

ATM ID / PROJECT NO: *[INSERT ATM / project NUMBER]*

CONTRACT NO: *[INSERT CONTRACT NUMBER]*

SITE NAME: *[INSERT SITE NAME AND DESCRIPTION OF SERVICES, AS APPLICABLE]*

MAINTENANCE SERVICES CONTRACT (INTERNATIONAL)

(MSCI-2024)

TENDER DOCUMENTS

***[LAST AMENDED: 5 FEBRUARY 2024 - PLEASE REMOVE BEFORE THE TENDER DOCUMENTS ARE PUBLISHED ON AUSTENDER]***

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

**Please note:**

* matters in ***[SQUARE BRACKETS, ITALICS AND CAPITALS]*** are to be completed by the Tenderer before lodging a Tender.

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1. - TENDER CONDITIONS

TENDER CONDITIONS

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

AusTender Help Desk

Telephone: 1300 651 698

International: +61 2 6215 1558

Email: tenders@finance.gov.au

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

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

1. interpretation of tender documents, QUESTIONS AND AMENDMENTS and governing law
   1. Interpretation

In the Tender Conditions and in the other Tender Documents:

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

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

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

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

* + 1. **Claim** includes (without limitation) any claim (at law or in equity):
       1. under, arising out of, or in any way in connection with, any contract which the Tenderer may enter into with the Commonwealth for the Services;
       2. arising out of, or in any way in connection with, any task, thing or relationship connected with the Services or the Tender; or
       3. otherwise at law or in equity including (without limitation):
          1. by statute;
          2. in tort for negligence or otherwise, including (without limitation) negligent misrepresentation; or
          3. for restitution;
    2. **Closing Date and Time** means the date and time specified in the Tender Particulars;
    3. **Commonwealth Procurement Rules** means the Commonwealth Procurement Rules issued under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (Cth);
    4. **Disclaimer and Confidentiality Agreement** means the disclaimer and confidentiality agreement published on AusTender or issued by the Tender Administrator by email or post (as applicable) in respect of this tender process;
    5. **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;
    6. **Financial Viability Assessment** means an assessment of whether the Tenderer has the necessary financial viability to perform the Services, achieve Completion and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer carried out by an Independent Financial Adviser;
    7. **Independent Financial Adviser** means an independent financial adviser engaged by the Commonwealth;
    8. **Information Documents** means:
       1. the documents listed in the Disclaimer and Confidentiality Agreement, with such listed Information Documents being published on AusTender or issued by the Tender Administrator by email or post (as applicable), as indicated in the Disclaimer and Confidentiality Agreement; and
       2. any other document or amendment to a document which is published on AusTender or issued by the Tender Administrator by email or post (as applicable) (including attachments to the Information Document, as indicated in the Information Document) prior to the Closing Date and Time and at the time of being published or issued expressly stated to be an "Information Document" or an amendment to an Information Document (notwithstanding that AusTender describes such documents as "addenda" or "ATM Documents");
    9. **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 Services, achieving Completion and otherwise meeting the obligations under the Contract in Part 5 if the parties are the successful Tenderers;
    10. **Material Change** means any actual, potential or perceived material change to the circumstances of the Tenderer including any change:
        1. arising out of or in connection with:
           1. a Change of Control;
           2. an Insolvency Event; or
           3. the Tenderer's financial viability, availability, capacity or ability to perform the Services, achieve Completion and otherwise meet its obligations under the Contract in Part 5; or
        2. which affects the truth, completeness or accuracy of:
           1. if the Tenderer has lodged a registration of interest, the registration of interest;
           2. if the Tenderer has lodged a Tender, the Tender; or
           3. any other information, documents, evidence or clarifications provided by the Tenderer to the Commonwealth arising out of or in connection with its registration of interest, the registration of interest process, its Tender or the tender process;
    11. **Separation Arrangement** means any arrangement that the Tenderer:
        1. has in place;
        2. will put in place; or
        3. is required to put in place in accordance with any Statutory Requirement, these Tender Conditions (including under clause 25.3) or the Disclaimer and Confidentiality Agreement,

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

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

but excludes the Information Documents;

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

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

* + - 1. exceeds the maximum number of Tenderer personnel specified in the Tender Administrator’s notice;
      2. fails to comply with paragraph (b); or
      3. substitutes or replaces Tenderer personnel after the time and date specified in the Tender Administrator’s notice under paragraph (a).
    1. All industry briefings will be conducted for the purpose of providing background information only. The Tenderer must not in any way rely upon any industry briefing (or any industry briefing materials provided in accordance with 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;
       2. is **not** permitted to take photographs or other electronic recordings of any industry briefing (including any presentation, site visit or inspection) unless:
          1. the Tenderer submits a request under clause 2.2(a) and such request is approved by the Tender Administrator; or
          2. the Tender Administrator or the Commonwealth otherwise permit photography or other electronic recording,

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

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

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

1. TENDERS
   1. Conforming Tender, including Closing Date and 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 Closing Date and Time**;
    2. the Tender must satisfy each **minimum form and content requirement** as follows:
       1. the Tender must remain valid for the duration of the Tender Validity Period, during which period the Tenderer cannot withdraw its Tender;
       2. if clause 26.1 applies, the Tenderer must complete and lodge Tender Schedule I - Statement of Tax Record;
       3. the Tenderer must accept (without departure, qualification, amendment, limitation or exclusion) the Contract in Part 5, except:
          1. subject to subparagraph B, to the extent provided in clause 3.2 and expressly set out by the Tenderer in in Tender Schedule G - Alternative Proposals; and
          2. in respect of clauses 7.2 - 7.6 of the Conditions of Contract in Part 5 only, as expressly set out by the Tenderer in item 1 of Tender Schedule H - Miscellaneous Matters for Evaluation; and
    3. the Tenderer must, at the time of lodging its Tender, satisfyeach **condition for participation** specified in the Tender Particulars (if any).
  1. Alternative Proposals
     1. The Commonwealth offers the Tenderer the opportunity to provide alternative proposals (including departures the Tenderer proposes to the Contract in accordance with clause 3.2(e)) 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 (including departures the Tenderer proposes to the Contract in Part 5 in accordance with clause 3.2(e)), it must be expressly set out in Tender Schedule G - Alternative Proposals. The Tenderer should note that this is a minimum form and content requirement for its Tender under clause 3.1(b).**
     3. The Tenderer should note that it is not required to submit Tender Schedule G - Alternative Proposals if it does not propose to submit an alternative proposal.
     4. If the Commonwealth (in its absolute discretion) selects or accepts any alternative proposal, the Commonwealth will make any necessary alterations to the Contract in Part 5.
     5. The Commonwealth has carefully considered its contractual requirements and has undertaken a significant amount of work in developing the Contract in Part 5 to the Commonwealth’s preferred risk allocation for the Services. Accordingly, the Commonwealth does not expect amendments to the Contract and does not commit to agree to amendments to the Contract. However, where the Tenderer submits an alternative proposal in Tender Schedule G - Alternative Proposals with departures to the Contract in Part 5, those departures will only be evaluated if:
        1. the Tenderer submits a conforming Tender;
        2. the proposed departure is accompanied by details of any technical or monetary advantage to the Commonwealth arising from the proposed departure;
        3. they involve substantive issues (after consideration to the timing required, additional cost involved and likelihood of achieving an agreement acceptable to the Commonwealth);
        4. a comprehensive description of the proposed departure and a proposed drafting amendment has been provided; and
        5. the proposed departure to the Contract is expressly set out by the Tenderer in Tender Schedule G – Alternative Proposals,

except to the extent provided for in respect of clauses 7.2 - 7.6 of the Conditions of Contract in Part 5 only, as expressly set out by the Tenderer in item 1 of Tender Schedule H – Miscellaneous Matters For Evaluation.

