

## **2.9 Alterations, Erasures and Illegibility (Core)**

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- 2.9.1 Any alterations or erasures made to a tender by a tenderer are to be initialled by that tenderer. Tenders containing alterations or erasures that are not initialled or pricing or other information that is not stated clearly and legibly may be excluded from consideration.

## **2.10 Unintentional Errors of Form (Optional)**

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**Note to drafters: This clause must be used when the procurement is subject to the additional rules detailed in the CPRs.**

- 2.10.1 If the Commonwealth considers that there are unintentional errors of form in a tender, the Commonwealth may request the tenderer to correct or clarify the error but will not permit any material alteration or addition to the tender.

## **2.11 Confidentiality (Core)**

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- 2.11.1 The Commonwealth may require a tenderer to execute a deed of confidentiality before being provided with some or all of the information included in the RFT. Whether or not such deed is required and without limiting a tenderer's obligations under the deed, tenderers are to treat the RFT and any information provided to tenderers by or on behalf of the Commonwealth in connection with the RFT process as confidential and not disclose or use that information except as strictly required for the purpose of developing a tender in accordance with the RFT.
- 2.11.2 In accordance with paragraph 7.23 of the CPRs, the Commonwealth will treat tenders as confidential before and after the award of any resultant Contract.
- 2.11.3 Despite clause 2.11.2 the Commonwealth may disclose information:
- a. if required by law or statutory or portfolio duties, or required for public accountability reasons, including following a request by parliament or a parliamentary committee;
  - b. for the purpose of defending any claim or proceeding in relation to the RFT process or any resultant Contract;
  - c. in the public domain otherwise than due to a breach of confidence; or
  - d. as contemplated under clause 2.13.

**2.12 Probity Assurance (Core)**

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***Note to tenderers: Tenderers should note that the Tenderer's Deed of Undertaking sets out a number of acknowledgements and undertakings to be given by tenderers, including in relation to probity, conflict of interest and bribery.***

2.12.1 The Commonwealth may exclude a tender from further consideration if in the opinion of the Commonwealth, the tenderer fails to comply with clause 4 of the Tenderer's Deed of Undertaking. The Commonwealth may exclude a 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 at any time during the last seven years.

**2.13 Use of Tender Documents (Core)**

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2.13.1 All tender documents submitted in response to the RFT become the property of the Commonwealth and the Commonwealth may use, retain and copy the information contained in those documents for the purposes of:

- a. evaluation and selection of any tender;
- b. preparation and negotiation of any resultant Contract with respect to the RFT; and
- c. verifying the currency, consistency and adequacy of information provided under any other RFT process conducted by the Commonwealth.

2.13.2 The Commonwealth may disclose all or part of the tender documents to a third party for the purposes of assisting the Commonwealth in the conduct of the RFT process, and for the purposes contained in clause 2.13.1. The Commonwealth may obtain appropriate confidentiality undertakings from the third party prior to disclosure.

2.13.3 Nothing in this clause 2.13 changes or affects the ownership of IP in the information contained in the tender documents.

**2.14 Part and Joint Tenders (Core)**

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2.14.1 The Commonwealth will not consider a tender for part of the Services.

2.14.2 Without limiting the Commonwealth's rights, the Commonwealth intends to enter into a contract with a single legal entity that will be the party responsible for the performance of any resultant Contract. If tenderers submit a consortium tender for the Services, the consortium tender is to:

- a. include in the tender the information sought in the RFT for each member of the consortium;
- b. describe in detail in the tender the relationship between each member of the consortium and the structure proposed for management of the consortium, including nominating a single point of contact for all communications in relation to this RFT;
- c. provide in the tender that each member of the consortium will be jointly and severally liable for the performance of all members of the consortium under any resultant Contract or that one member of the consortium will be fully liable for the performance of all members of the consortium; and
- d. include such other information that the Commonwealth requires to undertake a risk assessment of the proposed consortium tender.

2.14.3 The Commonwealth will not consider a joint tender other than a tender submitted in accordance with clause 2.14.2. A reference to tenderer in this RFT is a reference to each member of the consortium..

**2.15 Alternative Proposals (Core)**

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2.15.1 The Commonwealth may consider an alternative proposal submitted by a tenderer that does not comply with the requirements of the RFT. Any alternative proposal is to be submitted in accordance with this clause 2.15.

