

ATM ID: *[INSERT ATM ID]*

PROJECT NO: *[INSERT PROJECT NUMBER]*

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

MEDIUM WORKS CONTRACT (MW-2 2021)

TENDER DOCUMENTS

***[Last amended: 23 april 2024 - PLEASE REMOVE BEFORE THE TENDER DOCUMENTS ARE PUBLISHED ON AUSTENDER OR OTHERWISE ISSUED TO TENDERERS]***

**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.

***[NOTE TO COMMONWEALTH/TENDER ADMINISTRATOR: THE TENDER VALIDITY PERIOD SPECIFIED IN CLAUSE 2.1(w)(i) MUST NOT BE AMENDED OR LATER EXTENDED WITHOUT PRIOR APPROVAL FROM THE DELEGATE]***

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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).
      3. The Tenderer's participation in the tender process is governed by, and subject to, the Disclaimer and Confidentiality Agreement and these Tender Conditions.
   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 ACT Local Time, Monday to Friday (excluding ACT and 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
   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 24.1 and 24.2 of the Conditions of Contract in Part 5; or
     2. in these Tender Conditions;
  2. **ATM Close Date and ATM Close Time** means the date and time specified in the Tender Particulars;
  3. **Covered Procurement** has the meaning in the Judicial Review Act;
  4. **Defence** means the Department of Defence;
  5. **Disclaimer and Confidentiality Agreement** means thedisclaimer and confidentiality agreement in respect of this tender process;
  6. **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;
  7. **Financial Viability Assessment** means an assessment of whether the Tenderer has the necessary financial viability to perform the Contractor's Activities and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer carried out by an Independent Financial Adviser;
  8. **Independent Financial Adviser** means an independent financial adviser engaged by the Commonwealth;
  9. **Indigenous Participation Plan** means a plan detailing how the Tenderer will meet the minimum mandatory requirements for the Indigenous Procurement Policy;
  10. **Indigenous Procurement Website** means the website at www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp;
  11. **Information Documents** means any document or amendment to a document which is issued by the Tender Administrator prior to the ATM Close Date and ATM Close Time and at the time of being issued expressly stated to be an "Information Document" or an amendment to an Information Document (notwithstanding that AusTender may, if applicable, describe such documents as "addenda" or "ATM Documents");
  12. **Insolvency Event** has the meaning given to it in the Disclaimer and Confidentiality Agreement;
  13. **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 and otherwise meeting the obligations under the Contract in Part 5 if the parties are the successful Tenderers;
  14. **Judicial Review Act** means the *Government Procurement (Judicial Review) Act 2018* (Cth);
  15. **Project** means the project described in the Tender Documents;
  16. **Relevant Commonwealth Procurement Rules** has the meaning in the Judicial Review Act;
  17. **Remote Area** means an area identified on the map located on the Indigenous Procurement Website, as updated from time to time;
  18. **Strategic Notice Event** has the meaning given to it in the Disclaimer and Confidentiality Agreement;
  19. **Tender** means the documents lodged with the Commonwealth pursuant to these Tender Conditions;
  20. **Tender Administrator** means the person specified in the Tender Particulars or such other person notified in writing to a Tenderer by the Commonwealth;
  21. **Tender Conditions** means these tender conditions in Part 1;
  22. **Tender Documents** means:
      1. the Tender Conditions;
      2. the Tender Particulars in Part 2;
      3. the Tender Form and Statutory Declaration in Part 3;
      4. the Tender Schedules in Part 4;
      5. the Contract in Part 5, including the "Works Description" (as defined in clause 24.1 of the Conditions of Contract in Part 5); and
      6. the other documents specified in the Contract Particulars in Part 5, which correspond to the definition of "Contract" under clause 24.1 of the Conditions of Contract in Part 5,

but excludes the Information Documents;

* 1. **Tender Validity Period** means:
     1. 90 days from the ATM Close Date and ATM Close Time; or
     2. if the procurement is suspended under the Judicial Review Act or in accordance with clause 18.2, the period specified in subparagraph (i) extended by the period of suspension, up to a maximum of 130 days;
  2. **Tenderer** means the person (or persons) or other entity (or entities) invited to lodge a Tender;
  3. **WHS Accreditation Scheme Building Work** has the meaning in section 6 of the *Federal Safety Commissioner Act 2022* (Cth);
  4. any reference to a Part is a reference to a Part of the Tender Documents; and
  5. any reference to one of the documents described in the definition of the "Tender Documents" under paragraph (v) is a reference to the document so entitled which is included in the Tender Documents.
  6. Questions, Communications 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 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 ATM Close Date and ATM Close Time. Subject to the Commonwealth Procurement Rules, neither the Commonwealth nor the Tender Administrator is obliged to respond to all such notices, questions, concerns or enquiries. Subject to paragraph (b), the Commonwealth may (in its absolute discretion) respond to such notices, questions, concerns 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 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 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 issued to all Tenderers).
     4. TheCommonwealth may (in its absolute discretion) amend the Tender Documents at any time prior to the ATM Close Date and ATM Close Time. All amendments to the Tender Documents will be in the form of addenda. 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. The Tender Administrator and the Commonwealth may give any notice or undertake any written communication contemplated by these Tender Conditions (including all addenda and Information Documents) by publication on AusTender or otherwise by email, other electronic means, post or hand.
     6. In the event of a discrepancy between:
        1. AusTender and the Tender Particulars, AusTender will prevail; and
        2. a communication by AusTender and a communication by the Tender Administrator by any other means, the communication by AusTender will prevail.
  7. 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. If an industry briefing will be conducted, the Tender Administrator will notify the Tenderer of the details of the industry briefing, including:
        1. the scheduled date, time and location (in person and/or by videoconference) for the industry briefing;
        2. where the industry briefing is to be held in person, 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 the 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 the 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 the industry briefing (or any industry briefing materials provided in accordance with paragraph (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:
       1. may, at the discretion of the Tender Administrator, be provided with copies of industry briefing materials (including presentations) as an Information Document; and
       2. is not permitted to take photographs or other electronic recordings of any industry briefing (including any presentation, site visit or inspection).
    3. 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 the 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 the industry briefing.

1. TENDERS
   1. Conforming Tender, including ATM Close Date and ATM Close Time, Minimum Form and Content Requirements and Conditions for Participation

To lodge a conforming Tender:

* + 1. **the Tender must be:**
       1. **lodged electronically via AusTender at www.tenders.gov.au;**and
       2. **received before the ATM Close Date and ATM Close 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 the Tender Particulars state that clauses 27.3 and 27.4 apply, the Tenderer must complete and lodge Tender Schedule F - Indigenous Procurement Policy;
       3. if clause 29.1 applies, the Tenderer must complete and lodge Tender Schedule K - Statement of Tax Record; and
       4. 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 I **-** Alternative Proposals; and
          2. in respect of clauses 4.3 - 4.6 of the Conditions of Contract in Part 5 only, as expressly set out by the Tenderer in item 1 of Tender Schedule J - Miscellaneous Matters For Evaluation; and
    3. the Tenderer must, at the time of lodging its Tender, satisfy each **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 I - Alternative Proposals. The Tenderer should note that this is a minimum form and content requirement for its Tender under clause 3.1(b)(iv).**
     3. The Tenderer should note that it is not required to submit Tender Schedule I-Alternative Proposalsif it does not propose to submit an alternative proposal. If the Tenderer wishes to submit an alternative proposal, it should ensure that item 1 and item 2 of Tender Schedule I-Alternative Proposals are each lodged as separate files.
     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 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 in 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 and Statutory Declaration in Part 3; and
        2. execute the Tender Form and Statutory Declaration 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 and Statutory Declaration; 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 Statutory Declaration,

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

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

* + 1. The Tenderer is requested to:
       1. lodge the Tender Form and Statutory Declaration in Part 3; and
       2. lodge:

* + - * 1. Tender Schedule A - Draft Project Plans;
        2. Tender Schedule B - Proposed Resources;
        3. Tender Schedule C - Local Industry Capability Plan;
        4. if the Tender Particulars state that it applies, Tender Schedule D - Previous Performance*;*
        5. Tender Schedule E - Program;
        6. if clauses:

27.1 and 27.2 apply, Tender Schedule F - Indigenous Procurement Policy; or

27.3 and 27.4 apply (**minimum form and content requirement**), Tender Schedule F - Indigenous Procurement Policy;

* + - * 1. Tender Schedule G - Commonwealth Procurement Rules Compliance;
        2. Tender Schedule H - Financial;
        3. subject to clause 3.1(b)(iv) (**minimum form and content requirement)** and only if it wishes to submit an alternative proposal, Tender Schedule I - Alternative Proposals, noting that it should ensure that item 1 and item 2 of Tender Schedule I - Alternative Proposals are each lodged as separate files;
        4. Tender Schedule J - Miscellaneous Matters For Evaluation;
        5. ***[IF CLAUSE 29.1 APPLIES, INSERT:* (minimum form and content requirement**) **Tender Schedule K** - **Statement of Tax Record*] [IF CLAUSE 29.1 DOES NOT APPLY, INSERT "NOT USED"]***; and
        6. Tender Schedule L - WHS Accreditation Scheme Accreditation;
      1. lodge each of the Tender Form and Statutory Declaration and each Tender Schedule described under subparagraphs (i) and (ii) in separate, stand-alone, unsecured, electronic files in the format specified in the Tender Particulars which:
         1. identify:

the Project;

the Tenderer's name; and

the relevant Tender Form and Statutory Declaration and Tender Schedule references;

* + - * 1. do not exceed the file size specified in the Tender Particulars;
        2. 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;
        3. do not contain macros, scripts or executable codes of any kind; and
        4. otherwise comply with the AusTender terms and conditions.

If the Tenderer wishes to submit an alternative proposal, it should lodge item 1 and item 2 of Tender Schedule I - Alternative Proposals as separate files;

* + - 1. lodge its Tender in accordance with the response lodgement procedures described in the Tender Documents and on AusTender. The Tender must be completely self-contained, without hyperlinks, QR codes or other material incorporated by reference;
      2. unless otherwise specified, express measurements in Australian legal units of measurement;
      3. unless otherwise specified, state all prices in Australian Dollars; and
      4. unless otherwise specified, provide its Tender in A4 and portrait format and otherwise 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 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 and Statutory Declaration 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,

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

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. **draft Project Plans (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 comprehends key issues and will implement appropriate solutions and management strategies in performing the Contractor's Activities to which the relevant Project Plans relate if it is the successful Tenderer (noting that the type of information the Commonwealth is seeking is outlined in Tender Schedule A - Draft Project Plans);
       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 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. **local industry capability(*[INSERT]*% weighting).** The extent to which the Tenderer has demonstrated its commitment to local industry participation and will implement appropriate solutions and management strategies to ensure that local industry is given full, fair and reasonable opportunity to participate in the delivery of the Works if it is the successful Tenderer (noting that the type of information the Commonwealth is seeking is outlined in Tender Schedule C - Local Industry Capability Plan);
       4. if the Tender Particulars state that it applies, **previous performance (*[INSERT]*% weighting).** The extent to which the Tenderer has demonstrated that it has the experience and ability to perform the Contractor's Activities 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 - Previous Performance);
       5. **program (*[INSERT]*% weighting).** The extent to which the Tenderer has demonstrated that it will satisfactorily program the Contractor's Activities 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 E - Program);
       6. **Indigenous Procurement Policy (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:
          1. if clauses 27.1 and 27.2 apply, that it has a satisfactory approach to delivering Indigenous employment and supplier use outcomes;
          2. if clauses 27.3 and 27.4 apply:

its commitment to increasing Indigenous participation, including:

that it has a satisfactory approach to delivering Indigenous employment and Indigenous supplier use outcomes;

that its Indigenous Participation Plan will meet the mandatory minimum requirements for the Indigenous Procurement Policy; and

its past performance and/or demonstrated commitment in relation to increasing Indigenous participation, including, where relevant, compliance with:

an Indigenous Participation Plan; and

the mandatory minimum requirements for the Indigenous Procurement Policy; and

if clause 27.5 applies, that it will ensure that the Contractor's Activities and the Works deliver significant Indigenous employment or Indigenous supplier use outcomes in the Remote Area,

and will 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 F - Indigenous Procurement Policy);

* + - 1. **Commonwealth Procurement Rules compliance (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 its capability to meet the applicable Australian standards, provided details of its practices regarding labour regulations and ethical employment and promoting environmental sustainability in relation to the Contractor's Activities (noting that the type of information the Commonwealth is seeking is outlined in Tender Schedule G - Commonwealth Procurement Rules Compliance);
      2. **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 H - Financial);
      3. 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 I - Alternative Proposals); and
      4. **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 Tender Schedule J - Miscellaneous Matters For Evaluation); and
         2. **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 Tender Schedule J - Miscellaneous Matters For Evaluation);
    1. will apply any **additional evaluation criteria** specified in the Tender Particulars;
    2. 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
    3. 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 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 or dealings with any preferred Tenderer appointed under clause 7.2(d),

if:

* + - * 1. the Commonwealth considers (in its absolute discretion), and whether as a result of the exercise of its rights under clause 24 or otherwise, that the Tenderer does not have the necessary financial viability to perform the Contractor's Activities and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer; or
        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.