* 1. Non-Conforming Tender

The Tenderer acknowledges and agrees that:

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

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

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

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

* + - * 1. Tender Schedule A – Services Understanding and Draft Operational Plan;
        2. Tender Schedule B - Proposed Resources;
        3. if the Tender Particulars state that it applies, Tender Schedule C – [Relevant Previous Performance/Not Used];

* + - * 1. Tender Schedule D – Transition-In Plan;
        2. Tender Schedule E – Anti-Bribery, Corruption and Modern Slavery Statement;

* + - * 1. Tender Schedule F – Financial;
        2. subject to clause 3.1(b)(iii) (**minimum form and content requirement**), and only if it wishes to submit an alternative proposal, Tender Schedule G - Alternative Proposals;
        3. Tender Schedule H - Miscellaneous Matters For Evaluation; and
        4. if clause 26.1 states that it applies, Tender Schedule I - Statement of Tax Record*,*

in separate, stand-alone, unsecured, electronic documents/files in the format/s specified in the Tender Particulars;

* + - 1. lodge (in respect of the Tender Form and Tender Schedules described under subparagraph (i) files which:
         1. identify:

the Site;

the Tenderer's name; and

the relevant Tender Form 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; and
        3. do not contain macros, scripts or executable codes of any kind;
      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 or other material incorporated by reference;
      2. unless otherwise specified, express measurements in Australian legal units of measurement; and
      3. ensure all contents are clear, legible and readable by using appropriate print colours and font sizes (equivalent to at least Arial 10 point or Times New Roman 11 point),

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

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

1. evaluation of tenders

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

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

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

if:

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

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

otherwise acted inconsistently with the tender process; or

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

1. tenderer's due diligence

The Tenderer is required to do, and will be deemed to have done, everything that would be expected of an expert professional provider of the Services in:

* + 1. assessing the risks which it is assuming under the Contract in Part 5; and
    2. ensuring that its tendered Fee contains allowances to protect it against any of these risks, including all those things, activities and tasks set out in the Tender Form.

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

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

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

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

but the Commonwealth is not obliged to:

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

by the time and date specified by the Commonwealth; and

by the form of communication specified by the Commonwealth; and

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

The Tenderer acknowledges that:

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

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

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

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

1. COSTS AND CLAIMS

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

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

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

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

* 1. Amendments to Contract

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

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

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

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

The Tenderer acknowledges that:

* + 1. its Tender and any other documents arising out of or in connection with this tender process become the property of the Commonwealth; and
    2. subject to the Commonwealth Procurement Rules, the Commonwealth may (in its absolute discretion) use, retain and copy the information contained in its Tender and any other documents arising out of or in connection with this tender process for any purpose arising out of or in connection with:
       1. the evaluation and selection of applicants and tenderers;
       2. the development and preparation of tender documents and any subsequent tender process conducted by the Commonwealth in respect of the Services or the Site;
       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 Services 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 Services.

* 1. Consequences of Improper or Unlawful Conduct

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

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

1. INFORMATION SECURITY - CONFIDENTIAL INFORMATION
   * 1. The Tenderer’s attention is drawn to the Commonwealth’s requirements in respect of Confidential Information in the Contract in Part 5.
     2. As part of its Tender, the Tenderer is requested to complete and lodge Tender Schedule H - Miscellaneous Matters For Evaluation. The Tenderer should also note the evaluation criterion under clause 4(a)(viii)C.
     3. If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to provide any information in Tender Schedule H - Miscellaneous Matters For Evaluation which it considers relevant to proposed joint bid arrangements (as applicable).
2. Information Security - SENSITIVE AND Classified Information

This clause 17 does not apply unless the Tender Particulars state that it applies.

* + 1. The Tenderer’s attention is drawn to the Commonwealth’s requirements in respect of Sensitive and Classified Information in the Contract in Part 5. As part of its Tender, the Tenderer is requested to complete and lodge Tender Schedule H - Miscellaneous Matters For Evaluation. The Tenderer should also note the evaluation criterion under clause 4(a)(viii)C.
    2. If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to provide any information in Tender Schedule H - Miscellaneous Matters For Evaluation which it considers relevant to proposed joint bid arrangements (as applicable).

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 8.5 of the Conditions of Contract in Part 5, the Auditor-General or other authorised persons may be nominated by the Contract Administrator under clause 8.5 of the Conditions of Contract in Part 5 for the purpose of exercising their rights under the *Auditor-General Act 1997* (Cth).
2. Freedom of Information
   * 1. The *Freedom of Information Act 1982* (Cth) (FOI Act) gives members of the public rights of access to official documents of the Commonwealth Government and its agencies. The FOI Act extends, as far as possible, rights to access information (generally documents) in the possession of the Commonwealth Government, limited only by considerations for the protection of essential public interest and of the private and business affairs of entities in respect of whom information is collected and held by departments and public authorities.
     2. Commonwealth requirements and policies will require certain identifying details of the Contract in Part 5 to be made available to the public via the internet.
3. tenderer's commercial-in-confidence information
   * 1. Subject to paragraph (b), the Commonwealth must keep confidential any information provided to the Commonwealth by a Tenderer after the Award Date when:
        1. a request to keep specific information confidential and the justification for keeping such information confidential is included in a Tender by a Tenderer in Tender Schedule H - Miscellaneous Matters For Evaluation;
        2. the Commonwealth agrees (in its absolute discretion) that such information is commercial-in-confidence information; and
        3. the Tender Administrator notifies the Tenderer by email that the Commonwealth (in its absolute discretion) agrees, including the terms of any agreement under subparagraph (ii),

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

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

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

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

At the Award Date, the successful Tenderer must not:

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

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

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

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

1. FINANCIAL VIABILITY
   1. Solvency Statement and Financial Information

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

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

for the purpose of assessing whether or not the Tenderer has the necessary financial viability to perform the Services, achieve Completion 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 this 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 undertake a Financial Viability Assessment (including an assessment of the information or documents provided by the Tenderer under clause 24.1, Tender Schedule H - Miscellaneous Matters For Evaluation or otherwise); and
       2. in respect of one or more Tenderers without engaging the Independent Financial Adviser in respect of all Tenderers;
    2. the Independent Financial Adviser may (in its absolute discretion) contact the Financial Representative nominated by the Tenderer (whether in response to a request under clause 24.1, Tender Schedule H - Miscellaneous Matters For Evaluation or otherwise) directly for the purpose of the Financial Viability Assessment; and
    3. it will ensure that its Financial Representative co-operates with and does everything necessary to assist the Commonwealth, the Tender Administrator and the Independent Financial Adviser in the Financial Viability Assessment process including providing such further financial information and documents and answering all such questions as the Commonwealth, the Tender Administrator and the Independent Financial Adviser may (in their absolute discretion) require for the purposes of the Financial Viability Assessment.

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

1. Material Change OR Strategic Interest Issue
   1. Tenderer's Warranty

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

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

in relation to the Tenderer.

* 1. Notice of Material Change or Strategic Interest Issue

If:

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

the Tenderer becomes aware of any:

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

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

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

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

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

notifies the Tender Administrator under clause 25.2; or

has failed to strictly comply with clause 25; or

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

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

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

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

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

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

by the time and date specified in the notice; or

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

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

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

by the time and date specified in the notice; and

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

notify the Tenderer by email or post that the Tenderer:

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

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

implementing Separation Arrangements; or

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

by the time and date specified in the notice; and

* + - * 1. take such Material Change or Strategic Interest Issue or failure into account in any registration of interest process, tender process or similar procurement process in connection with the Services, the Site or any other Commonwealth project;
    1. releases the Commonwealth in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Tenderer or any other person or entity arising out of or in connection with the exercise of any of the Commonwealth's absolute discretions under clause 25 or a corresponding clause in respect of any other Tenderer; and
    2. indemnifies the Commonwealth in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Commonwealth arising out of or in connection with:
       1. a Material Change or Strategic Interest Issue;
       2. the Tenderer's failure to strictly comply with clause 25; or
       3. the exercise of any of the Commonwealth's absolute discretions under clause 25 or a corresponding clause in respect of any other Tenderer.