2.15.2 The Commonwealth will not consider an alternative proposal unless the alternative proposal:

- a. is submitted together with a tender that addresses the requirements of the RFT;
- b. is clearly identified as an alternative proposal submitted under this clause 2.15;

- c. complies with all essential requirements identified in the RFT;
- d. is fully described by the tenderer, including:
  - (i) the advantages, disadvantages, limitations and capability of the alternative proposal; and
  - (ii) the extent to which the adoption of the alternative proposal would impact upon the tender that addresses the requirements of the RFT including any financial impact, impact on the provision of the Services and any other consequences of the alternative proposal; and
- e. contains sufficient and verifiable supporting information and data to enable a comparison of the alternative proposal against other tenders.

2.15.3 For the avoidance of doubt, alternative proposals are not required to constitute a complete tender that addresses all of the requirements of the RFT.

## **2.16 Substitution of Tenderer (Core)**

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2.16.1 If during the period following the submission of the tender and prior to execution of any resultant Contract with the successful tenderer, there occurs:

- a. an Insolvency Event in respect of the tenderer; or
- b. any other event that has the effect of substantially altering the composition or control of the tenderer or the business of the tenderer,

then the Commonwealth may allow, on such terms as the Commonwealth considers appropriate, the substitution of that tenderer with another legal entity upon receipt of a joint written request from or on behalf of the tenderer and the other legal entity.

2.16.2 If no request for substitution is made, or the Commonwealth chooses not to allow the substitution under clause 2.16.1, the Commonwealth may decide not to consider the tender any further or, in considering it, may take into account the impact of the event on the information provided in the tender.

2.16.3 If the Commonwealth allows the substitution under clause 2.16.1, the Commonwealth will evaluate the tender in its original form prior to the event, except that the impact of the event on the information provided in the tender may be taken into account.

## **3 EVALUATION OF TENDERS**

### **3.1 Evaluation and Process (Core)**

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3.1.1 Tenders will be evaluated on the basis of best value for money consistent with Commonwealth procurement policies, utilising the tender evaluation criteria at clause 3.9.

3.1.2 The Commonwealth may at any time during the RFT process:

- a. obtain additional information (whether that information is obtained through the RFT process or by any other means) relevant to a tenderer's tender;
- b. use material tendered in response to one evaluation criterion in the evaluation of other criteria;
- c. seek clarification or additional information from, and enter into discussions with, any or all of the tenderers in relation to their tender;
- d. shortlist one or more tenderers;
- e. request a presentation of the tenderer's tender; or
- f. visit the tenderers' or proposed Subcontractor's facilities.

3.1.3 In assessing tenders, the Commonwealth may take into account any supporting documentation provided under clause 2.2.2 and 3.1.2.

### 3.2 Minimum Content and Format Requirements (Core)

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**Note to drafters: When the procurement is subject to the additional rules detailed in the CPRs, 'will' is to be selected from the following clause. When the procurement is NOT subject to the additional rules detailed in the CPRs, 'may' is to be selected.**

- 3.2.1 [Subject to clause 2.10], the Commonwealth [MAY/WILL] exclude a tender from further consideration if the Commonwealth considers that the tender does not comply with any of the Minimum Content and Format Requirements specified in the Tender Details Schedule.

### 3.3 Conditions for Participation (Optional)

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**Note to drafters: This clause should be used when the procurement is subject to the additional rules detailed in the CPRs.**

- 3.3.1 The Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tenderer does not comply with the Conditions for Participation specified in the Tender Details Schedule.

### 3.4 Essential Requirements (Optional)

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**Note to drafters: This clause is to be used if the draft SOW contains essential requirements. When the procurement is subject to the additional rules detailed in the CPRs, 'will' is to be selected from the following clause. When the procurement is NOT subject to the additional rules detailed in the CPRs, 'may' is to be selected.**

- 3.4.1 The Commonwealth [MAY/WILL] exclude a tender from further consideration if the Commonwealth considers that the tender does not comply with a requirement identified as essential in the draft SOW.

### 3.5 Negotiation (Core)

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- 3.5.1 The Commonwealth may engage one or more tenderers in negotiations, which may involve tenderers being asked to:
- clarify, improve or consolidate any of the technical, commercial, legal, financial and operational aspects of their tenders; or
  - enter into an agreement with the Commonwealth relating to the terms of the detailed engagement with that tenderer.

