

UPDATE SUMMARY

dESIGN SERVICES Contract

JunE 2024

1. INVITATION TO REGISTER INTEREST

| Topic/Subject | Reference (if applicable) | Description |
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| Defence Website | Clause 1.2 | Amendment to remove reference to the 'Defence Estate Quality Management System' website and to include a reference to the "Defence website". |
| ITR Administrator | Clause 1.5 | Amendment to include a placeholder for the ITR Administrator's email address to be provided.  |
| Preliminary Proposals | (Previous) clause 2(a)(i) and Schedule A - Preliminary Proposals | Amendments to remove the "preliminary proposals" evaluation criterion and to delete the requirement to submit the previous Schedule A - Preliminary Proposals. |
| Financial viability | Clauses 2(b)(iii)A and 18 | Amendments to include new clauses in relation to: * the provision of certain information or documents by the Applicant to the ITR Administrator for the purpose of assessing the Applicant's financial viability to meet its obligations under the contract if it is the successful tenderer, and to provide that the Commonwealth may engage an independent financial advisor for this purpose; and
* the Commonwealth's rights not to evaluate (or continue to evaluate) a Registration of Interest where the Applicant does not have the necessary financial viability.
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| Tender evaluation criteria | Clause 2(c)(iii) | Amendments to align with the updated DSC-1 (2021) Tender Documents evaluation criteria.  |
| Administrative arrangements | Clauses 3.3(a)(iii)E and (iv) | Amendment to provide that the Registration of Interest Form and each Schedule should comply with the AusTender terms and conditions and not contain QR codes. |
| Communications by the Commonwealth and ITR Administrator | Clause 4(d) and various consequential | Amendment to include a new clause for the provision of any notice or written communication by the ITR Administrator and the Commonwealth contemplated by the Invitation to Register Interest by publication on AusTender, or otherwise by email, other electronic means, post or hand, and consequential amendments throughout the document to reflect this amendment.  |
| Joint Bids - Completion of Registration of Interest Form and Schedules | Clause 8.2 and various consequential | Amendment to include a new clause 8.2 in relation to the Applicant's compliance with the Invitation to Register Interest, provision of information and completion and lodgement of the Registration of Interest Form where the Registration of Interest is lodged on a Joint Bid Basis. |
| Workplace Gender Equality | Clause 14 | Amendments to clarify the requirements in respect of the *Workplace Gender Equality Act 2012* (Cth). |
| Employee Entitlements | Clause 15 | Amendments to clarify the requirements in respect of employee entitlements set out in the Commonwealth Procurement Rules. |
| Industry Briefing | Clause 16 and various consequential | Amendments to include a new clause 16 in respect of the Commonwealth's right to conduct to one or more industry briefings (including Site visits) in person and/or by videoconference, the details of which, if applicable, will be notified by the ITR Administrator.  |
| Information Security | Clause 17 and Schedule C - Information Security | Amendments to align with the approach to information security in the Disclaimer and Confidentiality Agreement, Tender Documents and Conditions of Contract, including to request the Applicant to provide details of its DISP membership (if any) and, if it does not hold such membership, complete the questionnaire in respect of its approach to information security.  |
| Strategic Notice Events | Clause 19 and paragraph (i)(ii) of Registration of Interest Form  | Amendments to incorporate the Department of Finance's "Notification of Significant Events" policy requirements into the existing "Material Change or Defence Strategic Interest Issue" clause, including to amend and streamline the requirements of that clause and associated defined terms.  |
| Registration of Interest Form - Tender Process | Paragraph (d)(iv) of Registration of Interest Form | Amendment to include an Applicant acknowledgment that its participation in the tender process (if applicable) will be governed by, is subject to, and that it must comply with, the Tender Documents.  |
| Previous Performance | Schedule B - Previous Performance | Amendments to the information sought by the Commonwealth in respect of the Applicant's previous projects.  |
| General | Various  | Further amendments, including minor drafting and tidy-up amendments, updates to hyperlinks and references to legislation and consequential amendments.  |