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

This clause 26.1 applies unless the Tender Particulars state that it does not apply.

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

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

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

This clause 26.2 does not apply unless the Tender Particulars state that it applies.

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

This clause 26.3 applies where either of clause 26.1 or 26.2 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 Services 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 26.2(b) 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 26:

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

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

1. - TENDER PARTICULARS

TENDER PARTICULARS

|  |  |
| --- | --- |
| **Closing Date and Time:** (Part 1, clause 2.1(e)) | ***[INSERT CLOSING DATE (day-month-year)]*** 12.00pm (Australian Capital Territory Local Time) |
| **Tender Administrator:** (Part 1, clause 2.1(q)) | ***[ENTER THE NAME AND EMAIL ADDRESS OF THE TENDER ADMINISTRATOR]***  ***[E.G. External DIP Contractor Name - Attn: Individual Name xyz@xxx.com.xx]*** |
| **Governing law:** (Part 1, clause 2.4) | (The law in the State of New South Wales, Australia applies unless otherwise stated) |
| **Conditions for participation:** (Part 1, clause 3.1(c)) | The conditions for participation applicable to this tender process are that the Tenderer must:  None stated.  ***["None stated" IS THE DEFAULT POSITION. IF THE COMMONWEALTH OR TENDER ADMINISTRATOR WISH TO INSERT CONDITIONS FOR PARTICIPATION IN THIS TENDER PROCESS, INSERT THE CONDITIONS FOR PARTICIPATION AND THE FOLLOWING:***  ***The Tenderer should note that [this is a/these are] condition/s for participation in this tender process under clause 3.1(c) of the Tender Conditions and it is requested to lodge information in its Tender demonstrating that it meets each condition for participation. If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to lodge this information for each joint bid party (as applicable).]*** |
| **Format of Tender:** (Part 1, clauses 3.4(b)(i) | ***[INSERT E.G. Microsoft Word version X (or above), Microsoft Excel version X (or above), PDF version X (or above)]*** |
| **Maximum file size:** (Part 1, clause 3.4(b)(ii)B) | ***[INSERT]*** megabytes per upload (with files compressed or zipped as required) |
| **Relevant Previous Performance:** (Part 1, clauses 3.4(b)(i)D and 4(a)(iii) and Part 4, Tender Schedule C - [Relevant Previous Performance/Not Used]) | Clauses 3.4(b)(i)D and 4(a)(iii) and Tender Schedule C - Relevant Previous Performance ***[DO/DO NOT]*** apply.  (Clauses 3.4(b)(i)D and 4(a)(iii) and Tender Schedule C - [Relevant Previous Performance/Not Used] apply unless stated otherwise)  ***[DELETE WHICHEVER OPTION DOES NOT APPLY]***  ***[IF AN INVITATION TO REGISTER INTEREST PROCESS HAS ONLY VERY RECENTLY BEEN CONDUCTED, CONSIDER WHETHER PREVIOUS PERFORMANCE WILL ALSO BE EVALUATED AT TIME OF TENDER. 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, INSERT ADDITIONAL EVALUATION CRITERIA AND THE FOLLOWING:***  ***The Tenderer should note that [this is an/these are] additional evaluation criterion/a in this tender process under clause 4(b) of the Tender Conditions and that it should attach information in its Tender demonstrating that it satisfies each additional criteria. If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to provide any information which it considers relevant to any joint bid arrangements (as applicable).***  ***IF ADDITIONAL EVALUATION CRITERIA IS INSERTED, ANY WEIGHTING PLACED ON THE EVALUATION CRITERIA MUST ALSO BE SPECIFIED. IF THERE IS NO APPLICABLE WEIGHTING, INSERT:***  ***There is no weighting for [this/these] additional evaluation [criterion/criteria]. The Tender will be evaluated with reference to [whether or not this evaluation criteria is met/whether value for money is achieved].]*** |
| **Information security - Sensitive and Classified Information** | Clause 17 ***[DOES/DOES NOT]*** apply.  (Clause 17 does not apply unless stated otherwise)  ***[DELETE WHICHEVER OPTION DOES NOT APPLY]*** |
| **Shadow Economy Procurement Connected Policy:** (Part 1, clause 26.1) | Clause 26.1 ***[DOES/DOES NOT]*** apply.  (Clause 26.1 applies unless stated otherwise)  ***[DELETE WHICHEVER OPTION DOES NOT APPLY]***  ***[CLAUSE*** ***26.1 WILL APPLY IF NO INVITATION TO REGISTER INTEREST PROCESS HAS BEEN CONDUCTED AND THE PROCUREMENT IS AN OPEN TENDER WITH AN ESTIMATED VALUE OVER $4 MILLION (GST INCLUSIVE)]*** |
| **Shadow Economy Procurement Connected Policy:** (Part 1, clause 26.2) | Clause 26.2 ***[DOES/DOES NOT]*** apply.  (Clause 26.2 does not apply unless stated otherwise)  ***[DELETE WHICHEVER OPTION DOES NOT APPLY]***  ***[CLAUSE 26.2******WILL APPLY WHERE AN INVITATION TO REGISTER INTEREST PROCESS HAS BEEN CONDUCTED AND THE PROCUREMENT IS AN OPEN TENDER WITH AN ESTIMATED VALUE OVER $4 MILLION (GST INCLUSIVE)]*** |
| **Special conditions of Tender:** (Part 1, clause 28) | None stated.  ***["None stated" IS THE DEFAULT POSITION. NOTE THAT SPECIAL CONDITIONS OF*** [***TENDER***](#tender) ***ARE NOT THE SAME AS SPECIAL CONDITIONS OF CONTRACT WHICH MAY BE INCLUDED IN THE CONTRACT IN PART 5]*** |
| **Program format:** (Part 4, item 1) | Microsoft Projector equivalent approved by the Tender Administrator. |

1. - TENDER FORM

TENDER FORM

**TENDER FORM**

To: **Commonwealth of Australia** (**Commonwealth**)