### 3.6 Preferred Tenderer Status (Core)

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- 3.6.1 The Commonwealth may select a tenderer as preferred tenderer, but such selection:
- does not affect or limit the Commonwealth's rights or the tenderer's obligations under the RFT; and
  - is not a representation that any Contract will be entered into between the Commonwealth and that tenderer,
- and the Commonwealth may recommence or commence negotiations under the RFT with any other tenderer whether or not a tenderer has been selected as preferred tenderer.

### 3.7 Cost Investigation of Tenders (Core)

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**Note to tenderers: The Commonwealth may refer to the Defence Cost Principles in considering whether the costs that the Contractor seeks to recover under the Contract are reasonable. The Defence Cost Principles can be accessed via the Defence internet site at:**

- <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/cost-principles>

- 3.7.1 For the purposes of evaluating a tender, Commonwealth Personnel may conduct a cost investigation of the tendered price. On request by the Commonwealth, the tenderer is to facilitate any such cost investigation.

### 3.8 Debriefing of Tenderers (Core)

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- 3.8.1 Tenderers will be notified whether they have been successful or unsuccessful and may request an oral or written tender debriefing. Tenderers requiring a debriefing should contact the Contact Officer specified in the Tender Details Schedule.
- 3.8.2 Tenderers will be debriefed against the evaluation criteria contained in clause 3.9.

### 3.9 Tender Evaluation Criteria (Core)

**Note to drafters: Additional or alternative evaluation criteria may be included in the following list where appropriate. Drafters should only include criteria that will be used by the Commonwealth during tender evaluation.**

3.9.1 The criteria to be applied for the purposes of evaluation are as follows, not in any order of importance:

- a. past performance of contractual obligations by the tenderer, any proposed Subcontractor, any Related Bodies Corporate, or special purpose vehicle (in which any of these entities have been involved), including involvement of any of them in any contract that is or has been listed as a Project/Product of Concern;
- b. the extent to which the tenderer is assessed as being capable of providing the Services in accordance with the requirements of the draft Contract (including the draft SOW) and the assessed level of risk relating to performance of the Services in accordance with those requirements;
- c. the extent to which the tenderer is compliant with the draft Contract and the assessed level of risk relating to the negotiation of any resultant Contract acceptable to the Commonwealth;
- d. the extent to which the proposed rights to Technical Data, Software and Contract Material would enable the Commonwealth to obtain the full benefit of the requested Services;
- e. the capability of the tenderer to satisfy the requirements of the draft Contract in relation to the environment, and health and safety, including in relation to proposed Subcontractors, and the assessed level of risk relating to performance of the Services in accordance with those requirements;
- f. the financial and corporate viability of the tenderer to fulfil Contract obligations; and
- g. the tendered prices and pricing structure.

**Note to drafters: If the procurement is valued at less than \$4 million for the Initial Term (inclusive of GST and any options included in the Endorsement to Proceed), then both criteria below can be deleted. If the procurement exceeds \$4 million and will include a DIP program (refer to draft Attachment J), then include Option A and delete Option B; however, if exempt from needing a DIP program, include Option B and delete Option A. If the procurement value may exceed \$20m (inclusive of GST and options), then more extensive DIP requirements may apply and additional clauses and DIDs from the ASDEFCON (Support) template may provide a basis for further development. Further advice may be sought from Non Materiel Procurement Branch (NMPB) at [defence.procurement@defence.gov.au](mailto:defence.procurement@defence.gov.au).**

**Option A: This criterion must be included when there is a requirement to address DIP in tender responses (as per Annex G to the TDRL), unless it is known that the price for the Initial Term of any resultant Contract would be less than \$4m (inclusive of GST), or that an exemption to the DIP program applies.**

- h. the extent to which the tender response achieves the objectives for Defence Industry Participation (DIP) and satisfies the DIP requirements contained within the RFT.

**Option B: This criterion must be included if the procurement is valued at more than \$1million but there is no requirement for tenders to address DIP in tender responses.**

- i. the extent to which the tenderer's response will achieve economic benefit for the Australian economy.

***Option C: These criteria must be used when the Mandatory Minimum Requirements (MMRs) of the Indigenous Procurement Policy apply (refer to clause 1.7 for further details on when the MMRs apply).***

- j. past performance and/or demonstrated commitment to increasing Indigenous participation, including, where relevant, the tenderer's past compliance with any Mandatory Minimum Requirements; and
- k. the extent to which the tendered Indigenous Participation Plan meets the Mandatory Minimum Requirements.