1. Tenderer's Due Diligence
   * 1. No representation has been or is made to the Tenderer by the Commonwealth, the Tender Administrator or any of their employees, agents or consultants about the accuracy, completeness or sufficiency of the Works Description or that the Works Description represents 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 and Statutory Declaration.

1. Information Documents
   * 1. The Tenderer acknowledges and agrees that:
        1. the Information Documents are for the information only of the Tenderer;
        2. the Information Documents do not form part of the Tender Documents and will not form part of the Contract in Part 5; and
        3. this clause 6 applies notwithstanding that AusTender may describe such documents as "addenda" or "ATM Documents".
     2. The Tenderer:
        1. warrants that, to the extent that the Tender Documents and the Information Documents:
           1. are published on AusTender, before the Tenderer downloaded any of the Tender Documents or the Information Documents from AusTender; or
           2. are not published on AusTender, before the Tender Administrator issued any of the Tender Documents or the Information Documents to the Tenderer,

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, 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 ATM Close Date and ATM Close Time
   1. Procedure Before the ATM Close Date and ATM Close 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 ATM Close Date and ATM Close Time, the Commonwealth may (in its absolute discretion) from time to time with one or more Tenderers, 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,

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 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 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 the ATM Close Date and ATM Close Time
     1. After the ATM Close Date and ATM Close 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 Tender;
        2. require the Tenderer to present key elements of its Tender to such persons as may be nominated by the Tender Administrator;
        3. conduct interviews with the Tenderer and any proposed personnel/representative approved by the Tender Administrator;
        4. require the Tenderer to provide the Commonwealth with further information, documents, evidence or clarification in relation to any aspect of the Tender or as otherwise described in the Tender Documents; and
        5. 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 appoint one or more Tenderers as preferred Tenderers:
        1. for the purposes of negotiating or otherwise seeking to document and finalise a contract; 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 or other dealings 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 4 of the Disclaimer and Confidentiality Agreement, the Commonwealth may (in its absolute discretion) by notice discontinue negotiations or dealings at any time and for any reason with a preferred Tenderer.
  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. neither the Commonwealth, the Tender Administrator nor anyone on the Commonwealth's behalf warrants, guarantees or makes any representation about:
          1. the relevance, completeness, accuracy or adequacy of any Information Document or whether or not any other information exists; or
          2. any 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 or 7 (**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), if the Commonwealth believes (in its absolute discretion) that it may do so in accordance with the Commonwealth Procurement Rules or the Commonwealth is required by law to do so, the Commonwealth may 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 or any Tender.
     2. A 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 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 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 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 if its Tender has been set aside under clause 7.2(a)(v); and
           2. will notify the Tenderer if its Tender was unsuccessful (regardless of whether or not its Tender was set aside under clause 7.2(a)(v)).
     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 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 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 Tender was non-conforming, successful or unsuccessful (as the case may be) and neither the Commonwealth nor the Tender Administrator 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 and except to the extent of any compensation awarded under the Judicial Review Act, 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 an industry briefing, if applicable, any Tenderer meeting, a debrief or any discussions, negotiations or enquiries or any work undertaken by the Tenderer before or after the ATM Close Date and ATM Close 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 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 ATM Close Date and ATM Close 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 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. Completion of Tender Form and Statutory Declaration and Tender Schedules

Where the Tender is lodged on a Joint Bid Basis, the Tenderer is requested to:

* + 1. comply with any specific requirement of these Tender Conditions and any Tender Schedule insofar as it relates to a Tender lodged on a Joint Bid Basis;
    2. otherwise ensure that it provides any information which it considers relevant to its proposed joint bid arrangements in the context of its response to the Tender Form and Statutory Declaration and each Tender Schedule; and
    3. complete and lodge a single Tender Form and Statutory Declaration on behalf of all entities that are lodging the Tender on a Joint Bid Basis and ensure that the Tender Form and Statutory Declaration is duly executed by each such entity.
  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 24.1of 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 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 issued to the Tenderer; or
        2. involved in any capacity in the Commonwealth's 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 ATM Close Date and ATM Close 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 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 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 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. 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 5.7 of the Conditions of Contract in Part 5, the Auditor-General or other authorised persons may be nominated by the Contract Administrator under clause 5.7 of the Conditions of Contract in Part 5 for the purpose of exercising their rights under the *Auditor-General Act* *1997* (Cth).
2. PROCUREMENT Complaints
   1. General Procurement Complaints

If the Tenderer wishes to make a complaint in relation to this tender process:

* + 1. subject to paragraph (b), the Tenderer should submit the complaint in writing to the email address set out in the Tender Particulars; or
    2. if the Tenderer has reason to believe that the complaint satisfies the requirements of the Judicial Review Act, the Tenderer may submit the complaint under the process set out in clause 18.2.
  1. Complaints under the *Government Procurement (Judicial Review) Act* *2018*
     1. Clause 18.2 only applies if this tender process is a Covered Procurement for the purposes of the Judicial Review Act.
     2. The Judicial Review Act establishes a statutory framework for suppliers to make complaints about non-compliance with specific provisions of the Commonwealth Procurement Rules in respect of Covered Procurements.
     3. If this clause 18.2 applies and the Tenderer has reason to believe that:
        1. the Commonwealth or an official of the Commonwealth has engaged, is engaging or is proposing to engage in any conduct in contravention of the Relevant Commonwealth Procurement Rules in relation to this tender process; and
        2. the interests of the Tenderer are affected by the conduct,

the Tenderer may submit a complaint about the conduct in writing to the email address set out in the Tender Particulars.

* + 1. Where requested by the Commonwealth, the Tenderer must do all things reasonably necessary to cooperate with the Commonwealth (including providing information or answering questions) in the investigation and attempted resolution of any complaint in respect of this tender process under this clause 18.2.
    2. A public interest certificate under the Judicial Review Act in relation to the tender process:
       1. is in force if stated in the Tender Particulars as being in force; or
       2. may otherwise be issued by the Commonwealth at any time during the tender process (including after any complaint has been made by a Tenderer under this clause 18.2), in which case the Tender Administrator will notify all Tenderers of the issue of the public interest certificate.
    3. Without limiting the operation of the Judicial Review Act, if a Tenderer makes a complaint under this clause 18.2 and at the time of the complaint no public interest certificate is in force in relation to this tender process, the Commonwealth may suspend this tender process in accordance with section 20 of the Judicial Review Act by notice to all Tenderers.

1. 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.
2. 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 J - 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 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 21, the Tenderer may also be obliged to comply with other obligations in relation to the handling of Personal Information, including under other Statutory Requirements.
2. WORKPLACE GENDER EQUALITY
   * 1. The Tenderer's attention is drawn to the Workplace Gender Equality Procurement Principles (the **Principles**), which impose obligations on the Commonwealth to obtain a letter of compliance from any Tenderer who is a "Relevant Employer" as defined in the *Workplace Gender Equality Act 2012* (Cth) (**WGE Act**). The Australian Government has adopted a policy of not purchasing goods or services from suppliers who do not comply with their obligations, if any, under the WGE Act. More information about the requirements arising under the Principles and the WGE Act is available from the Workplace Gender Equality Agency (**WGEA**) at https://www.wgea.gov.au/what-we-do/compliance-reporting/wgea-procurement-principles.
     2. As part of its Tender, the Tenderer must complete section 5 of the Tender Form and Statutory Declaration in Part 3.
     3. At the Award Date, the successful Tenderer must comply with the WGE Act if it applies to the successful Tenderer.
3. EMPLOYEE ENTITLEMENTS
   * 1. 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 against it (not including a decision under appeal) relating to employee entitlements and who has not satisfied any resulting order (e.g. where the entitlement remains unpaid). A judicial decision is one made by any court, tribunal or other body with authority to make a decision or determination which is binding on the Tenderer.
     2. The Tenderer must provide the declaration set out in section 6 of the Tender Form and Statutory Declaration in Part 3.
     3. At the Award Date, the successful Tenderer must not have any judicial decision against it (not including a decision under appeal) relating to employee entitlements where the resulting order remains unsatisfied.
     4. At any time before the Award Date, the Tender Administrator may (in its absolute discretion) notify the Tenderer 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. confirming that it has not had any judicial decision against it (not including a decision under appeal) relating to employee entitlements where the resulting order remains unsatisfied; 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 subparagraph (i) and which relates to any employee related entitlement (whether on appeal or otherwise).
4. FINANCIAL VIABILITY
   1. Solvency Statement and Financial Information

Without limiting clauses 4(d) and 7, at any time before the Award Date, the Tender Administrator may (in its absolute discretion) notify the Tenderer 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 information or documents:

* + 1. a duly executed solvency statement in the form attached to the Tender Administrator's notice;
    2. financial reports, accounts and records as specified (including any which have been subject to third party audit) for up to three prior financial years;
    3. if the Tenderer is a foreign individual, firm, corporation or otherwise, details of all assets and liabilities in Australia;
    4. if the Tenderer is a company and forms part of a corporate group, details of the structure of the corporate group and any financial guarantee or assurance arrangements or inter-company loans between members of that corporate group;
    5. details of any pending, threatened or actual litigation, arbitration or other forms of dispute resolution involving the Tenderer;
    6. 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), any contingent liabilities and all finance facilities that the Tenderer has in place;
    7. full contact details for its Financial Representative for the purpose of providing further financial information and documents and answering questions; and
    8. any additional 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 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 24.1 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

The Tenderer acknowledges that:

* + 1. the Commonwealth may (in its absolute discretion) engage an Independent Financial Adviser:
       1. to assess whether or not the Tenderer has the necessary financial viability to perform the Contractor's Activities and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer (including an assessment of the information or documents provided by the Tenderer under clause 24.1 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 in response to a request under clause 24.1 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.

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

1. STRATEGIC NOTICE EVENTS
   1. Tenderer's Warranty

The Tenderer warrants that, at the time of lodging its Tender, it is not aware of any Strategic Notice Event.

* 1. Tenderer to Give Notice

The Tenderer acknowledges and agrees that:

* + 1. it will comply with its obligations under the Disclaimer and Confidentiality Agreement in respect of the notification and management of any Strategic Notice Event; and
    2. the Commonwealth, either itself or acting through the Tender Administrator, has rights and discretions in respect of any Strategic Notice Event and may exercise those rights in accordance with the relevant terms of the Disclaimer and Confidentiality Agreement.
  1. Release

The Tenderer must bear, and releases the Commonwealth in respect of, all 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 Strategic Notice Event or the exercise of any of the Tender Administrator's or the Commonwealth's absolute discretions under clause 25 or a corresponding clause in respect of any other Tenderer.