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

1. THE OFFER
   * 1. We tender to perform the Services in accordance with the Tender Documents and the enclosed Tender Schedules.
     2. We confirm that our tender has been lodged in accordance with the Tender Conditions, including:
        1. the lodgement requirements in clause 3.1(a) of the Tender Conditions;
        2. the minimum form and content requirements in clause 3.1(b) of the Tender Conditions; and
        3. the conditions for participation requirements (if any) in clause 3.1(c) of the Tender Conditions.
     3. In consideration of the Commonwealth promising to pay us the sum of One Dollar ($1.00) we unconditionally accept and agree to be bound by the Tender Conditions and this Tender Form, including:
        1. in respect of the consequences of a non-conforming tender as set out in the Tender Conditions, including in clause 3.3 of the Tender Conditions;
        2. after the Closing Date and Time, to comply with all obligations and participate in all processes set out in clause 7.2 of the Tender Conditions;
        3. if applicable, the requirements of clause 26 of the Tender Conditions in relation to Statements of Tax Record;
        4. to be bound by this Tender for the duration of the Tender Validity Period and agree that this Tender may be accepted by the Commonwealth at any time before the expiration of that period; and
        5. providing the acknowledgements, agreements, releases, indemnities, warranties and other assurances as set out in the Tender Conditions and this Tender Form.
     4. We:
        1. prepared our Tender, and will enter into any contract with the Commonwealth, based on our own investigations, interpretations, deductions, information and determinations;
        2. calculated our tendered Fee to cover, in addition to all other obligations under the Contract, the assumption of the risks described under clause 5 of the Tender Conditions;
        3. obtained independent legal advice as to the effect of the provisions of these Tender Conditions and the Contract in Part 5 as to the assumption by the successful Tenderer of the risks described under clause 5 of the Tender Conditions;
        4. examined all information relevant to the risks, contingencies and other circumstances having an effect on our Tender including (without limitation) the Information Documents, the material contained in the Tender Documents, any relevant technical advice made available by the Commonwealth and the terms and conditions of all Statutory Requirements;
        5. [***INCLUDE THE FOLLOWING, IF TENDERERS WILL BE PROVIDED WITH AN OPPORTUNITY TO EXAMINE THE SITE***: examined the Site and its surroundings, conditions and characteristics and made an appropriate allowance in our Tender for any effect on our Tender;]
        6. satisfied ourselves as to the correctness and sufficiency of our Tender for the Services and that our tendered Fee 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 Services which may restrict or inhibit the execution of any part of the Services and satisfied ourselves of our capacity to perform the Services, achieve Completion and otherwise meet our obligations under the Contract in Part 5 without breaching any such Statutory Requirement; and
        8. are aware that the Commonwealth will be relying upon each of the promises, representations and warranties given by us in this Tender if we are selected as the successful Tenderer.
     5. We acknowledge and agree that:
        1. the entire tender process (including the process for meeting with any Tenderers under clause 2.3, 7 or 25.3 of the Tender Conditions, obtaining, evaluating and (if applicable) negotiating Tenders) (**Process**) is, as between the Tenderer and the Commonwealth, being conducted solely for the benefit of the Commonwealth;
        2. notwithstanding subparagraph (i), we are submitting to the Process because we consider that this represents a valuable commercial opportunity for us;
        3. we release the Commonwealth in respect of any claim that we may have for costs, expenses, losses, damages or liabilities suffered or incurred by us arising out of or in connection with the Process, the rejection of, failure to evaluate or failure to accept our Tender, any failure to comply with the Tender Documents, any Meeting Conduct, any debrief, any variation or suspension of the Process or any discontinuance or termination of the Process;
        4. the Commonwealth is proceeding with the Process strictly on the basis of, and in reliance upon, the acknowledgements and releases set out above; and
        5. we indemnify the Commonwealth in respect of all costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth arising out of or in connection with any breach of any acknowledgement or release given by us under this paragraph (e).
     6. We acknowledge that each party constituting the Tenderer is bound jointly and severally by this Tender.
2. UNACCEPTABLE TENDERING PRACTICES

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

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

1. ADDENDA

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

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

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

1. DETAILS OF TENDERER

Full Name

|  |
| --- |
|  |

ABN/ACN (if applicable)

|  |
| --- |
|  |

Street address (not PO Box)

|  |
| --- |
|  |

Email address

|  |
| --- |
|  |

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

|  |
| --- |
|  |

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

|  |
| --- |
|  |

Person for attention for the serving of notices upon the Contractor

|  |
| --- |
|  |

Name of contact person

|  |
| --- |
|  |

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

Name of the Executive Negotiator, Level 1 Representative, Level 2 Representative and Level 3 Representative (the Tenderer is requested to note that each of its proposed Executive Negotiator, Level 1 Representative, Level 2 Representative and Level 3 Representative should not be the same person as the Contractor's Representative nominated in Tender Schedule B - Proposed Resources)

Executive Negotiator

|  |
| --- |
|  |

Level 1 Representative

|  |
| --- |
|  |

Level 2 Representative

|  |
| --- |
|  |

Level 3 Representative

|  |
| --- |
|  |

The Tenderer is requested to provide:

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

|  |
| --- |
|  |

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

1. FINANCIAL VIABILITY

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

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 6 is available at <https://www.ato.gov.au/Business/International-tax-for-business/Working-out-your-residency/>.

1. EXECUTION OF THE TENDER FORM

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

**DATED** this day of 20

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

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

[S 127 OF CORPORATIONS ACT]

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

[OR - AUTHORISED SIGNATORY OF COMPANY]

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

1. - TENDER SCHEDULES
2. Services Understanding and Draft Operational Plan

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 provide the following information.

The Tenderer should ensure that the information provided in this Tender Schedule A – Services Understanding and Draft Operational Plan is consistent with information given in other parts of its Tender (as applicable).

1. OPERATIONAL PLAN

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

* + 1. clauses 3.3(a)(ii) and 10.9; and
    2. the definition of "Operational Plan" in clause 1.1.

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

* + 1. complete each item in the Operational Plan outline attached to this Tender Schedule A – Services Understanding and Draft Operational Plan;
    2. ensure that the Operational Plan provides approaches, solutions and methodologies that comply with the terms of the Conditions of Contract in Part 5; and
    3. include in the Operational Plan such additional items as the Tenderer considers necessary,

to clearly demonstrate:

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

The Tenderer should note that:

* + 1. subject to paragraph (i), the Operational Plan provided by the successful Tenderer will become the Operational Plan for the purposes of clause 10.9 of the Conditions of Contract in Part 5; and
    2. the Commonwealth reserves the right to negotiate the Operational Plan provided by any Tenderer with a view to amending the terms of the Operational Plan before entering into any Contract with the successful Tenderer.

If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to provide any information in this item 1 of this Tender Schedule A - Services Understanding and Draft Operational Plan which it considers relevant to proposed joint bid arrangements (as applicable).

1. OTHER CONTRACT MANAGEMENT PLANS

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described in 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** Contract Management Plans:

* + 1. Work Health and Safety Plan;
    2. Fraud and Corruption Control Plan;
    3. Transition-In Plan - (see Tender Schedule D - Transition-In Plan); and
    4. Local Industry Capability Plan,

to demonstrate that the Tenderer comprehends key issues and will implement appropriate solutions and management strategies in performing the Services, achieving Completion of the Services and otherwise meeting its obligations under the Contract in Part 5 if it is the successful Tenderer.

In preparing the draft Contract Management Plans referenced above, the Tenderer’s attention is drawn to the definitions of “Contract Management Plans”, "Fraud and Corruption Control Plan", "Transition-In Plan", “Work Health and Safety Plan” and “Local Industry Capability Plan” in clause 1.1 of the Conditions of Contract in Part 5.

The Tenderer should note that:

* + 1. subject to paragraph (b), the draft Contract Management Plans provided by the successful Tenderer will become the draft Contract Management Plans for the purposes of clause 10.9 of the Conditions of Contract in Part 4; and
    2. the Commonwealth reserves the right to negotiate the draft Contract Management Plans provided by the Tenderer with a view to amending the terms of the draft Contract Management Plans before entering into any Contract with the successful Tenderer.
    3. The Tenderer is requested to ensure that its draft Contract Management Plans are focused on the Services described in the Contract in Part 5.
    4. If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to provide any information in this item 2 of this Tender Schedule A – Services Understanding and Draft Operational Plan which it considers relevant to proposed joint bid arrangements (as applicable).

ATTACHMENT TO Tender Schedule A

OPERATIONAL PLAN OUTLINE

The instructions provided in this outline reflect the Commonwealth’s minimum requirements for each section of the draft Operational Plan and do not in any way limit the information which the Tenderer should include in order to demonstrate its ability to satisfy the evaluation criterion described in clause 4(a)(i).

In each section the Tenderer must describe the processes, tools and systems that it will use and include process maps, as relevant, to demonstrate its proposed systems and processes for contractual compliance.

The Tenderer’s response to a section may include details regarding subcontractor collaboration, data collection, reporting and analysis, workflows, scheduling process, access process, technology used, communication flowcharts, call-backs, supply chain management, materials and products management, variations and extensions of time.