1. DISCLAIMER AND CONFIDENTIALITY aGREEMENT

| Topic/Subject | Reference (if applicable) | Description |
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| References to Tender Documents | Various | Amendments to omit references to provisions of the Tender Documents.  |
| Due execution of Agreement | Recital A and clause 3 | Amendments to:* provide that the Commonwealth's proposal to invite the Tenderer to lodge a tender is subject to due execution by the Tenderer of the Disclaimer and Confidentiality Agreement; and
* include an acknowledgement by the Tenderer that it must duly complete, execute and return the Disclaimer and Confidentiality Agreement prior to the Tender Administrator issuing the Tender Documents.
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| Communications by Commonwealth and Tender Administrator | Clause 2 and various consequential  | Amendment to include a new clause for the provision of any notice written communication by the Commonwealth contemplated by the Disclaimer and Confidentiality Agreement by publication on AusTender, or otherwise through the Tender Administrator by email, other electronic means, post or hand, and consequential amendments throughout the document to reflect this amendment.  |
| Participation in the Process | Clause 4(f) | Amendment to include an acknowledgment by the Tenderer that its participation in the Process will be governed by and is subject to, and that it must comply with, the Tender Documents upon the Tenderer receiving those Tender Documents. |
| Information Documents | (Previous) Recital B and clause 4 | Amendments to remove provisions which provided for Information Documents to be issued with the Disclaimer and Confidentiality Agreement. |
| Confidentiality and Information Security | Clauses 5 - 17 and Attachment 1 - Information Security | Amendments to streamline the information security provisions and to align such provisions with the approach taken to information security in the Tender Documents and Conditions of Contract.Amendments to Attachment 1 - Information Security to provide for circumstances where an Invitation to Register Interest process either was or was not used. If an Invitation to Register Interest process was used, the Tenderer is requested to confirm whether any of the information provided as part of that process has changed. If an Invitation to Register Interest process has not been used, the Tenderer is requested to provide details of its DISP membership (if any) and, if it does not hold such membership, to complete the questionnaire in respect of its approach to information security. |
| Strategic Notice Events | Clauses 18 - 23 | Amendments to incorporate the Department of Finance's "Notification of Significant Events" policy requirements into the existing "Material Change or Defence Strategic Interest Issue" clause, including to amend and streamline the requirements of that clause and associated defined terms. |
| General | Various  | Further amendments, including drafting and tidy-up amendments, updates to hyperlinks and references to legislation and consequential amendments.  |