1. LOCAL INDUSTRY CAPABILITY
   1. General
      1. Local industry participation is an expected outcome of Commonwealth expenditure. This expectancy builds on the Commonwealth Procurement Rules, which require procurement practices that do not unfairly discriminate against Small and Medium Enterprises (**SMEs**) and provide appropriate opportunities for SMEs to compete for Commonwealth funded work. Tenderers are also referred to the Defence Policy for Industry Participation (available at https://www.defence.gov.au/business-industry/programs/defence-policy-industry-participation).
      2. A core requirement of Commonwealth procurement is for the Commonwealth to consider, in the context of determining value for money:
         1. the benefits of doing business with competitive SMEs when specifying requirements and evaluating value for money;
         2. barriers to entry that may prevent SMEs for competing (for example, costly preparation of tenders);
         3. the capabilities of SMEs and their commitment to local or regional markets; and
         4. the potential benefits of having a larger, more competitive supplier base.
      3. To ensure compliance with the relevant requirements in the Commonwealth Procurement Rules and the Defence Policy for Industry Participation, the Tenderer is required to develop a Local Industry Capability Plan. The Local Industry Capability Plan will outline the Tenderer’s proposed approach to engaging industry and SMEs at the local and national level in the delivery of the project.
   2. Local Industry Capability Plan
      1. As part of its Tender, the Tenderer is requested to prepare, complete and lodge a draft Local Industry Capability Plan containing the details requested in Tender Schedule C - Local Industry Capability Plan.
      2. The Tenderer should also note the evaluation criterion under clause 4(a)(iii).
      3. The successful Tenderer will be required to prepare a Local Industry Capability Plan and submit it to the Contract Administrator after the Award Date. The Local Industry Capability Plan must be:
         1. based on the draft Local Industry Capability Plan provided by the successful Tenderer in its response to Tender Schedule C - Local Industry Capability Plan; and
         2. finalised in accordance with clause 8.7 of the Conditions of Contract in Part 5.
      4. For projects valued at $7.5 million and above, the Local Industry Capability Plan will be used by the Commonwealth in considering the economic benefits to the Australian economy to be derived from the project during the term of the Contract in accordance with paragraph 4.7 of the Commonwealth Procurement Rules.
      5. During the term of the Contract:
         1. the Contractor will use the Local Industry Capability Plan to:
            1. demonstrate how local Australian industry is, or will be, engaged and provided opportunity to contribute to the delivery of Defence capability requirements;
            2. provide evidence of the local and broader Australian industry commitment, in dollar value, benefits and work package terms;
            3. deliver data on the economic benefits for Australian industry locally and nationally; and
            4. indicate how these obligations will be monitored and managed during the term of the Contract; and
         2. the Commonwealth will use the Local Industry Capability Plan to:
            1. determine the extent of the economic benefit to the Australian economy;
            2. validate engagement and commitment to opportunities for local industry participation in the procurement or the supply chain; and
            3. identify further opportunities to support and develop Australian industry.
2. INDIGENOUS Procurement Policy

Clauses 27.1 and 27.2 apply unless the Tender Particulars state that they do not apply.

Clauses 27.3 and 27.4 do not apply unless the Tender Particulars state that they apply.

Clause 27.5 does not apply unless the Tender Particulars state that it applies.

* 1. General - Not a High Value Contract

The Tenderer's attention is drawn to the Indigenous Procurement Policy (including the mandatory minimum requirements for the Indigenous Procurement Policy) available on the Indigenous Procurement Website. The purpose of the Indigenous Procurement Policy is to stimulate Indigenous entrepreneurship and business development and provide Indigenous Australians with more opportunities to participate in the economy. More information on Indigenous Enterprises is available at www.supplynation.org.au and in the Indigenous Procurement Policy.

* 1. Tenderer’s Response - Not a High Value Contract

The Tenderer is requested to describe in Tender Schedule F - Indigenous Procurement Policy its approach to delivering:

* + 1. Indigenous employment; and
    2. Indigenous supplier use outcomes.

The Tenderer should also note that such information is also an evaluation criterion under clause 4(a)(vi) of the Tender Conditions.

* 1. General - High Value Contract

The Tenderer's attention is drawn to the Indigenous Procurement Policy (including the mandatory minimum requirements for the Indigenous Procurement Policy) available on the Indigenous Procurement Website. The purpose of the Indigenous Procurement Policy is to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy. More information on Indigenous Enterprises is available at www.supplynation.org.au and in the Indigenous Procurement Policy.

The Tenderer is requested to note that using Indigenous Enterprises may involve the direct engagement of Indigenous Enterprises as subcontractors, suppliers or otherwise or further along the supply chain.

* 1. Tenderer's Response - High Value Contract

As part of its Tender, the Tenderer must complete and lodge Tender Schedule F - Indigenous Procurement Policy.

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. High Value Contract and Remote Area Contract

If the Contractor's Activities or the Works will be delivered in a Remote Area, this creates an opportunity to deliver significant Indigenous employment or Indigenous supplier use outcomes in that Remote Area.

The Tenderer should describe in its Indigenous Participation Plan how it will ensure that the Contractor's Activities and the Works deliver significant Indigenous employment or Indigenous supplier use outcomes in the Remote Area. More information on Remote Areas is available in section 4.5 of the Indigenous Procurement Policy, including examples of options available to ensure the Contractor's Activities and the Works will deliver significant Indigenous employment or Indigenous supplier use outcomes in the Remote Area.

The Tenderer should also note the evaluation criterion under clause 4(a)(vi)B.2).

1. WHS Accreditation Scheme
   * 1. Clause 28 applies unless the Tender Particulars state that it does not apply.
     2. As part of its Tender, the Tenderer must complete and lodge Tender Schedule L - WHS Accreditation Scheme Accreditation.
     3. The Tenderer's attention is drawn to the WHS Accreditation Scheme described in section 43 of the *Federal Safety Commissioner Act 2022* (Cth). More information on the WHS Accreditation Scheme is available at www.fsc.gov.au or by contacting the Federal Safety Commissioner on 1800 652 500.
     4. In accordance with section 43(4) of the *Federal Safety Commissioner Act 2022* (Cth) the Commonwealth must not fund WHS Accreditation Scheme Building Work unless:
        1. contracts for the WHS Accreditation Scheme Building Work will be entered into with builders who are accredited persons; and
        2. at the time of funding, the Commonwealth takes appropriate steps to ensure that builders will be accredited persons when they carry out the WHS Accreditation Scheme Building Work.
     5. On or prior to the proposed Award Date (as nominated in writing to the Tenderer by the Tender Administrator), where a Tender is submitted:
        1. on the basis the Tenderer will carry out the WHS Accreditation Scheme Building Work, the Tenderer must hold WHS Accreditation Scheme accreditation; or
        2. on a Joint Bid Basis and:
           1. both joint bid parties will carry out WHS Accreditation Scheme Building Work, both joint bid parties must hold WHS Accreditation Scheme accreditation;
           2. only one joint bid party will carry out WHS Accreditation Scheme Building Work, that party must hold WHS Accreditation Scheme accreditation; or
           3. one joint bid party will carry out WHS Accreditation Scheme Building Work as an unaccredited builder (and one joint bid party is accredited), the joint bid parties must have obtained written confirmation from the Federal Safety Commissioner confirming the requirements of section 26(g) of the *Federal Safety Commissioner (Accreditation Scheme) Amendment Rules 2023* (Cth) have been met in relation to the Project.
     6. The entity carrying out WHS Accreditation Scheme Building Work must:
        1. comply with all conditions of accreditation under the WHS Accreditation Scheme; and
        2. maintain accreditation at all times whilst the WHS Accreditation Scheme Building Work is being carried out.
     7. At any time before the proposed Award Date (as nominated in writing to the Tenderer by the Commonwealth), the Tender Administrator may (in their absolute discretion) notify the Tenderer that the Commonwealth requires the Tenderer to provide to the Tender Administrator by email by the time and date specified in the notice, evidence:
        1. it holds WHS accreditation in accordance with the WHS Accreditation Scheme (including any expiry dates for such accreditation);
        2. it has taken steps to obtain accreditation in accordance with the WHS Accreditation Scheme; or
        3. regarding any other information concerning accreditation under the WHS Accreditation Scheme, the Tender Administrator determines in their absolute discretion, is applicable.
     8. The Tenderer acknowledges and agrees that irrespective of any WHS Accreditation Scheme evidence (or information lodged by a Tenderer as part of the tender process) the Commonwealth:
        1. will only enter into a contract with a Tenderer whose Tender and proposed approach to the delivery of WHS Accreditation Scheme Building Work complies in all respects with the WHS Accreditation Scheme and this clause 28; and
        2. may (in its absolute discretion) exclude the Tenderer from further consideration if at any time before the proposed Award Date (as nominated in writing to the Tenderer by the Commonwealth) the:
           1. Tenderer does not provide copies of all information requested by the Commonwealth (including satisfactory evidence of WHS Accreditation Scheme accreditation), including in accordance with a request under paragraphs (g)(i) to (g)(iii) of this clause 28; or
           2. Commonwealth considers that the Tenderer cannot:

obtain accreditation under the WHS Accreditation Scheme on or before the proposed Award Date; or

comply with the conditions of the WHS Accreditation Scheme or this clause 28 on or before the proposed Award Date.

1. STATEMENT OF TAX RECORD
   1. Tenderer to provide valid and satisfactory STRs

Clause 29.1 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 Department of Treasury at https://treasury.gov.au/policy-topics/economy/shadow-economy/procurement-connected-policy.
    2. As part of its Tender, the Tenderer must complete and lodge Tender Schedule K - 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 K - Statement of Tax Record;
       2. if the Tenderer has requested any of the STRs required under Tender Schedule K - Statement of Tax Record but the STR has not been issued by the Australian Taxation Office prior to the ATM Close Date and ATM Close 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 ATM Close Date and ATM Close 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)(iii) of the Tender Conditions**.