1. General

The Tenderer is required to describe its overall approach and vision for delivering the Services, including how it will:

* + 1. undertake the planning and management of the Services so as to perform the Services in accordance with the Contract;
    2. inform itself of the Commonwealth’s requirements for the Services;
    3. ensure that the Services are provided economically and in accordance with any budgetary requirements of the Commonwealth notified to the Contractor;
    4. ensure that the Tenderer will exercise the utmost good faith in the best interests of the Commonwealth and keep the Commonwealth fully and regularly informed as to all matters affecting or relating to the Services;
    5. ensure that the Services are fit and suitable for the purposes expressed in the Contract or which the Commonwealth has made known to the Contractor, or in the absence of such expressed purpose, be fit for the purposes for which services of a similar kind as the Services are commonly procured;
    6. ensure that all goods, building products, construction materials and construction or manufacturing processes, plant and equipment used by it to perform the Services comply with the requirements set out in the Contract; and
    7. provide a flexible approach to the changing needs and requirements of the Commonwealth and the Host Nation,

(refer to clauses 3.3, 3.4 and 3.5 of the Conditions of Contract in Part 5).

1. Review and amendment of Operational Plan

In this section the Tenderer must describe how it will regularly review, update and amend the Operational Plan (including to correct any defects or omissions in the Operational Plan) in accordance with clause 10.9 of the Conditions of Contract in Part 5.

1. Performance of the Services

In this section the Tenderer must demonstrate that it understands the core requirements for the provision of the Services by describing in detail its approach to delivering and performing the Services.

* 1. Management of Service Requests

The Tenderer must describe its approach to managing Service Requests to meet the requirements detailed in clause 3 of the Conditions of Contract in Part 5, including:

* + 1. the Tenderer’s approach to identifying any Reactive Maintenance Services which it considers should be undertaken in respect of an Asset or part of an Asset where the value of the Reactive Maintenance Service is equal to or less than the Reactive Maintenance Services Threshold under clause 3.1(b) of the Contract in Part 5; and
    2. the Tenderer’s approach to managing Service Requests issued by the Commonwealth under clause 3.1(c) of the Contract in an efficient and effective manner, including how the Tenderer will ensure that it is at all time able to perform any Reactive Maintenance Services the subject of such a Service Request as required by clause 3.1(f) of the Contract in Part 5.
  1. Site Access and Security

The Tenderer must describe:

* + 1. how it will liaise with the Host Nation to obtain any access to the Site which it will require to perform the Services and how it will otherwise arrange access to any other property which it may require to carry out the Services in accordance with clause 3.6 of the Conditions of Contract in Part 5; and
    2. the measures it will implement to ensure that all of its personnel and subcontractors hold all necessary security clearances, induction and identification clearances and passes prior to attending the Site to perform any Services as required by the Specification and the Contract in Part 5.
  1. Variations

The Tenderer must describe how it will manage Variations to align with the requirements of clause 12 of the Conditions of Contract in Part 5.

* 1. Extensions of time to Times or Dates for Completion

The Tenderer must describe how it will manage delays to Completion of the Services and extensions of time to Times or Dates for Completion to align with the requirements of clause 11 of the Conditions of Contract in Part 5.

* 1. Management of Resources

The Tenderer must describe its proposed approach to resource management to align with the requirements of the Contract, including clause 5.7 of the Conditions of Contract in Part 5.

1. Annual Requirements

In this section the Tenderer must describe in detail its approach to:

* + 1. consulting with the Contract Administrator about the Commonwealth’s Annual Requirements in accordance with clause 3.3(b) of the Conditions of Contract in Part 5; and
    2. undertaking the planning and management of the Services so as to perform the Services in accordance with the Annual Requirements (as made available by the Commonwealth under clause 4.1 of the Conditions of Contract in Part 5).

1. Recruitment and engagement with personnel and subcontractors

In this section the Tenderer must describe in detail its approach to recruitment and engagement with its personnel and subcontractors.

* 1. Procurement of Subcontractors

The Tenderer must describe its approach to engaging subcontractors and suppliers (refer to clause 9 of the Conditions of Contract in Part 5), including:

* + 1. how it will engage, allocate, manage and monitor subcontractors during the term of the Contract;
    2. how it will ensure that its subcontracting terms and conditions are not a barrier to the engagement of local subcontractors and suppliers;
    3. its approval process for verifying insurance, experience and qualification requirements (including any licensing required by law);
    4. its procedures for the employment and screening of subcontractors; and
    5. the processes and procedures it will adopt when onboarding subcontractors.
  1. Induction

The Tenderer must describe its approach to the induction of subcontractors and suppliers. In describing its approach, the Tenderer should provide examples of the induction programs it has provided to its subcontracts and staff in the last 12 months.

* 1. Training of Personnel and Subcontractors

The Tenderer must describe its approach to the induction of subcontractors and suppliers. In describing its approach, the Tenderer should provide examples of the training programs it has provided to its subcontracts and staff in the last 12 months.

* 1. Supervision of Personnel and Subcontractors

The Tenderer must describe its approach to supervising the delivery of the Services by subcontractors, including how it will ensure that the delivery of the Services will meet the standards required under the Contract in Part 5.

* 1. Performance

The Tenderer must describe:

* + 1. how it will assess and measure subcontractor performance and how it will motivate its subcontractors to continually improve performance; and
    2. its approach to conducting compliance and assurance activities and inspecting subcontractor and supplier compliance with contractual requirements.
  1. Management of Subcontractor Disputes

The Tenderer must describe its approach to managing subcontractor and supplier default and disputes, including concerning time, cost quality and payment claims.

* 1. Drug and Alcohol Management

The Tenderer must describe its approach to drug and alcohol management in respect of its personnel and subcontractors.

1. Quality Assurance

In this section the Tenderer must describe how it will monitor the quality of the Services (refer to the Specification and clause 10.2 of the Conditions of Contract in Part 5).

* 1. Quality Assurance Process

The Tenderer must describe the quality assurance process, system or framework that it proposes to implement in accordance with clause 10.2(a) of the Conditions of Contract in Part 5, including how that process, system or framework will enable the Tenderer to improve the quality of the work undertaken under the Contract.

* 1. Testing, Auditing and Inspections

The Tenderer must describe its approach to conducting audits, testing and inspections under the Specification and clause 10.3 of the Conditions of Contract in Part 5, including:

* + 1. the Tenderer’s methodology for selecting minimum baseline target inspections and other assurance activities;
    2. who will be undertaking those audits, tests and inspections; and
    3. how the outcome of those audits, tests and inspections will be reported to the Commonwealth.

1. Business Continuity

In this section the Tenderer must describe in detail how it will ensure business continuity of the Services including:

* + 1. details of the Tenderer’s current business continuity plan (if any), when or if this plan has been tested and when this plan was last updated;
    2. how the Tenderer will respond in each of the following scenarios:
       1. a Force Majeure event occurs;
       2. IT systems, telephone lines and communication channels are not operational; and
       3. urgent Reactive Maintenance Services are required but specific / specialist subcontractors are not available to attend; and
    3. details of the Tenderer’s past experience in ensuring continuity of service provision.

1. Customer Service

In this section the Tenderer must describe in detail its approach to customer service and communication with the Commonwealth and the Host Nation and how it will meet the Commonwealth’s requirements as set out in clause 3.4 of the Contract in Part 5.

* 1. Approach to Customer Service

The Tenderer must set out its customer service processes and practices and demonstrate how it will build, monitor and maintain positive relationships with the Commonwealth and Host Nation, including:

* + 1. how it will manage requests and directions by the Commonwealth;
    2. details of the Tenderer’s demonstrated capability to manage such requests and directions;
    3. the innovations it has implemented to measure customer service satisfaction; and
    4. its strategies and approaches to continuous improvement in customer service outcomes.
  1. Communication

The Tenderer must set out its approach to communication with the Commonwealth and Contract Administrator in relation to the Services, including its approach to improving communication.