1. TENDER DOCUMENTS

| Topic/Subject | Reference (if applicable) | Description |
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| References to 'DPA' | Various | Amendments to update references to 'DPA' to 'the Delegate' or 'the Executive Director', as applicable.  |
| Participation in tender process | Clause 1.1(c) | Amendment to provide that the Tenderer's participation in the tender process is governed by, and subject to, the Disclaimer and Confidentiality Agreement and the Tender Conditions. |
| Tender Administrator | Clause 2.1(t) | Amendment to provide that 'Tender Administrator' means the person specified in the Tender Particulars or such other person notified in writing to a Tenderer by the Commonwealth. |
| Communications by Commonwealth and Tender Administrator | Clause 2.2(e) and various consequential | Amendment to include a new clause for the provision of any notice or written communication by the Tender Administrator and the Commonwealth contemplated by the Tender Conditions by publication on AusTender, or otherwise by email, other electronic means, post or hand, and consequential amendments throughout the document to reflect this amendment. |
| Industry Briefing | Clause 2.3 and Tender Particulars | Amendments to provide that the Commonwealth may conduct one or more industry briefings (including Site visits) in person and/or by videoconference, the details of which, if applicable, will be notified by the Tender Administrator, and consequential amendment to the Tender Particulars. |
| Administrative arrangements | Clause 3.4(b) | Amendment to provide that the Tender Form and each Tender Schedule should comply with the AusTender terms and conditions and not contain QR codes.  |
| Evaluation criteria - draft Project Plans | Clause 4(a)(i), Tender Schedule A - Draft Project Plans and various consequential  | Amendments to reflect that the Tenderer is not required to submit a DCAP, including to the evaluation criterion in respect of the evaluation of draft Project Plans only. Amendments also to reflect the removal of the preparation of a preliminary design solution as part of Tender Schedule A. |
| Evaluation criteria - Minimum Resource Schedule | Clause 4(a)(iv), Tender Schedule D - Program and Minimum Resource Schedule and various consequential | Amendment to reflect that the Tenderer should submit a Minimum Resource Schedule and a supporting narrative in respect of its program as part of its response to Tender Schedule D. |
| Information Documents | Clause 6 | Amendments to reflect that Information Documents will be issued following the issue of the Tender Documents.  |
| Procedure before the ATM Close Date and ATM Close Time | Clause 7.1 | Amendments to the Commonwealth's rights in respect of interaction with Tenderers prior to the ATM Close Date and ATM Close Time.  |
| Procedure after the ATM Close Date and ATM Close Time | Clause 7.2(a)(iii) | Amendments to include a right for the Commonwealth to conduct interviews with the Tenderer and proposed personnel/representatives after the ATM Close Date and ATM Close Time. |
| Procedure after the ATM Close Date and ATM Close Time | Clause 7.2(d), (f) and (g) | Amendments to reflect that the appointment of a preferred Tenderer may be for the purposes of negotiating or otherwise seeking to document and finalise a contract. |
| Tender Process | Clause 7.3(a)(iii) | Amendment to provide that neither the Commonwealth, the Tender Administrator nor anyone on the Commonwealth's behalf warrants, guarantees or makes any representation in respect of the matters in this clause. |
| Joint Bids - Completion of Tender Form and Statutory Declaration and Tender Schedules | Clause 11.3 and various consequential | Amendments to include a new clause 11.3 in relation to the Tenderer's compliance with the Tender Conditions and any Tender Schedule, provision of information and completion and lodgement of the Tender Form and Statutory Declaration where the Tender is lodged on a Joint Bid Basis and consequential amendments throughout the document to reflect this amendment. |
| Information Security  | (Previous) clauses 16 and 17, Tender Particulars, Tender Form and Statutory Declaration and item 3 of Tender Schedule H - Miscellaneous Matters For Evaluation | Amendments to:* delete clauses 16 and 17 in respect of Information Security as Tenderers are required, in accordance with clause 3.4(b), to complete and lodge Tender Schedule H - Miscellaneous Matters For Evaluation, and consequential amendments to the Tender Particulars; and
* item 3 of Tender Schedule H - Miscellaneous Matters For Evaluation to align with the approach to information security in the Invitation to Register Interest, Disclaimer and Confidentiality Agreement and Conditions of Contract, including to request the Tenderer to provide details of its DISP membership (if any) and, if it does not hold such membership, to complete the questionnaire in respect of its approach to information security.
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| Workplace Gender Equality | Clause 22 and section 5 of the Tender Form and Statutory Declaration | Amendments to clarify the requirements in respect of the *Workplace Gender Equality Act 2012* (Cth) and to require the Tenderer to complete the relevant section in the Tender Form and Statutory Declaration, including to provide a letter of compliance if the Tenderer is a "Relevant Employer". |
| Employee Entitlements | Clause 23 and section 6 of the Tender Form and Statutory Declaration | Amendments to clarify the requirements in respect of employee entitlements set out in the Commonwealth Procurement Rules and to require the Tenderer to provide the declaration set out in the Tender Form and Statutory Declaration. |
| Financial Viability | Clause 24 and section 4 of the Tender Form and Statutory Declaration | Amendments to:* streamline the list of information the Tender Administrator may request from the Tenderer in respect of its financial viability; and
* the declaration to be provided by the Tenderer in the Tender Form and Statutory Declaration to address compliance with any Statutory Requirement which requires it to satisfy any prescribed minimum financial requirements.
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| Strategic Notice Events | Clause 25 and section 3(c) of the Tender Form and Statutory Declaration | Amendments to incorporate the Department of Finance's "Notification of Significant Events" policy requirements into the existing "Material Change or Defence Strategic Interest Issue" clause and include an acknowledgement by the Tenderer that it will comply with its obligations in the Disclaimer and Confidentiality Agreement in respect of Strategic Notice Events. |
| Shadow Economy Procurement Connected Policy | Clause 27.2(d) | Amendment to provide that the Tenderer must obtain and hold valid and satisfactory STRs for each subconsultant 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 ATM Close Date and ATM Close Time. |
| Additional Project Plans | Tender Particular for Part 4, Tender Schedule A - Draft Project Plans, item (c) and Tender Schedule A - Draft Project Plans, item (c) | Amendment to the guidance note in this Tender Particular to provide that "None stated" is the default position in respect of additional Project Plans to be prepared by Tenderers.  |
| Country of Tax Residency | Section 10 of the Tender Form and Statutory Declaration | Amendments to include a new section which requests Tenderers to provide the tendering entity's country of tax residency and its ultimate parent entity's country of tax residency, consistent with the Department of Treasury's Country of Tax Residency policy.  |
| Previous Performance | Tender Schedule C - Previous Performance | Amendments to the information sought by the Commonwealth in respect of the Tenderer's previous projects.  |
| Environmental Sustainability | Tender Schedule E - Commonwealth Procurement Rules Compliance | Amendments to clarify the requirements in respect of environmental sustainability set out in the Commonwealth Procurement Rules. |
| Times for submission of payment claims | Item 4 (where there are no phases) and item 7 (where there are phases) of Tender Schedule F - Financial  | Amendments to request the Tenderer to provide the times for submission of payment claims for the purposes of clause 11.2(a) of the Conditions of Contract. |
| Insurance | Item 1 of Tender Schedule H - Miscellaneous Matters for Evaluation  | Amendments to the 'Cover Limit' requirements in the table in respect of Workers Compensation Insurance (and if applicable, Employers' Liability Insurance) and subconsultants' Professional Indemnity Insurance. |
| General | Various  | Further amendments, including minor drafting and tidy-up amendments, updates to hyperlinks and references to legislation and consequential amendments. |