* + 1. If the Tenderer provides in its response to Tender Schedule K - Statement of Tax Record an STR receipt issued by the Australian Taxation Office demonstrating that any of the STRs required under Tender Schedule K - Statement of Tax Record were requested from the Australian Taxation Office prior to the ATM Close Date and ATM Close 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 ATM Close Date and ATM Close 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 ATM Close Date and ATM Close Time, the Commonwealth may (in its absolute discretion) decide not to evaluate (or continue to evaluate) the Tender.
    2. The Tenderer's attention is also drawn to the Declaration in item B of Tender Schedule K - Statement of Tax Record, which requires the Tenderer to declare that:
       1. it has complied with the requirements in Tender Schedule K - 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 ATM Close Date and ATM Close 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 ATM Close Date and ATM Close 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 29.2 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/shadow-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 E - 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), 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.
    4. The Tenderer must obtain and hold 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 ATM Close Date and ATM Close Time.
  1. Acknowledgement

This clause 29.3 applies where either of clause 29.1 or 29.2 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 29.2(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 29:

* + 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

|  |  |  |
| --- | --- | --- |
| **ATM Close Date and ATM Close Time:** (Part 1, clause 2.1(b)) | ***[INSERT ATM CLOSE DATE (day-month-year)]*** 12.00pm (ACT Local time) | |
| **Tender Administrator:** (Part 1, clause 2.1(t)) | ***[ENTER THE NAME AND EMAIL ADDRESS OF THE TENDER ADMINISTRATOR]***  ***[E.G. External DIP Consultant Name - Attn: Individual Name xyz@xxx.com.xx]*** | |
| **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, PRIOR APPROVAL MUST BE SOUGHT FROM THE DELEGATE. IF PRIOR APPROVAL IS GIVEN, 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 Tender is lodged on a Joint Bid Basis, the Tenderer is requested to lodge this information for each joint bid party (as applicable)]*** | |
| **Format of Tender:** (Part 1, clause 3.4(b)(iii)) | ***[INSERT E.G. MICROSOFT WORD (COMPATIBLE WITH MICROSOFT OFFICE 2021), TEXT SEARCHABLE PDF]*** | |
| **Maximum file size:** (Part 1, clause 3.4(b)(iii)B) | ***[INSERT]*** *megabytes per upload (with files compressed or zipped as required)* | |
| **Previous Performance:** (Part 1, clauses 3.4(b)(ii)D and 4(a)(iv) and Part 4, Tender Schedule D - Previous Performance) | Clauses 3.4(b)(ii)D and 4(a)(iv) and Tender Schedule D - Previous Performance ***[DO/DO NOT]*** apply.  (Clauses 3.4(b)(ii)D and 4(a)(iv) and Tender Schedule D - Previous Performance apply unless stated otherwise)  ***[IF PREVIOUS PERFORMANCE WAS RECENTLY EVALUATED AS PART OF AN INVITATION TO REGISTER INTEREST PROCESS, CONSIDER WHETHER PREVIOUS PERFORMANCE WILL ALSO BE EVALUATED AT TIME OF TENDER. APPROACH MUST BE CONSISTENT WITH PDDP]*** | |
| **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, PRIOR APPROVAL MUST BE OBTAINED FROM THE DELEGATE AND APPROACH MUST BE CONSISTENT WITH THE PDDP. IF PRIOR APPROVAL IS GIVEN, 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 Tender is lodged on a Joint Bid Basis, the Tenderer 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]]*** | |
| **Email address for submitting general procurement complaints:** (Part 1, clause 18.1) | cfi.qualityandcompliance@defence.gov.au | |
| **Complaints under the Judicial Review Act:** (Part 1, clause 18.2) | **Email address for submitting complaints under the Judicial Review Act:** (Part 1, clause 18.2(c)) | ***[IF THE TENDER PROCESS IS A COVERED PROCUREMENT INSERT:]***  procurement.complaints@defence.gov.au  ***[IF THE TENDER PROCESS IS NOT A COVERED PROCUREMENT INSERT:]***  Not Applicable  ***[DELETE WHICHEVER OPTION DOES NOT APPLY. A TENDER PROCESS WILL BE A COVERED PROCUREMENT FOR THE PURPOSES OF THE JUDICIAL REVIEW ACT IF THE RULES IN DIVISION 1 AND DIVISION 2 OF THE COMMONWEALTH PROCUREMENT RULES APPLY TO THE TENDER PROCESS]*** |
| **Public interest certificate:** (Part 1, clause 18.2(e)(i)) | ***[IF THE TENDER PROCESS IS A COVERED PROCUREMENT INSERT:]***  As at the date of the release of the Tender Documents, a public interest certificate ***[HAS/HAS NOT]*** been issued.  ***[IF THE TENDER PROCESS IS NOT A COVERED PROCUREMENT INSERT:]***  Not Applicable  ***[DELETE WHICHEVER OPTION DOES NOT APPLY. A TENDER PROCESS WILL BE A COVERED PROCUREMENT FOR THE PURPOSES OF THE JUDICIAL REVIEW ACT IF THE RULES IN DIVISION 1 AND DIVISION 2 OF THE COMMONWEALTH PROCUREMENT RULES APPLY TO THE PROCUREMENT]*** |
| **Indigenous Procurement Policy:** (Part 1, clause 27) | ***[IF IPP OPTION 1 (CONTRACT IS NOT A HIGH VALUE CONTRACT), INSERT:]***  Clauses 27.1 and 27.2 apply.  ***[IF IPP OPTION 2 (CONTRACT IS A HIGH VALUE CONTRACT), INSERT:]***  Clauses 27.1 and 27.2 do not apply.  ***[IPP OPTION 1 (CONTRACT IS NOT A HIGH VALUE CONTRACT) IS THE DEFAULT POSITION.***  ***"HIGH VALUE CONTRACT" HAS THE MEANING IN THE INDIGENOUS PROCUREMENT POLICY. BY WAY OF SUMMARY, A CONTRACT IS LIKELY TO BE A HIGH VALUE CONTRACT IF THE CONTRACTOR'S ACTIVITIES OR THE WORKS WILL BE DELIVERED IN AUSTRALIA, THE VALUE OF THE CONTRACTOR'S ACTIVITIES AND THE WORKS IS $7.5 MILLION (GST INCLUSIVE) OR MORE AND 50% OR MORE OF THE VALUE OF THE CONTRACT IS BEING SPENT IN THE BUILDING, CONSTRUCTION AND MAINTENANCE SERVICES INDUSTRY SECTOR]*** | |
| **Indigenous Procurement Policy - High Value Contract:** (Part 1, clauses 3.1(b)(ii) and 27) | ***[IF IPP OPTION 1 (CONTRACT IS NOT A HIGH VALUE CONTRACT), INSERT:]***  Clauses 3.1(b)(ii), 27.3 and 27.4 do not apply.  ***[IF IPP OPTION 2 (CONTRACT IS A HIGH VALUE CONTRACT), INSERT:]***  Clauses 3.1(b)(ii), 27.3 and 27.4 apply.  ***[IPP OPTION 1 (CONTRACT IS NOT A HIGH VALUE CONTRACT) IS THE DEFAULT POSITION]*** | |
| **Indigenous Procurement Policy - Remote Area:** (Part 1, clause 27.5) | ***[IF IPP OPTION 1 (CONTRACT IS NOT A HIGH VALUE CONTRACT), INSERT:]***  Clause 27.5 does not apply.  ***[IPP OPTION 1 (CONTRACT IS NOT A HIGH VALUE CONTRACT) IS THE DEFAULT POSITION]***  ***[IF THE CONTRACT IS NOT A HIGH VALUE CONTRACT, CLAUSE 27.5 DOES NOT APPLY, EVEN IF IT IS IN A REMOTE AREA]***  ***[IF IPP OPTION 2 (CONTRACT IS A HIGH VALUE CONTRACT BUT IS NOT A REMOTE AREA CONTRACT), INSERT:]***  Clause 27.5 does not apply.  ***[IF IPP OPTION 3 (CONTRACT IS A HIGH VALUE CONTRACT AND A REMOTE AREA CONTRACT), INSERT:]***  Clause 27.5 does apply.  ***["REMOTE AREA" HAS THE MEANING IN THE INDIGENOUS PROCUREMENT POLICY AND UNDER CLAUSE 2.1 OF THE TENDER CONDITIONS. TENDER ADMINISTRATOR TO REVIEW AND CONSIDER REMOTE AREA MAP TO DETERMINE WHETHER THIS IS APPLICABLE TO THE PROJECT (SEE https://www.niaa.gov.au/resource-centre/indigenous-affairs/ripp-map-data)]*** | |
| **WHS Accreditation Scheme:** (Part 1, clause 28) | Clause 28 ***[DOES/DOES NOT]*** apply.  (Clause 28 applies unless stated otherwise)  ***[IF THE CONTRACT INVOLVES DIRECTLY FUNDED WHS ACCREDITATION SCHEME BUILDING WORK AND IS VALUED IN EXCESS OF $4 MILLION, CLAUSE 28 APPLIES]***  ***[IF THE CONTRACT DOES NOT INVOLVE DIRECTLY FUNDED WHS ACCREDITATION SCHEME BUILDING WORK OR IS VALUED AT LESS THAN $4 MILLION, CLAUSE 28 DOES NOT APPLY]*** | |
| **Shadow Economy Procurement Connected Policy - Tenderer to provide valid and satisfactory STRs:** (Part 1, clause 29.1) | Clause 29.1 ***[DOES/DOES NOT]*** apply.  (Clause 29.1 applies unless stated otherwise)  ***[CLAUSE 29.1 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 - Tenderer to confirm it holds valid and satisfactory STRs:** (Part 1, clause 29.2) | Clause 29.2 ***[DOES/DOES NOT]*** apply.  (Clause 29.2 does not apply unless stated otherwise)  ***[CLAUSE 29.2 WILL APPLY WHERE AN INVITATION TO REGISTER INTEREST PROCESS HAS BEEN CONDUCTED AND THE PROCUREMENT HAS AN ESTIMATED VALUE OVER $4 MILLION (GST INCLUSIVE)]*** | |
| **Special conditions of Tender:** (Part 1, clause 30) | None stated.  ***["None stated" IS THE DEFAULT POSITION. IF THE COMMONWEALTH OR THE TENDER ADMINISTRATOR WISH TO INSERT SPECIAL CONDITIONS OF TENDER, PRIOR APPROVAL MUST BE SOUGHT FROM THE EXECUTIVE DIRECTOR. NOTE THAT SPECIAL CONDITIONS OF TENDER ARE NOT THE SAME AS SPECIAL CONDITIONS OF CONTRACT WHICH MAY BE INCLUDED IN THE CONTRACT IN PART 5]*** | |
| **Additional Project Plans:** (Part 4, Tender Schedule A - Draft Project Plans, item (c)) | None stated.  ***[***"None stated" IS THE DEFAULT POSITION. TENDER ADMINISTRATOR TO ENSURE THERE IS A GOOD REASON AND JUSTIFICATION FOR REQUIRING TENDERERS TO PREPARE AND PROVIDE ADDITIONAL PROJECT PLANS AS PART OF THEIR TENDERS. IF IT IS DETERMINED THAT ADDITIONAL PROJECT PLANS ARE REQUIRED, ***INSERT DESCRIPTION OF EACH ADDITIONAL PROJECT PLAN, NOTING THIS SHOULD ALIGN WITH THE TITLE/DESCRIPTION IN THE CONTRACT IN PART 5]*** | |
| **Program format:** (Part 4, Tender Schedule E - Program, item 1(d)) | ***[PRIMAVERA SURETRAK/MICROSOFT PROJECT]***or equivalent requested by the Tenderer and approved by the Tender Administrator. | |

1. - TENDER FORM AND STATUTORY DECLARATION

TENDER FORM AND STATUTORY DECLARATION

TENDER FORM

To: Commonwealth of Australia (Commonwealth)

By: [INSERT NAME OF TENDERER INCLUDING ABN]

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 ATM Close Date and ATM Close 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 28 of the Tender Conditions in relation to WHS Scheme Accreditation;
        4. if applicable, the requirements of clause 29 of the Tender Conditions in relation to Statements of Tax Record;
        5. 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
        6. 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. 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 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 and warrant that such promises, representations and warranties are true and accurate in all material respects.
     5. We acknowledge and agree that:
        1. the entire tender process (including the process for meeting with any Tenderers under clause 2.3 or 7 of the Tender Conditions, obtaining, evaluating and (if applicable) negotiating Tenders) (**Process**) is 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, except to the extent of any compensation awarded under the Judicial Review Act;
        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. 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 Strategic Notice Event on the interests of the Commonwealth (if applicable).

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1. FINANCIAL VIABILITY

The Tenderer declares that, subject to any disclosures made below:

* + 1. it has the necessary financial viability to perform the Contractor's Activities and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer;
    2. it is not subject to any current or impending legal action (either formal legal proceedings or other dispute resolution process such as arbitration or expert determination) or notification of such legal action, which could impact on the financial viability of the Tenderer or its ability to perform the Contractor's Activities and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer; and
    3. it is compliant with any Statutory Requirement which requires it to satisfy any prescribed minimum financial requirements, including for the purpose of holding any relevant licence necessary to perform the Contractor's Activities.

|  |
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1. WORKPLACE GENDER EQUALITY

The Tenderer is referred to clause 22 of the Tender Conditions.

The Tenderer is requested to identify, by ticking the relevant box below, whether or not it is a "Relevant Employer" as defined in the WGE Act.