1. Key Performance Indicators
   1. Reporting

In this section the Tenderer must demonstrate its ability to successfully monitor and report on its performance of the Services against the Key Performance Indicators on a monthly and quarterly basis in accordance with clauses 5.9 and 5.10 of the Conditions of Contract in Part 5. This should include details of the Tenderer’s current records management practices and reporting mechanisms.

* 1. Performance Management

In this section the Tenderer must describe how it will measure its performance to ensure that, in performing the Services, it meets or exceeds each of the Key Performance Indicators.

* 1. Performance Issues

The Tenderer must describe how it will manage areas of poor performance or performance issues raised by the Commonwealth including under clause 10.11(c) of the Conditions of Contract in Part 5.

1. Risk Management

In this section the Tenderer must provide details of how it will manage any risks arising in connection with the provision of the Services, including:

* + 1. a description of the key risks identified by the Tenderer; and
    2. the Tenderer’s proposed risk mitigation strategy and risk controls.

1. Environmental Management

In this section the Tenderer must describe in detail its approach to managing the Services from an environmental perspective so as to:

* + 1. ensure compliance with Statutory Requirements; and
    2. maximise the achievement of the Environmental Objectives.

1. Proposed Resources

1. PROPOSED RESOURCES (INCLUDING CONTACTOR’S REPRESENTATIVE 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:

* + 1. its proposed key people for the Services, including the key people for the roles described in the table below, except to the extent already provided in any Registration of Interest. 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 Site and, where not, details of how the key person will perform the relevant part of the Services in the location/s of the Site);
       2. details of how the key person is proposed to perform the relevant part of the Services, including their proposed scope of duties;
       3. their current and potential future workload, capacity and availability and involvement in other current and potential future maintenance services contracts, and how the key person is proposed to perform the relevant part of the Services in light of the key person's commitments to those other maintenance services contracts;
       4. details of their involvement in projects identified in Tender Schedule C - [Relevant Previous Performance/Not Used] (if applicable) and other experience relevant to their proposed scope of duties (with such experience to be linked to the details included in the curriculum vitae provided under paragraph 1(d) below); and
       5. 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 1(d) below); and
    2. the minimum number of full-time equivalent staff that it will maintain throughout the Term to ensure that the resource levels proposed are sufficient to enable it to perform the Services in accordance with the Conditions of Contract in Part 5, including an explanation as to why it considers that the minimum resource levels proposed in the table are adequate to deliver the Services.

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

Note that the individual roles listed in the table reflect the Commonwealth’s minimum requirements and are not intended to be an exhaustive list. It should not, in any way, prevent the Tenderer from proposing any additional roles and resources that it may require to support the delivery of the Services in accordance with the Commonwealth’s requirements.

| **PROPOSED MINIMUM RESOURCES / KEY PEOPLE**  **ROLE** | **NAME** | **LOCATION (CURRENT AND PROPOSED) AND HOW MANAGED** | **FULL TIME EQUIVALENT ALLOCATION %** | **DETAILS OF PROPOSED INVOLVEMENT AND PROPOSED SCOPE OF DUTIES** | **CURRENT AND POTENTIAL FUTURE WORKLOAD, CAPACITY, AVAILABILITY AND HOW MANAGED** | **EXPERIENCE RELEVANT TO SCOPE OF DUTIES** | **RELEVANT QUALIFICATIONS ETC** | **REASON FOR RESOURCE LEVEL ALLOCATION** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **\*Contractor’s Representative** |  |  |  |  |  |  |  |  |
| **\*Site Manager** |  |  |  |  |  |  |  |  |
| **\*Administration Support** |  |  |  |  |  |  |  |  |
| **[Tenderer to propose additional roles]** |  |  |  |  |  |  |  |  |
| **[Other roles]** |  |  |  |  |  |  |  |  |

\* Denotes Key People

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

**IMPORTANT NOTE TO TENDERERS**

If the Tenderer has lodged a registration of interest for these Services, 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 and each key person for the roles specified in the table above, which should provide details of all relevant maintenance service contracts in the last 5 years and the name and telephone number of a client referee. The Tenderer is requested not to exceed **2 pages** for each curriculum vitae.

2. PROPOSED SUBCONTRACTORS

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(ii) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide details of its proposed subcontractors for the Services if it is the successful Tenderer, except to the extent already provided in any Registration of Interest.

Such details include:

* + 1. the subcontractors’ current and proposed future location (including identifying whether the subcontractor is located in the general geographical location/s of the Site); and
    2. details of how the subcontractor will perform the relevant part of the Services in the location/s of the Site; and
    3. involvement in maintenance services identified in Tender Schedule C – [Relevant Previous Performance/Not Used] (if applicable), maintenance services projects carried out or completed by the Tenderer in the ***[INSERT]*** years prior to the Closing Date and Time (up to a maximum of ***[INSERT]*** relevant maintenance services projects) and other relevant experience.

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **SUBCONTRACORS DISCIPLINE** | **LEGAL NAME AND ABN  (AND OTHER NAMES, IF APPLICABLE)** | **CURRENT AND PROPOSED FUTURE LOCATION** | **DETAILS OF HOW THE SUBCONTRACTOR WILL PERFORM THE RELEVANT PART OF THE SERVICES** | **INVOLVEMENT IN MAINTENANCE SERVICES PROJECTS AND OTHER RELEVANT EXPERIENCE** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

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

**IMPORTANT NOTE TO TENDERERS**

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

***[INSERT]***

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 Services or the Contract in Part 5.

1. [Relevant Previous Performance/Not Used]

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

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause Tender Schedule C - [Relevant Previous Performance/Not Used] 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 maintenance services being carried out or completed in the ***[INSERT]*** years prior to the Closing Date and Time; and
    2. up to a maximum of ***[INSERT]*** maintenance service contracts,

in table format as set out below:

RELEVANT MAINTENANCE SERVICES BEING CARRIED OUT OR COMPLETED IN THE *[INSERT E.G. 4]* YEARS PRIOR TO THE CLOSING DATE AND TIME UP TO A MAXIMUM OF *[INSERT]* CONTRACTS

|  | **[SERVICES, LOCATION AND DATE OF SERVICES/CONTRACT]** | **[SERVICES, LOCATION AND DATE OF SERVICES/CONTRACT]** | **[ETC]** |
| --- | --- | --- | --- |
| **CLIENT** |  |  |  |
| **NATURE AND EXTENT OF MANAGEMENT SERVICES INVOLVEMENT OF THE TENDERER** |  |  |  |
| **NATURE AND EXTENT OF MAINTENANCESERVICES INVOLVEMENT OF THE TENDERER** |  |  |  |
| **CLIENT REFEREE - NAME AND CURRENT TELEPHONE NUMBER** |  |  |  |

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

1. Transition-In Plan
2. TRANSITION-IN PLAN

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(iv) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide a draft Transition-In Plan to demonstrate that the Tenderer understands key issues and will implement appropriate solutions and strategies in performing the Transition-In Activities and otherwise meeting its obligations under the Contract in Part 5 if it is the successful Tenderer.

The draft Transition-In Plan should:

* + 1. be based on an assumed Award Date of ***[INSERT]***;
    2. set out in how, during the Transition-In Period, the Tenderer will undertake the Transition-In Activities;
    3. address:
       1. how the Tenderer will establish and procure the labour and resources required for the Services, including subcontractors, vehicles, plant, equipment and office accommodation;
       2. the training and induction to be provided by the Tenderer to its employees and subcontractors;
       3. how the Tenderer will acquire any technology required for the performance of the Services;
       4. the procedures to be implemented by the Tenderer to capture and report data under the Contract;
       5. the Tenderer’s proposed mobilisation arrangements, including the process by which its operations on each Site and access arrangements will be established; and
       6. the Tenderer’s program for the preparation, submission and finalisation of each other Contract Management Plan required to be finalised prior to expiry of the Transition-In Period;
    4. show all individual activities forming part of the Transition-In Activities including co‑ordination of activities to successfully meet the Services Commencement Date (both internal and with the Commonwealth, Other Contractors and others);
    5. allow for all necessary meetings (internal and external), reviews, consents and approvals;
    6. link the workload and involvement of the resources listed in the minimum resource schedule provided in the Tenderer’s response to Tender Schedule B – Proposed Resources against the activities described in the above paragraphs;
    7. be in a format compatible with the software specified in the Tender Particulars, which otherwise shows all worksheets and calculations; and
    8. otherwise satisfy the requirements for the Transition-In Plan set out in the Contract in Part 5.

The Transition-In Plan program should be based on achieving completion of each milestone identified in the Contract by the relevant date for completion.

The Tenderer should note that:

* + 1. subject to paragraph (c), the draft Transition-In Plan provided by the successful Tenderer will become the draft Transition-In Plan for the purposes of clause 10.9 of the Conditions of Contract in Part 5; and
    2. the Commonwealth reserves the right to negotiate the draft Transition-In Plan provided by the Tenderer with a view to amending the terms of the draft Transition-In Plan before entering into any Contract with the successful Tenderer; and
    3. the assumed Award Date provided in paragraph (a) above is for the purposes of assisting the Tenderer to prepare its draft Transition-In Plan. 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. Anti-Bribery, Corruption and Modern Slavery Statement

The Tenderer's attention is drawn to clause 27 of the Tender Conditions. To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(v) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to complete and lodge Tender Schedule E – Anti-Bribery, Corruption and Modern Slavery Statement by:

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

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

A GENERAL APPROACH TO ANTI-BRIBERY AND CORRUPTION

**[INSERT]**

B QUESTIONNAIRE

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

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

**❑ YES ❑ NO**

If Yes, please provide a copy.

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

Please provide details and evidence:

**[INSERT]**

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

If Yes, please provide details and evidence:

**[INSERT]**

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

**❑ YES ❑ NO**

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

**[INSERT]**

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

Please provide details and evidence:

**[INSERT]**

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

Please provide details and evidence:

**[INSERT]**

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

Please provide details and evidence:

**[INSERT]**

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

Please provide details and evidence:

**[INSERT]**

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

**❑ YES ❑ NO**

If Yes, please provide details and evidence:

**[INSERT]**

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

Please provide details and evidence:

**[INSERT]**

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

Please provide details and evidence:

**[INSERT]**

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

**❑ YES ❑ NO**

If Yes, please provide details and evidence:

**[INSERT]**

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

**❑ YES ❑ NO**

If Yes, please provide details and evidence:

**[INSERT]**

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

**❑ YES ❑ NO**

If Yes, please provide details and evidence:

**[INSERT]**

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

**❑ YES ❑ NO**

If Yes, please provide details and evidence:

**[INSERT]**

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

**❑ YES ❑ NO**

If Yes, please provide details and evidence:

**[INSERT]**

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

**❑ YES ❑ NO**

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

**[INSERT]**

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

**❑ YES ❑ NO**

1. Financial

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

The Tenderer should note that all amounts are not and will not be subject to rise and fall, or adjustment or gross up on account of any Tax. The Tenderer should ensure that **all amounts are GST-exclusive** **and exclusive of all Taxes specified in the Contract Particulars in Part 5** **for which the Commonwealth bears the risk** (see clauses 13.10 and 13.11 of the Conditions of Contract in Part 5).

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

IMPORTANT NOTE TO TENDERERS - CURRENCIES

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

Tenderers are also referred to the "Australian Government foreign exchange risk management - guidelines for entities" Resource Management Guide (RMG) 120 available at <https://www.finance.gov.au/government/managing-commonwealth-resources/managing-risk-internal-accountability/foreign-exchange-risk-management>.

1. Fee

***[THE TENDERER IS TO COMPLETE THE MS EXCEL WORKBOOK ATTACHED, A SUMMARY OF WHICH IS OUTLINED BELOW - TAB REFERENCES TO BE COMPLETED AS NECESSARY].***

The Tenderer is to complete the MS Excel workbook which will form Annexure 2 of the Contract in Part 5 and includes (as applicable):

* + 1. the Management Fee (see tab ***[#INSERT]***), for which the Tenderer is to provide a breakdown, itemising amounts referable to proposed resources and other management costs and a margin % which allows for all profit, overheads and disbursements in relation to the Services (including transport, travel, accommodation and meal allowances) that are not otherwise included in the Management Fee;
    2. the Transition-In Fee (see tab ***[#INSERT]***), for which the Tenderer is to provide a breakdown, itemising amounts referable to proposed resources and other transition costs and a margin % which allows for all profit, overheads and disbursements in relation to the Transition-In Activities that are not otherwise included in the Transition-In Fee;
    3. the PPM Fee for ***[#INSERT]*** Year(s), for which the Tenderer is to complete only the Pricing Uplift % for ***[#INSERT]*** Year(s) (see tab ***[#INSERT]***);
    4. the Scheduled Maintenance Services fees (***[#INSERT RELEVANT DESCRIPTION OF SERVICES]***),which will be used to populate the PPM Fee for Year(s) ***[#INSERT]*** to ***[#INSERT]*** (see tab ***[#INSERT]***), for which the Tenderer is to provide all inclusive rates per task per frequency specified (including allowances for site attendance, travel, accommodation and meal allowances and plant and equipment, materials and consumables where specified); and
    5. the rates applicable for calculation of the Reactive Maintenance Services Fee (see tab ***[#INSERT]***) which will also form Annexure 3 of the Contract in Part 5, for which the Tenderer is to provide all inclusive minimum call-out fees, standard hourly rates and after-hours hourly rates per service per trade specified (including allowances for site attendance, travel, accommodation and meal allowances where specified).

The Tenderer's attention is drawn to the definition of "Table of Variation Rates and Prices" in clause 1.1 of the Conditions of Contract in Part 5. The Tenderer should complete the table of Variation Rates and Prices (see tab ***[#INSERT]***) which is to apply for the purposes of clause 12 of the Conditions of Contract, and for the purposes of clause 13 of the Conditions of Contract to be used for pricing of Reactive Maintenance in Part 5.

1. PAYMENT OF THE FEE

The Tenderer is requested to provide an anticipated monthly cash flow for payment of the Fee for the first year of the contract period, excluding reactive works forecast costs.

[INSERT]

1. Alternative Proposals

**The Tenderer's attention is drawn to clause 3.2 of the Tender Conditions and the Contract in Part 5.** The Tenderer should also note the evaluation criterion under clause 4(a)(vii) of the Tender Conditions.

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

* + 1. subject to paragraph (b), to the extent completed and lodged in Tender Schedule G - Alternative Proposals; and
    2. in respect of clauses 7.2 - 7.6 of the Conditions of Contract in Part 5 only, as expressly set out by the Tenderer in item 1 of Tender Schedule H - Miscellaneous Matters For Evaluation.

The Commonwealth offers the Tenderer the opportunity to provide alternative proposals (including departures the Tenderer proposes to the Contract in Part 5in accordance with clause3.2(e))in pursuit of greater value for money. The Tenderer should note that (subject to the Commonwealth's absolute discretion under clause 3.2 of the Tender Conditions), it **must lodge a conforming Tender before an alternative proposal will be considered**.