**❑** The Tenderer is a Relevant Employer; or

**❑** The Tenderer is not a Relevant Employer.

Where the Tenderer is a Relevant Employer, the Tenderer must provide a current letter of compliance issued by the WGEA with its Tender.

1. EMPLOYEE ENTITLEMENTS

The Tenderer is referred to clause 23 of the Tender Conditions.

The Tenderer declares that the Tenderer does not have any judicial decision against it (not including a decision under appeal) relating to employee entitlements where the resulting order remains unsatisfied.

1. MODERN SLAVERY

The Tenderer is referred to clause 18.19 of the Conditions of Contract in Part 5.

The Tenderer is requested to provide details of:

* + 1. any procedures or policies the Tenderer has in place to identify, assess and address risks of modern slavery in its operations and supply chains including (if applicable) any due diligence the Tenderer performs to assess the risks of modern slavery, such as screening of prospective subcontractors and suppliers;
    2. if the Tenderer does not have any such procedures or policies in place, what the Tenderer is doing, or plans to do, to manage modern slavery risks in its operations and supply chains; and
    3. any other steps the Tenderer will take to ensure compliance with clause 18.19 of the Conditions of Contract in Part 5 if it is the successful Tenderer.

|  |
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1. PAYMENT TIMES PROCUREMENT CONNECTED POLICY

The Tenderer is referred to the definition of "Reporting Entity" in the *Payment Times Reporting Act 2020* (Cth).

The Tenderer is requested to identify, by ticking the relevant box below, whether or not it is a Reporting Entity for the purposes of the Payment Times Procurement Connected Policy (being the procurement connected policy available at https://treasury.gov.au/publication/p2021-183909).

**❑** The Tenderer is a Reporting Entity; or

**❑** The Tenderer is not a Reporting Entity.

1. COUNTRY OF TAX RESIDENCY DISCLOSURE

The Tenderer is referred to the Country of Tax Residency Disclosures policy (available from the Department of Treasury at https://treasury.gov.au/policy-topics/taxation/country-tax-residency-disclosures).

The Tenderer is requested to provide the tendering entity's:

* + 1. country of tax residency; and
    2. ultimate parent entity's country of tax residency,

noting that if the tendering entity or its ultimate parent entity has multiple tax residencies, the Tenderer should disclose each country in which that entity is a tax resident.

Information to assist the Tenderer to identify the information requested in this item 9 is available at https://www.ato.gov.au/Business/International-tax-for-business/Working-out-your-residency/.

|  |
| --- |
|  |

1. EXECUTION OF THE TENDER FORM AND STATUTORY DECLARATION

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

|  |
| --- |
|  |

**DATED this day of 20**

**[COMPLETE ONE OF THE FOLLOWING SIGNING BLOCKS, OR INSERT AS APPROPRIATE, THEN DELETE ANY SIGNING BLOCK NOT USED]**

[S 127 OF CORPORATIONS ACT

**THE FOLLOWING IS PROVIDED AS GUIDANCE ONLY:**

**IF YOU ARE EXECUTING UNDER S 127 OF THE CORPORATIONS ACT, THEN THIS DOCUMENT MUST BE EXECUTED BY (A) 2 DIRECTORS OF THE COMPANY; OR (B) A DIRECTOR AND THE COMPANY SECRETARY; OR (C) IF THE COMPANY HAS A SOLE DIRECTOR WHO IS ALSO THE SOLE SECRETARY, THAT DIRECTOR]**

|  |  |  |  |
| --- | --- | --- | --- |
| **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**

**THE FOLLOWING IS PROVIDED AS GUIDANCE ONLY:**

**IF YOU ARE EXECUTING BY AUTHORISED SIGNATORY OF THE COMPANY, THEN THIS DOCUMENT MUST BE EXECUTED BY THE AUTHORISED SIGNATORY AND SIGNED BY A WITNESS, AND THE DOCUMENT THAT AUTHORISES THE SIGNATORY TO EXECUTE THIS DOCUMENT MUST BE PROVIDED TO THE COMMONWEALTH]**

|  |  |  |  |
| --- | --- | --- | --- |
| **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. IF SUBMITTING ON A JOINT BID BASIS, A SINGLE TENDER FORM SHOULD BE PROVIDED ON BEHALF OF ALL ENTITIES, SEPARATELY EXECUTED BY EACH ENTITY]

**[THE TENDERER IS REQUESTED TO ENSURE THAT THE TENDER FORM IS COMPLETE, ACCURATE, DULY EXECUTED AND VALID]**

STATUTORY DECLARATION

Commonwealth of Australia Statutory Declaration

*Statutory Declarations Act 1959* (Cth)

I, **[INSERT NAME, ADDRESS AND OCCUPATION OF PERSON MAKING THE DECLARATION]**, make the following declaration under the *Statutory Declarations Act* *1959* (Cth)*:*

DEFINITIONS

1. In this statutory declaration:

**Commonwealth** means the Commonwealth of Australia;

**Contractor's Activities** means all tasks and things which the Tenderer would be required to do if it were the successful Tenderer for **[INSERT PROJECT NAME, INSERT DESCRIPTION OF WORKS, AS APPLICABLE]**;

**Industry** **Association** means any organisation of building or construction contractors and includes the Master Builders' Association and the Australian Federation of Construction Contractors;

**Tenderer** means **[INSERT NAME, ACN AND ABN OF TENDERER, AS APPLICABLE]**; and

**tender** **price** means the amount indicated by a Tenderer as being the lowest amount for which that Tenderer was prepared to perform any of the Contractor's Activities.

PREAMBLE

1. I hold the position of **[INSERT TITLE - E.G. MANAGING DIRECTOR]** of the Tenderer and am duly authorised by the Tenderer to make this declaration on its behalf.
2. I make this declaration on behalf of the Tenderer and on behalf of myself.

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.
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 ATM Close Date and ATM Close Time.

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.
2. The Tenderer is genuinely competing for the contract for the Contractor's Activities and its Tender is not a "cover bid".

INDUSTRY ASSOCIATION AGREEMENTS

1. 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 in respect of the Tender.

UNSUCCESSFUL TENDERERS' FEES

1. 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.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act* *1959* (Cth), and I believe that the statements in this declaration are true in every particular.

|  |  |
| --- | --- |
| Signature of declarant |  |
| **Declared** at [**INSERT PLACE]** on the **[INSERT DAY]** day of **[INSERT MONTH]** 20**[INSERT YEAR]**  Before me: | |
|  |  |
| Signature of person before whom the declaration is made |  |
|  |  |
| Full name, qualification and address of person before whom the declaration is made |  |

*Note 1* A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years - see section 11 of the *Statutory Declarations Act 1959* (Cth).

*Note 2* Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* (Cth) *-* see section 5A of the *Statutory Declarations Act 1959* (Cth).

A list of "Prescribed Persons" (witnesses) for the purposes ofthe *Statutory Declarations Act 1959* (Cth) is available at https://www.legislation.gov.au/Details/F2018L01296.

**[THE TENDERER IS REQUESTED TO ENSURE THAT THE STATUTORY DECLARATION IS COMPLETE, ACCURATE, DULY EXECUTED AND VALID]**

1. - TENDER SCHEDULES
2. Draft Project Plans

DRAFT PROJECT PLANS

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 following **draft** Project Plans:

* + 1. Site Management Plan;
    2. Work Health and Safety Plan; and
    3. any additional Project Plans specified in the Tender Particulars,

to demonstrate that the Tenderer comprehends key issues and will implement appropriate solutions and management strategies in performing the Contractor's Activities and otherwise meeting its obligations under the Contract in Part 5 if it is the successful Tenderer.

In preparing the draft Project Plans referenced above, the Tenderer's attention is drawn to the definitions of "Project Plans", "Site Management Plan" and "Work Health and Safety Plan" under clauses 8.7 and 24.1 of the Conditions of Contract in Part 5.

The Tenderer is requested to ensure that:

* + 1. its draft Project Plans are focused on the Contractor's Activities and the Works described in the Contract in Part 5; and
    2. the information provided in this Tender Schedule A - Draft Project Plans is consistent with information given in other parts of its Tender (as applicable).

1. Proposed Resources

PROPOSED RESOURCES (INCLUDING CONTRACTOR'S REPRESENTATIVE, QUALITY MANAGER, ESD AND WOL MANAGER AND 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 the key person’s 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 (h) below); and
    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 (h) below).

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

| **ROLE** | **NAME** | **LOCATION (CURRENT AND PROPOSED) AND HOW MANAGED** | **DETAILS OF PROPOSED INVOLVEMENT AND PROPOSED SCOPE OF DUTIES** | **ESTIMATED HOURS PER WEEK** | **CURRENT AND POTENTIAL FUTURE WORKLOAD, CAPACITY, AVAILABILITY AND HOW MANAGED** | **RELEVANT EXPERIENCE RELEVANT TO SCOPE OF DUTIES** | **RELEVANT QUALIFICATIONS ETC** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **CONTRACTOR'S REPRESENTATIVE** |  |  |  |  |  |  |  |
| **QUALITY MANAGER** |  |  |  |  |  |  |  |
| **ESD AND WOL MANAGER** |  |  |  |  |  |  |  |
| **LOCAL INDUSTRY CAPABILITY MANAGER** |  |  |  |  |  |  |  |
| **WHS MANAGER** |  |  |  |  |  |  |  |
| ***[OTHER ROLES]*** |  |  |  |  |  |  |  |
| **[TENDERER TO PROPOSE ADDITIONAL KEY PEOPLE]** |  |  |  |  |  |  |  |

The Tenderer is permitted to provide the information requested in this Tender Schedule B - Proposed Resources in A3 or landscape format.

**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 each of the Contractor's Representative, the Quality Manager, the ESD and WOL Manager, the Local Industry Capability Manager 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 and the name and telephone number of a client referee. The Tenderer is requested not to exceed **3 pages** for each curriculum vitae.

The information provided by a Tenderer in this 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. Local Industry Capability Plan

The Tenderer's attention is drawn to clause 26 of the Tender Conditions, the definition of "Local Industry Capability Plan" in clause 24.1 of the Conditions of Contract and clause 8.7 of the Conditions of Contract in Part 5.

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described in clause 4(a)(iii) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to prepare and lodge a draft Local Industry Capability Plan by completing the information requested in items A to D of this Tender Schedule C - Local Industry Capability Plan below.

In accordance with clause 8.7 of the Conditions of Contract in Part 5, the successful Tenderer will be required to prepare a Local Industry Capability Plan and submit it to the Contract Administrator after the Award Date. The Local Industry Capability Plan must be:

* + 1. based on the draft Local Industry Capability Plan provided in its response to this Tender Schedule C - Local Industry Capability Plan; and
    2. finalised in accordance with clause 8.7 of the Conditions of Contract in Part 5.

The Local Industry Capability Plan must detail the Tenderer's approach to the market and intended Australian industry engagement locally and nationally for the project.

For further information, Tenderers are referred to the Defence Policy for Industry Participation (available at https://www.defence.gov.au/business-industry/programs/defence-policy-industry-participation) and the Department of Finance's guidance titled the "Consideration of broader domestic economic benefits in procurement" (available at https://www.finance.gov.au/sites/default/files/2020-08/consideration-of-broader-economic-benefits-in-procurement.pdf).

A EXPECTED ECONOMIC IMPACT OF THE WORKS

The Tenderer is requested to provide the following information:

1. For the purposes of Tender Schedule C - Local Industry Capability Plan, specify the Tenderer's interpretation of "local" industry:

[**INSERT**]

1. Detail how you have considered the limits of local capacity in estimating your local engagement for the Works:

[**INSERT**]

1. Details of the direct benefits expected to be generated to the Australian economy through the Project, the performance of the Contractor's Activities and the Works or more broadly through the Tenderer's business, for example:
   * 1. by making better use of Australian resources that would otherwise be underutilised
     2. otherwise increasing productivity
     3. providing benefits that support the development and sustainment of industry capabilities
     4. increasing productivity enhancing technology development and adoption

[**INSERT**]

1. Estimate the employment numbers, work package or trade types and industry sectors that will apply during the term of the Contract.