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

The Tenderer must demonstrate how an alternative proposal (including any departures the Tenderer proposes to the Contract in Part 5in accordance with clause3.2(e))will achieve greater value for money. The Tenderer is requested to note that providing detailed comments from insurers and brokers and legal advice (without more information, including any effect on pricing) will be unlikely to meet this requirement.

To assist the Tenderer to demonstrate its ability to satisfy the evaluation criterion described under clause 4(a)(vii) of the Tender Conditions and to assist the Commonwealth in evaluating an alternative proposal (including departures the Tenderer proposes to the Contract in Part 5in accordance with clause3.2(e)), the Tenderer must provide a brief explanation of each alternative proposal (including each contract departure) and provide supporting evidence (for example, details of the alternative, technical descriptions, costing information, program information, technical specifications, testing information, data and any other relevant information).

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

The Commonwealth reserves the right to negotiate the information provided by any Tenderer in this Tender Schedule G - Alternative Proposals with a view to amending the terms of the Contract before entering into any Contract with the successful Tenderer (noting the Commonwealth is under no obligation to)..

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.

**The Tenderer should note that departures relating to insurances in clauses 7.2 - 7.6 of the Conditions of Contract must be expressly set out by the Tenderers in Item 1 of Tender Schedule H - Miscellaneous Matters For Evaluation only.**

| **REFERENCE (CLAUSE / SECTION / DOCUMENT TITLE ETC)** | **ALTERNATIVE** | **SUPPORTING INFORMATION** | **EFFECT ON OTHER TENDER SCHEDULES (IF ANY)** | **VALUE FOR MONEY** |
| --- | --- | --- | --- | --- |
| **CONDITIONS OF CONTRACT** | | | | |
|  |  |  |  |  |
| **SPECIAL CONDITIONS** | | | | |
|  |  |  |  |  |
| **SERVICES 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)(viii) of the Tender Conditions and to assist the Commonwealth in evaluating its Tender, the Tenderer is requested to provide the following information.

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

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

1. INSURANCES

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

The Tenderer's attention is drawn to clause 7 of 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 7.2 – 7.6 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**  **(AMOUNT AND CURRENCY E.G. AUD, LOCAL HOST NATION CURRENCY)** | **POLICY PERIOD** | **DEDUCT-IBLE** |
| --- | --- | --- | --- | --- | --- | --- | --- |
|
| **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  $**[INSERT]** in aggregate  Worldwide limits:  Jurisdictional limits: |  |  |
| **WORKERS COMPENSATION INSURANCE (AND IF APPLICABLE, EMPLOYERS LIABILITY INSURANCE)** |  |  |  | **YES/NO]**  **[IF NO, PROVIDE DETAILS]** | Prescribed by Statutory Requirement in the State or Territory or international jurisdiction in which the Services are performed or the Contractor’s  employees perform work, are employed or normally reside.  Relevant States and Territories:  If the Services are performed or the Contractor’s employees perform work, are employed or normally reside in Western Australia or any jurisdiction outside Australia, Employers Liability Insurance:  **$[INSERT]** |  |  |
| ***[IF APPLICABLE - INSERT OTHER INSURANCES REQUIRED UNDER CLAUSE 7.2(a) 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 7.2 - 7.6 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 7.2 – 7.6 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 7.2 – 7.6 of the Conditions of Contract in Part 5.

To the extent that the Tenderer's proposed insurance does not comply with clauses 7.2 – 7.6 of the Conditions of Contract in Part 5, the Tenderer may propose a departure from clauses 7.2 – 7.6. 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 7.2 – 7.6)** | **PROPOSED DEPARTURE (including drafting mark up of amendment proposed)** | **EXPLANATION AND JUSTIFICATION OF THE PROPOSED DEPARTURE** |
| **[INSERT]** | **[INSERT]** | **[INSERT]** |

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

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

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

1. TENDERER'S COMMERCIAL-IN-CONFIDENCE INFORMATION

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

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

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

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

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

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

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

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

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

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

1. FINANCIAL STANDING

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

Such information should include the following:

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

1. Information Security

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

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

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

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

If the Tenderer wishes to lodge its Tender on a Joint Bid Basis, it is requested to provide any information in this item 4 of Tender Schedule H - Miscellaneous Matters For Evaluation which it considers relevant to proposed joint bid arrangements (as applicable).

A GENERAL APPROACH TO INFORMATION SECURITY

**[INSERT]**

B QUESTIONNAIRE

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

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

**❑ YES ❑ NO**

If Yes, please provide details:

**[INSERT]**

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

**❑ YES ❑ NO**

If No, please provide details:

**[INSERT]**

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

**[INSERT]**

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

**[INSERT]**

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

**[INSERT]**

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

**[INSERT]**

* + 1. hardware or software malfunctions:

**[INSERT]**; and

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

**[INSERT]**,

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

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

**❑ YES ❑ NO**

If Yes, please provide details:

**[INSERT]**

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

**❑ YES ❑ NO**

If No, please provide details:

**[INSERT]**

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

**[INSERT/NOT APPLICABLE]**

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

**[INSERT/NOT APPLICABLE]**

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

**❑ YES ❑ NO ❑ NOT APPLICABLE**

If Yes, please provide details:

**[INSERT]**

1. If clause 17 of the Tender Conditions applies, does each proposed Recipient of Sensitive and Classified Information (or any part of it) hold a current security clearance?

**❑ YES ❑ NO ❑ NOT APPLICABLE**

If Yes, please provide details:

**[INSERT]**

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

**[INSERT]**

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

**❑ YES ❑ NO**

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

**[INSERT]**

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

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

**[INSERT].**

The Tenderer should note that:

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

1. Statement of Tax Record

The Tenderer’s attention is drawn to clause 18.8 of the Conditions of Contract in Part 5 and clause 26 of the Tender Conditions.

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

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

As noted in clause 26.1(c) even **if the Tenderer is not registered or resident in Australia, the Shadow Economy Procurement Connected Policy does still apply** (see section 8 of the policy). More information with regards to the STR process for non-residents is also available from the Australian Tax Office website at:   
https://www.ato.gov.au/business/bus/statement-of-tax-record/#NonresidentthatisunregisteredwiththeATO.

A. STATEMENT OF TAX RECORD

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

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

1. If the Tenderer has requested any of the STRs required under paragraph 1 above but the STR has not been issued by the Australian Taxation Office prior to the Closing Date and Time, the Tenderer must provide and attach the STR receipt issued by the Australian Taxation Office demonstrating that the STR was requested from the Australian Taxation Office prior to the Closing Date and Time.
2. The Tenderer is requested to note that, in accordance with clause 26.1(c) of the Tender Conditions, if the Tenderer provides and attaches in its response to this Tender Schedule I - Statement of Tax Record an STR receipt issued by the Australian Taxation Office demonstrating that any of the STRs required under this Tender Schedule I - Statement of Tax Record were requested from the Australian Taxation Office prior to the Closing Date and Time, then:
   * 1. the Tenderer must provide all of the required valid and satisfactory STRs to the Tender Administrator by email within 4 business days after the Closing Date and Time; and
     2. if the Tenderer does not provide all of the required valid and satisfactory STRs to the Tender Administrator by email within 4 business days after the Closing Date and Time, the Commonwealth may (in its absolute discretion) decide not to evaluate (or continue to evaluate) the Tender.

B. DECLARATION

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

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

The Tenderer declares that:

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

The Tenderer acknowledges and agrees that the Commonwealth:

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

**[INSERT DATE]**

**[S 127 OF CORPORATIONS ACT]**

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

[OR - AUTHORISED SIGNATORY OF COMPANY]

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

[THESE ARE EXAMPLE EXECUTION CLAUSES ONLY.]

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

1. – Contract