[**INSERT**]

1. An annual forecast for local industry for each financial year for the duration of the carrying out of the Works:

[**INSERT**]

1. Detail your understanding of relevant local subcontractor capability, expertise and experience:

[**INSERT**]

1. Indicate the percentage of the total contract value that will be let via subcontracts with industry participants:
   * 1. locally

[**INSERT**]

* + 1. nationally

[**INSERT**]

1. Indicate the total number of subcontracts and the percentage of subcontracts which will be let to industry participants:
   * 1. locally

[**INSERT**]

* + 1. nationally

[**INSERT**]

B PROPOSED LOCAL INDUSTRY PARTICIPATION IN THE DEVELOPMENT AND DELIVERY OF THE WORKS

The Tenderer is requested to provide the following information:

1. Describe the mechanisms that will be used to ensure that local industry will be given full, fair and reasonable opportunity to participate in the delivery of the Works:

**[INSERT]**

1. Where specialist subcontracting support is required, describe how this will be procured, including by reference to ensuring that local industry will be given full, fair and reasonable opportunity to participate in the delivery of the Works:

**[INSERT]**

1. Describe how local Small to Medium Enterprises (**SMEs**) will be encouraged to participate in the procurement activities in relation to the Works, for example:
   * 1. the communication strategies that will be used to alert local industry of project opportunities:

**[INSERT]**

* + 1. the proposed approach to a local supply chain, including the process for refreshing and updating preferred supplier lists:

**[INSERT]**

* + 1. the opportunities for local industry, not currently within the supply chain or a preferred supplier list, to submit subcontract tenders for the Works or to supply materials in connection with the Works:

**[INSERT]**

* + 1. the process for assessing potential local businesses:

**[INSERT]**

* + 1. the mechanisms to ensure that the obligation to provide full, fair and reasonable opportunity is passed on to relevant subcontractors, including subcontractors that are involved in awarding contracts to lower tiered businesses:

**[INSERT]**

* + 1. the weighting to be given to tenders from the subcontractors who employ trainees and apprentices as a high proportion of their workforce:

**[INSERT]**

1. Will feedback be offered to unsuccessful subcontract tenderers for the Works?

**[YES/NO]**

If yes, describe the process for offering feedback to unsuccessful subcontract tenderers for the Works:

**[INSERT]**

C PROPOSED VETERAN PARTICIPATION IN THE CARRYING OUT OF THE CONTRACTOR'S ACTIVITIES

The Tenderer is requested to describe its approach to employing and engaging Australian veterans in connection with the carrying out of the Contractor's Activities, whether directly or through the engagement of subcontractors:

[**INSERT**]

D IMPLEMENTATION AND REPORTING

The Tenderer is requested to provide the following information:

1. Provide the contact details of the Local Industry Capability Manager (this person may also be nominated for another role in the provision of the Contractor's Activities and the Works) who will be the key person responsible for implementing and reporting on the Local Industry Capability Plan:

**[INSERT]**

1. Where will the workplace of the Local Industry Capability Manager be?

[**INSERT**]

1. If the Local Industry Capability Manager is not based locally to the site, detail how they will perform this duty remotely:

[**INSERT**]

The Commonwealth must be notified in writing if the Local Industry Capability Manager changes before or after the Award Date.

1. The successful Tenderer will be required to report to the Commonwealth on the implementation of the Local Industry Capability Plan as part of the monthly report prepared in accordance with clause 2.6 of the Conditions of Contract in Part 5. The Tenderer is requested to provide details of the proposed approach to monitoring and reporting on the implementation of the Local Industry Capability Plan over the term of the Contract:

[**INSERT**]

1. Previous Performance

This Tender Schedule D - Previous Performance 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)(iv) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide details of previous performance:

* 1. by reference to any relevant projects being carried out or completed in the ***[INSERT]*** years prior to the ATM Close Date and ATM Close Time; and
  2. up to a maximum of ***[INSERT E.G. 5]*** projects in table format as set out below.

**RELEVANT PROJECTS BEING CARRIED OUT OR COMPLETED IN THE *[INSERT] YEARS* PRIOR TO THE ATM CLOSE DATE AND ATM CLOSE TIME UP TO A MAXIMUM OF *[INSERT]* PROJECTS**

|  | **[PROJECT AND LOCATION]** | **[PROJECT AND LOCATION]** | **[ETC]** |
| --- | --- | --- | --- |
| **CLIENT** |  |  |  |
| **DETAILS OF THE PROJECT, INCLUDING VALUE AND DURATION** |  |  |  |
| **CURRENT STATUS OF THE PROJECT** |  |  |  |
| **NATURE AND EXTENT OF INVOLVEMENT OF THE TENDERER** |  |  |  |
| **KEY RISKS AND ISSUES ENCOUNTERED AND THE TENDERER'S APPROACH TO ADDRESSING THOSE** |  |  |  |
| **DETAILS OF INNOVATIONS AND THE BASIS UPON WHICH THE TENDERER ADDED VALUE TO THE PROJECT** |  |  |  |
| **BASIS UPON WHICH THE PROJECT DEMONSTRATES THE TENDERER'S EXPERIENCE AND ABILITY TO PERFORM THE CONTRACTOR'S ACTIVITIES** |  |  |  |
| **BASIS UPON WHICH THE PROJECT DEMONSTRATES THE TENDERER'S EXPERIENCE AND ABILITY TO DELIVER ESD AND WOL OUTCOMES FOR THE BENEFIT OF THE PROJECT** |  |  |  |
| **DETAILS OF ANY MATERIAL NON-COMPLIANCE/S WITH THE CONTRACT FOR THE PROJECT, INCLUDING IN RESPECT OF TIME, COST AND QUALITY OBLIGATIONS** |  |  |  |
| **CLIENT REFEREE - NAME AND CURRENT TELEPHONE NUMBER** |  |  |  |

The Tenderer is permitted to provide the information requested in this Tender Schedule D - Previous Performance in A3 or landscape format.

If the Tender is lodged on a Joint Bid Basis, 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

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 provide a detailed program showing its order of work, periods for carrying out all ***[IF DESIGN AND CONSTRUCT DELIVERY METHOD, INSERT: design, documentation and]*** construction activities, including off‑site activities and key dates.

The program should:

* + 1. be based on:
       1. an assumed Award Date of ***[INSERT]***;
       2. achieving Completion of the Works or each Stage by the relevant Date for Completion ***[IF THE TENDERER IS TO PROPOSE THE DATE/S FOR COMPLETION, INSERT: as proposed in the Tenderer’s response to item 2 to this Tender Schedule E - Program OR, IF THE DATE/S FOR COMPLETION ARE NOT TO BE PROPOSED BY THE TENDERER, INSERT: as specified in the Contract Particulars]***;
    2. ***[IF DESIGN AND CONSTRUCT DELIVERY METHOD ONLY, INSERT: show all individual design activities, including co‑ordination and design development meetings (both internal and with the Commonwealth), design submissions and design review periods;]***
    3. allow for all necessary meetings (internal and external), reviews, consents and approvals;
    4. be in a format compatible with the software specified in the Tender Particulars, which otherwise shows all worksheets and calculations; and
    5. otherwise satisfy the requirements for the program described in the Contract in Part 5.

The Tenderer should note that:

* + 1. the program referred to in this Tender Schedule E - Program will not form part of the Contract but will, subject to any negotiation of that program prior to the Award Date, form the basis of the initial program provided by the successful Tenderer under clause 9.2of 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 Works and the Contractor's Activities. 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. DATE/S FOR COMPLETION *[IF THE TENDERER IS TO TENDER THE DATE/S FOR COMPLETION. IF NOT, DELETE THIS ITEM]*

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 provide ***[a]*** proposed Date***[s]*** for Completion (as defined in clause 24.1 of the Conditions of Contract in Part 5) which must be no later than the "latest date for Completion" in the table below.

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

1. Indigenous Procurement Policy

***[IF IPP OPTION 1 (CONTRACT IS NOT A HIGH VALUE CONTRACT), INSERT:]***

The Tenderer's attention is drawn to clauses 27, 27.1 and 27.2 of the Tender Conditions.

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described in clause 4(a)(vi)A of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to describe its approach to delivering Indigenous employment and Indigenous supplier use outcomes.

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

***[IF IPP OPTION 2 (CONTRACT IS A HIGH VALUE CONTRACT) OR IPP OPTION 3 (CONTRACT IS A HIGH VALUE CONTRACT AND A REMOTE AREA CONTRACT), INSERT:]***

The Tenderer's attention is drawn to clauses 3.1(b)(ii), 27, 27.3 and 27.4 of the Tender Conditions. The Tenderer should also note the evaluation criteria under clause 4(a)(vi)B.1) of the Tender Conditions and if clause 27.5 of the Tender Conditions applies, clause 4(a)(vi)B.2) of the Tender Conditions.

The Tenderer must complete and lodge Tender Schedule F - Indigenous Procurement Policy, which includes:

* + 1. signing a Declaration of Compliance (which includes providing details of its past performance) in the form set out in item A below;
    2. providing an Indigenous Participation Plan in the form and containing the content set out in item B below; and
    3. providing details of its past performance in item C below.

**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.** If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it must complete and lodge the information in this Tender Schedule F - Indigenous Procurement Policy for each joint bid party (as applicable).

A DECLARATION OF COMPLIANCE

**Declaration of Compliance with the Indigenous Procurement Policy**

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

The Tenderer declares the following:

1. the Tenderer has or has had **[INSERT NUMBER/NIL]** contracts with the Commonwealth which included the mandatory minimum requirements for the Indigenous Procurement Policy;
2. with respect to the contracts identified under paragraph 1, the Tenderer has **[FULLY MET/PARTIALLY MET/NOT MET/NOT APPLICABLE AS NIL CONTRACTS UNDERTAKEN]** the mandatory minimum requirements for the Indigenous Procurement Policy; **[and]**
3. the Indigenous Enterprises referred to in the Indigenous Participation Plan in item B below are 50% or more Indigenous owned; **[and]**
4. **[IF THE TENDERER IS AN INCORPORATED JOINT VENTURE, IF THE JOINT VENTURE IS AT LEAST 25% INDIGENOUS OWNED, INSERT: the Tenderer is a joint venture that is 25% or more Indigenous owned.]**

**[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. INSERT APPROPRIATE EXECUTION CLAUSE FOR TENDERER]**

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

**B INDIGENOUS PARTICIPATION PLAN**

The Tenderer's attention is drawn to the definition of "Indigenous Participation Plan" under clause 24.1 and clause 18.2 of the Conditions of Contract in Part 5.

The Tenderer's Indigenous Participation Plan provided in this item B should address:

* + 1. the Tenderer's commitment to Indigenous participation, including the Tenderer's approach to delivering Indigenous employment or Indigenous supplier use outcomes;
    2. how the Tenderer intends on meeting the mandatory minimum requirements for the Indigenous Procurement Policy. These requirements are described in the Indigenous Procurement Policy and the Tenderer should note that these can be met at either the contract-based level or the organisation based level and can be met directly or through the use of subcontracts, as described in the Indigenous Procurement Policy. For the purpose of the mandatory minimum requirements for the Indigenous Procurement Policy, the Tenderer should assume that the "Initial Term" is the period from the Award Date to the end of the last Defects Liability Period;
    3. the Tenderer's current rate of Indigenous employment and Indigenous supplier use as at the ATM Close Date and ATM Close Time; and
    4. if clause 27.5 of the Tender Conditions applies, how the Tenderer will ensure that the Contractor's Activities and the Works deliver significant Indigenous employment and Indigenous supplier use outcomes in that Remote Area. The Tenderer should note that more information on Remote Areas is available in section 4.5 of the Indigenous Procurement Policy.

The Tenderer should also note that the Indigenous Participation Plan should be prepared in accordance with the form and contain the content set out below.

**Indigenous Participation Plan**

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

1. We are committed to Indigenous participation and our approach to delivering Indigenous employment and Indigenous supplier use outcomes is as follows:

**[INSERT DETAILS]**; and

1. We will meet the mandatory minimum requirements for the Indigenous Procurement Policy:

**❑ AT THE CONTRACT-BASED LEVEL** as follows:

* + 1. at least **[INSERT]**% of our full time equivalent Australian-based workforce deployed in the Contractor's Activities and the Works must be Indigenous Australians over the Initial Term (on average); and
    2. at least **[INSERT]**% of the Contract Price will be subcontracted to Indigenous Enterprises over the Initial Term (on average).

**OR**

**❑ AT THE ORGANISATION-BASED LEVEL** as follows:

* + 1. at least **[INSERT]**% of our full time equivalent Australian-based workforce must be Indigenous Australians over the Initial Term (on average); and
    2. at least **[INSERT]**% of the value of our Australian supply chain will be subcontracted to Indigenous Enterprises over the Initial Term (on average).

1. To meet the mandatory minimum requirements for the Indigenous Procurement Policy, we will undertake the following:

**[INSERT DETAILS, INCLUDING DETAILS OF CURRENT AUSTRALIAN-BASED WORKFORCE, SUPPLY CHAIN AND HOW THE TENDERER WILL MEET THE MANDATORY MINIMUM REQUIREMENTS AT EITHER THE CONTRACT BASED LEVEL OR THE ORGANISATIONAL-BASED LEVEL. THE TENDERER SHOULD ENSURE THAT IT INCLUDES ITS APPROACH TO ACHIEVING THE MANDATORY MINIMUM REQUIREMENTS OVER THE INITIAL TERM (ON AVERAGE)].**

1. We will meet the mandatory minimum requirements for the Indigenous Procurement Policy:

**❑ DIRECTLY ❑ THROUGH SUBCONTRACTS**

as follows:

**[INSERT APPROACH TO MEETING MANDATORY MINIMUM REQUIREMENTS FOR THE INDIGENOUS PROCUREMENT POLICY DIRECTLY OR THROUGH SUBCONTRACTS].**

1. Our rate of Indigenous supplier use as at the ATM Close Date and ATM Close Time is:

**[INSERT DETAILS].**

1. Our rate of Indigenous employment as at the ATM Close Date and ATM Close Time is:

**[INSERT DETAILS].**

1. If clause 27.5 of the Tender Conditions applies, we will ensure the Contractor's Activities and the Works deliver significant Indigenous employment and Indigenous supplier use outcomes in the Remote Area as follows:

**[INSERT DETAILS].**

**C PAST PERFORMANCE**

The Tenderer's attention is drawn to clause 4(a)(vi)B.1)c) of the Tender Conditions.

The Tenderer must lodge details of its past performance in increasing Indigenous participation, including, where relevant, compliance with:

* + 1. any Indigenous Participation Plan as follows:

**[INSERT DETAILS]**; and

* + 1. without limiting the Declaration of Compliance in item A above, the mandatory minimum requirements for the Indigenous Procurement Policy as follows:

**[INSERT DETAILS]**.

1. Commonwealth Procurement Rules Compliance

The Tenderer is requested to:

* + 1. provide details of its practices regarding labour regulations and ethical employment practices:

|  |
| --- |
|  |

* + 1. provide details of its practices regarding 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; and
       4. the Sustainable Procurement Guide (as published by the Department of Agriculture, Fisheries and Forestry):

|  |
| --- |
|  |

* + 1. if an Australian standard is applicable as identified in the Works Description, demonstrate its capability to meet the applicable Australian standard including by providing evidence of any relevant certifications:

|  |
| --- |
|  |

1. Financial

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 information described in Tender Schedule H - Financial.

The Tenderer should note that all amounts are not and will not be subject to rise and fall. The Tenderer should ensure that all amounts are GST-exclusive (see clause 11.15 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)(iv) 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 I - Alternative Proposals (subject only to the exception for departures in respect of clauses 4.3 - 4.6 of the Conditions of Contract in Part 5, in accordance with clause 3.1(b)(iv)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 4.3 - 4.6 of the Conditions of Contract referred to in paragraph (a)), it must complete and lodge Tender Schedule I - Alternative Proposals** **and not set out or describe such matters in this Tender Schedule H - 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 7.5 of the Conditions of Contract in Part 5).

1. CONTRACT PRICE

LUMP SUM CONTRACT PRICE

The Tenderer should provide a lump sum Contract Price as follows:

|  |  |
| --- | --- |
| **CONTRACT PRICE:** | **$[INSERT]** (GST exclusive). |

BREAKDOWN OF CONTRACT PRICE

*[IF NO BREAKDOWN IS REQUIRED, INSERT "Not Applicable"]*

The Tenderer should provide a breakdown of the lump sum Contract Price which fully and clearly provides details of how the lump sum Contract Price has been calculated. The breakdown should clearly itemise and identify each amount in respect of at least the following:

|  |  |
| --- | --- |
| ***[INSERT E.G. BUILDING ELEMENTS, SECTIONS, TRADES, STAGES ETC.]*** | **$[INSERT]** (GST exclusive). |
| ***[INSERT E.G. BUILDING ELEMENTS, SECTIONS, TRADES, STAGES ETC.]*** | **$[INSERT]** (GST exclusive). |
| ***[IF THERE IS PROVISIONAL SUM WORK, INCLUDE PROVISIONAL SUM WORK AND AMOUNTS FOR PROVISIONAL SUM WORK SET OUT IN THE CONTRACT PARTICULARS IN THE CONTRACT IN PART 5]*** | **$*[INSERT]*** (GST exclusive). |
| **SECURITY** | **$[INSERT]** (GST exclusive). |
| **INSURANCES** | **$[INSERT]** (GST exclusive). |
| ***[THE LIST ABOVE IS INTENDED TO BE A STARTING POINT ONLY. THE COMMONWEALTH AND THE TENDER ADMINISTRATOR MUST CONSIDER AND AMEND THE LIST AS APPROPRIATE HAVING REGARD TO THE WORKS AND THE PROJECT]*** | **$[INSERT]** (GST exclusive). |
| **[TENDERER TO INSERT ADDITIONAL ITEMS]** | **$[INSERT]** (GST exclusive). |
| **CONTRACT PRICE** | **$[INSERT]** (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.

The Tenderer is permitted to provide the breakdown in A3 or landscape format.

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 24.1 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 10.3 of the Conditions of Contract in Part 5 as follows:

|  |  |  |
| --- | --- | --- |
| **ROLE/POSITION/ITEM** | **UNIT** | **RATE/PRICE** |
| **CONTRACTOR'S REPRESENTATIVE** | HOUR | **$[INSERT]** (GST exclusive). |
| **QUALITY MANAGER** | HOUR | **$[INSERT]** (GST exclusive). |
| **ESD AND WOL MANAGER** | HOUR | **$[INSERT]** (GST exclusive). |
| ***[OTHER ROLES]*** | HOUR | **$[INSERT]** (GST exclusive). |
| ***[WORK, ITEMS, MATERIALS, GOODS]*** | ***[INSERT]*** | **$[INSERT]** (GST exclusive). |
| **[TENDERER TO INSERT ADDITIONAL ITEMS]** |  | **$[INSERT]** (GST exclusive). |

1. PAYMENT

The Tenderer is requested to provide the times for submission of payment claims for the purposes of clause 11.2(a) of the Conditions of Contract in Part 5 as follows:

|  |  |
| --- | --- |
| **TIMES FOR SUBMISSION OF PAYMENT CLAIMS** | Monthly on the **[INSERT]** day of each month |

The Tenderer is also requested to provide an anticipated monthly cash flow for payment of the Contract Price.

**[INSERT]**

This cash flow is for evaluation purposes and will not limit or affect the scope of the Contractor's Activities, the Works or the Contract in Part 5.

***[NOTE THAT SPECIAL CONDITIONS WILL BE REQUIRED TO ADDRESS ANY "TENDER OPTIONS" TO BE PRICED (E.G. ADDITIONAL ELEMENTS OF THE WORKS NOT INCLUDED AT THE TIME OF TENDER BUT WHICH MAY BE REQUIRED TO BE PRICED NOW FOR FURTHER CONSIDERATION BY THE COMMONWEALTH EITHER BEFORE OR AFTER THE AWARD DATE).***

***SPECIAL CONDITIONS MAY ALSO BE REQUIRED TO DIFFERENTIATE VALUES TO BE APPLIED TO THE DISCOVERY OF LATENT CONDITIONS AND VALUES TO BE APPLIED TO TABLE OF VARIATION RATES AND PRICES WORK, DEPENDING ON THE ITEMS/GOODS/MATERIALS DESCRIBED.***

***IF THE COMMONWEALTH OR TENDER ADMINISTRATOR WISH TO INSERT SPECIAL CONDITIONS, PRIOR APPROVAL MUST BE SOUGHT FROM THE EXECUTIVE DIRECTOR]***

1. ADJUSTMENT FOR IMPORTED ITEMS *[RETAIN IF CLAUSE 7.6 OF THE CONDITIONS OF CONTRACT IS TO APPLY. IF NOT, DELETE THIS ITEM AND INSERT “NOT USED”]*

The Tenderer's attention is drawn to clause 7.6 of the Conditions of Contract in Part 5 (if applicable).

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, if the Tender is based on the provision of any imported items, the Tenderer should provide its Tender in Australian dollars and provide the following information for each imported item:

|  |  |
| --- | --- |
| **DETAILS OF ITEM TO BE IMPORTED** |  |
| **F.O.B VALUE** |  |
| **PRICE** | **A$[INSERT]** (GST exclusive) |
| **COUNTRY OF ORIGIN** |  |
| **EXCHANGE RATE IN EFFECT 7 DAYS PRIOR TO THE ATM CLOSE DATE AND ATM CLOSE TIME** |  |
| **NAME OF BANK PROVIDING EXCHANGE RATE** |  |
| **ADDRESS OF BANK PROVIDING EXCHANGE RATE** |  |
| **FREIGHT COST** |  |
| **NAME OF FREIGHT PROVIDER** |  |
| **ADDRESS OF FREIGHT PROVIDER** |  |
| **DATE FOR PROPOSED SETTLEMENT OF ACCOUNT** |  |

If the Tenderer does not provide the information required by this item 4 of Tender Schedule H - Financial for any imported item(s), it will not be entitled to any adjustment to the Contract Price for exchange rate fluctuations which impact on the imported item(s).

1. MAXIMUM AMOUNT OF DELAY DAMAGES

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 its maximum amount of delay damages for the purposes of clause 9.6 of the Conditions of Contract in Part 5 as follows:

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

1. Alternative Proposals

**The Tenderer's attention is drawn to clauses 3.1(b)(iv) and 3.2 of the Tender Conditions.** The Tenderer should also note the evaluation criterion under clause 4(a)(ix) 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)(iv) 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 this Tender Schedule I - Alternative Proposals; and**
    2. **in respect of clauses 4.3 - 4.6 of the Conditions of Contract in Part 5 only, as expressly set out by the Tenderer in item 1 of Tender Schedule J - 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 I - 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.

The Tenderer must ensure that **all pricing and financial information in respect of any alternative proposal is** **separately provided it** **item 2 below**, including details of the financial impact of the alternative proposal on the Tenderer’s proposed Contract Price provided in Tender Schedule H - Financial. No pricing or financial information should be included in item 1 of this Tender Schedule I - Alternative Proposals.

The Tenderer must lodge item 1 and item 2 of this Tender Schedule I - Alternative Proposals as separate files as part of its Tender.

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.

1. ALTERNATIVE PROPOSALS (EXCLUDING PRICING/FINANCIAL INFORMATION)

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(ix) of the Tender Conditions and to assist the Commonwealth in evaluating an alternative proposal, in the table format below the Tenderer must:

* + 1. provide a brief explanation of each alternative proposal and provide supporting evidence (for example, details of the alternative, technical descriptions, program information, technical specifications, testing information, data and any other relevant information); and
    2. clearly explain the impact that any alternative proposal provided in this item 1 of Tender Schedule I - Alternative Proposals will have on the information provided in any other Tender Schedule lodged with its Tender, excluding the impact on Tender Schedule H - Financial (which should be addressed in item 2 of this Tender Schedule I - Alternative Proposals).

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **ITEM NO.** | | **REFERENCE (CLAUSE / SECTION / DOCUMENT TITLE ETC)** | | **ALTERNATIVE** | | **SUPPORTING INFORMATION** | **EFFECT ON OTHER TENDER SCHEDULES (IF ANY, EXCLUDING TENDER SCHEDULE H - FINANCIAL)** | **VALUE FOR MONEY (EXCLUDING ANY PRICING/FINANCIAL INFORMATION)** |
| **CONDITIONS OF CONTRACT** | | | | | | | | |
|  |  | |  | |  | |  |  |
| **SPECIAL CONDITIONS** | | | | | | | | |
|  |  | |  | |  | |  |  |
| **WORKS DESCRIPTION** | | | | | | | | |
|  | |  |  | |  | |  |  |
| **TENDER SCHEDULES** | | | | | | | | |
|  |  | |  | |  | |  |  |
| **OTHER** | | | | | | | | |
|  |  | |  | |  | |  |  |

1. ALTERNATIVE PROPOSALS - FINANCIAL

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(ix) of the Tender Conditions and to assist the Commonwealth in evaluating an alternative proposal, the Tenderer must, in respect of each alternative proposal set out in item 1 of this Tender Schedule I - Alternative Proposals, in the table format below:

* + 1. provide supporting evidence of the financial impact of the alternative proposal, including all pricing information; and
    2. clearly explain the pricing/financial impact of each alternative proposal set out in item 1 of this Tender Schedule I - Alternative Proposals, including the impact on Tender Schedule H - Financial.

|  |  |  |  |
| --- | --- | --- | --- |
| **ITEM NO. (BY REFERENCE TO THE TABLE IN ITEM 1)** | **SUPPORTING INFORMATION – FINANCIAL** | **EFFECT ON TENDER SCHEDULE H – FINANCIAL (IF ANY)** | **OTHER PRICING/FINANCIAL INFORMATION, INCLUDING TO DEMONSTRATE VALUE FOR MONEY** |
| **CONDITIONS OF CONTRACT** | | | |
|  |  |  |  |
| **SPECIAL CONDITIONS** | | | |
|  |  |  |  |
| **WORKS DESCRIPTION** | | | |
|  |  |  |  |
| **TENDER SCHEDULES** | | | |
|  |  |  |  |
| **OTHER** | | | |
|  |  |  |  |

1. Miscellaneous Matters For Evaluation

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

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

1. INSURANCES

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(x)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 4of 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 4.3 ‑ 4.6 of the Conditions of Contract in Part 5, including as set out below.

| **INSURANCE TYPE** | **INSURER AND BROKER** | **INSURER RATING** | **POLICY NO** | **IS THE TENDERER A NAMED INSURED?** | **COVER LIMIT** | | **POLICY PERIOD** | **DEDUCTIBLE** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|
| **CONSTRUCTION RISKS INSURANCE** |  |  |  | **[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 IF APPLICABLE, EMPLOYERS' LIABILITY INSURANCE)** |  |  |  | **[YES/NO]**  **[IF NO, PROVIDE DETAILS]** | Prescribed by Statutory Requirement in the State or Territory in which the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside.  Relevant States and Territories:  If the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside in any jurisdiction outside Australia, Employers' Liability Insurance:  $[INSERT] | |  |  |
| ***[IF DESIGN AND CONSTRUCT DELIVERY METHOD ONLY, INSERT: PROFESSIONAL INDEMNITY INSURANCE]*** |  |  |  | **[YES/NO]**  **[IF NO, PROVIDE DETAILS]** | $**[INSERT]** per claim  $**[INSERT]** in aggregate  Worldwide limits:  Jurisdictional limits:  Retroactive Date:  Subcontractors' Professional Indemnity Insurance / Errors and Omissions Insurance: $**[INSERT]** per claim and $**[INSERT]** in aggregate | |  |  |
| ***[IF APPLICABLE - INSERT OTHER INSURANCES REQUIRED UNDER CLAUSE 4.3(a)(vi) OF THE CONDITIONS OF CONTRACT IN PART 5]*** |  |  |  |  |  | |  |  |

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 4.3 - 4.6 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 4.3 - 4.6 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 4.3 - 4.6 of the Conditions of Contract in Part 5.

To the extent that the Tenderer's proposed insurance does not comply with clauses 4.3 - 4.6 of the Conditions of Contract in Part 5, the Tenderer may propose a departure from clauses 4.3 - 4.6 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 4.3 - 4.6 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)(x)A of the Tender Conditions. The Commonwealth is not bound to accept any departure proposed by the Tenderer.

1. TENDERER'S COMMERCIAL-IN-CONFIDENCE INFORMATION

The Tenderer's attention is drawn to clause 20 of the Tender Conditions and clause 19 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)(x)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.

Without limiting the Commonwealth's absolute discretion under clause 20(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. INFORMATION SECURITY

The Tenderer's attention is drawn to clause 20 of the Conditions of Contract in Part 5.

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

* + 1. confirm whether or not it currently holds DISP membership and, if so, provide details of such membership in item A; and
    2. if the Tenderer **does not** currently hold DISP membership or if the Tenderer **does not** comply with the requirements under the Contract relating to the DISP, complete the Questionnaire in item B.

A DEFENCE INDUSTRY SECURITY PROGRAM

Does the Tenderer currently hold DISP membership?

**❑ YES ❑ NO**

If Yes, please provide details of the relevant level held for each of the following Security Domains:

* + 1. Governance

**[INSERT]**

* + 1. Personnel Security

**[INSERT]**

* + 1. Physical Security

**[INSERT]**

* + 1. Information / Cyber Security

**[INSERT]**

B QUESTIONNAIRE

The Tenderer should only complete this item B in circumstances where the Tenderer has indicated in item A above that it does not currently hold DISP membership or that it does not comply with the requirements under the Contract relating to the DISP.

1. If the Tenderer is the successful Tenderer, will it be in a position to comply with its obligations under the Contract relating to the DISP, including to have obtained as at the Award Date and thereafter maintain for the term of the Contract the level of DISP membership specified in the Contract Particulars (if any) and to comply with any other direction or requirement of the Contract Administrator in relation to the DISP?

**❑ YES ❑ NO**

If No, please provide details:

**[INSERT]**

1. Do the Tenderer'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 (including any Sensitive and Classified Information)?

**❑ YES ❑ NO**

If No, please provide details:

**[INSERT]**

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

**[INSERT]**

1. Do the Tenderer's information security procedures, policies and measures extend to preventing, detecting, reporting on, responding to and closing out:
   * 1. new and emerging threats to information security procedures, policies and measures; and
     2. hardware or software malfunctions,

in respect of Confidential Information (including any Sensitive and Classified Information)?

**❑ YES ❑ NO**

If No, please provide details:

**[INSERT]**

1. Has the Tenderer been the subject of any notices, investigations, proceedings, consequences or sanctions 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 fully complying with the outcomes of such investigations, proceedings, consequences or sanctions?

**❑ YES ❑ NO**

If No, please provide details:

**[INSERT]**

1. Has the Tenderer been subject to a hardware and software malfunction, malicious code or other Security or Confidentiality Incident in the past 5 years?

**❑ YES ❑ NO ❑ NOT APPLICABLE**

If Yes, please provide details of how the Tenderer managed such incident:

**[INSERT]**

1. Statement of Tax Record

***[THIS TENDER SCHEDULE K - STATEMENT OF TAX RECORD WILL ONLY APPLY IF CLAUSE 29.1 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 18.17 of the Conditions of Contract in Part 5 and clause 29 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/shadow-economy/procurement-connected-policy.

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

**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 ATM Close Date and ATM Close 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 ATM Close Date and ATM Close Time.
2. The Tenderer is requested to note that, in accordance with clause 29.1(c) of the Tender Conditions, if the Tenderer provides and attaches in its response to this Tender Schedule K - Statement of Tax Record an STR receipt issued by the Australian Taxation Office demonstrating that any of the STRs required under this Tender Schedule K - Statement of Tax Record were requested from the Australian Taxation Office prior to the ATM Close Date and ATM Close 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 ATM Close Date and ATM Close 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 ATM Close Date and ATM Close Time, the Commonwealth may (in its absolute discretion) decide not to evaluate (or continue to evaluate) the Tender.

**B. DECLARATION**

**[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 K - 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 ATM Close Date and ATM Close 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 ATM Close Date and ATM Close 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 ATM Close Date and ATM Close 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), 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. WHS Accreditation Scheme Accreditation

The Tenderer's attention is drawn to clause 28 of the Tender Conditions and clauses 8.9(d) and (e) of the Conditions of Contract in Part 5 and section 43 of the *Federal Safety Commissioner Act 2022* (Cth).

**The Tenderer must complete and lodge Tender Schedule L - WHS Accreditation Scheme Accreditation.**

**The Tenderer should note that if it cannot demonstrate to the Commonwealth on or before the proposed Award Date (as notified by the Commonwealth to the Tenderer) evidence of compliance with clause 28 of the Tender Conditions and the WHS Accreditation Scheme, the Commonwealth may, in its absolute discretion, exclude the Tenderer from consideration in accordance with clause 28(h)(ii) of the Tender Conditions.**

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 28 of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide:

* + 1. evidence of:
       1. accreditation in accordance with the WHS Accreditation Scheme by attaching a copy of its accreditation issued by the Federal Safety Commissioner and any expiry dates for such accreditation; or
       2. the steps taken to obtain accreditation in accordance with the WHS Accreditation Scheme, including any application and correspondence with the Office of the Federal Safety Commissioner.
    2. if a Tender is lodged on a Joint Bid Basis:
       1. details regarding which parties will carry out the WHS Accreditation Scheme Building Work;
       2. if each joint bid party will carry out WHS Accreditation Scheme Building Work, evidence of each parties accreditation under the WHS Accreditation Scheme by attaching copies of their accreditation issued by the Federal Safety Commissioner and any expiry dates for such accreditation; or
       3. if any WHS Accreditation Scheme Building Work will be carried out by a joint bid party that has not obtained accreditation in accordance with the WHS Accreditation Scheme, evidence that all joint bid parties operate (or will operate) under the accredited party's work health safety management system, including:
          1. evidence of the accredited party's accreditation under the WHS Accreditation Scheme by attaching a copy of its accreditation issued by the Federal Safety Commissioner and any expiry dates for such accreditation;
          2. copies of the written undertakings provided to the Federal Safety Commissioner in relation to the Project; and
          3. written confirmation from the Federal Safety Commissioner confirming the requirements of section 26(g) of the *Federal Safety Commissioner (Accreditation Scheme) Amendment Rules 2023* (Cth) have been met in relation to the Project (if the written confirmation has been received prior to the Tender being lodged); and
       4. if the Tenderer has not obtained the written confirmation required by clause 28(e)(ii)C of the Tender Conditions prior to their Tender being lodged, the written confirmation must be provided to the Tender Administrator upon receipt by the Tenderer (and when requested by the Tender Administrator).

1. - CONTRACT