1. CONTRACT

| Topic/Subject | Reference (if applicable) | Description |
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| Glossary of Terms | Clause 1.1 | Amendments to insert, amend and delete defined terms consequent upon the other amendments described in this document.  |
| Building Works Manual | Clauses 1.1 and 16.12 | Amendments to reflect the introduction of the Building Works Manual, including in respect of defined terms, standards and certification. |
| Information Security | Clauses 1.1 and 18, various consequential and Contract Particulars | Amendments to:* address all information security provisions in a single clause;
* specify updated requirements in respect of the DISP, including that the Consultant must at its cost have obtained as at the Award Date and thereafter maintain the level of DISP membership specified in the Contract Particulars;
* confidentiality requirements, including in respect of exceptions to such requirements in specified circumstances;
* require the Consultant to comply with all Information Security Requirements including as set out in Control 10 of the Defence Security Principles Framework;
* require the Consultant to ensure that persons performing the roles specified in the Contract Particulars hold and maintain a security clearance at or above the level specified in the Contract Particulars;
* clarify the provisions relating to anticipated security classification of information and assets available to the Consultant and the consequences of any change in such classifications;
* provide for the notification and management of Security or Confidentiality Incidents; and
* consequential amendments to defined terms and other clauses.
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| DCAP | Clauses 1.1 and (previous) 6.10, Annexure 3 - DCAP and various consequential | Amendments to remove references to and requirements in respect of the DCAP. |
| Design Management Plan  | Clause 1.1 and Contract Particulars | Amendments to include the Design Management Plan (the requirements of which are set out in the template DSC Brief) as a "Project Plan" under the Conditions of Contract. |
| Defence Website | Various | Amendments to:* reflect that the DEQMS website has been decommissioned and that the documents previously available on DEQMS are now available on the "Defence Website"; and
* provide that if a document referred to as being available on the Defence Website is not so available, the Contract Administrator may provide that document to the Consultant.
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| Moral Rights | Clauses 1.1 and 16.7 and Contract Particulars | Amendments to:* remove the requirements relating to Moral Rights Consents in the form prescribed by the Commonwealth;
* require the Consultant to ensure that each of the Consultant and subconsultant personnel engaged in the production or creation of Project Documents or the Works gives genuine consent in writing to the use of the Project Document or the Works (as applicable) for the Specified Acts; and
* require the Consultant to provide these consents to the Commonwealth on request by the Contract Administrator.
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| Pandemic Adjustment Event | Clauses 1.1 and 2.14 and Contract Particulars  | Amendments to: * the definition of "Pandemic Adjustment Event" to provide that it means the listed events which arise as a direct result of the Pandemic and first occurs after the Award Date in each case which directly impacts the supply of labour, equipment, materials or services required for the carrying out of the Services;
* provide that if either party considers there has been a Pandemic Adjustment Event, the party discovering it must inform the Contract Administrator and the other party;
* remove the Consultant's Pandemic Adjustment Plan requirements and clarify that the Contract Administrator's instruction to the Consultant as to the course it must adopt following a Pandemic Adjustment Event may include the preparation and compliance with, a plan satisfactory to the Contract Administrator specifying the steps that the Consultant will implement to avoid, mitigate, resolve and otherwise manage the effects of the Pandemic on the Services and the Works;
* provide that the Fee will be decreased by any savings made by the Consultant which arise directly from the Pandemic Adjustment Event or any instruction of the Contract Administrator;
* provide that the Site Management Plan must address the procedure for managing the effects of the Pandemic; and
* consequential amendments in respect of defined terms and assessment of entitlements.
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| Interpretation - GST | Clause 1.2(k) | Amendment to provide that, unless the context otherwise indicates, amounts expressed in dollars are exclusive of GST. |
| Absolute discretion | Clause 1.2(w) and various consequential | Amendment to include a new clause which provides that where an absolute discretion is conferred on the Commonwealth or the Contract Administrator, neither is required to exercise that discretion for the benefit of the Consultant, and that the exercise of such discretion is not capable of being the subject of a dispute or difference for the purposes of clause 13.1 or otherwise subject to review. Consequential amendments throughout the Conditions of Contract to reflect this clause.  |
| Insurance | Clauses 1.1, 5.1, 5.2, 5.3, 5.5 and 5.6  | Amendments to the insurance requirements, including in respect of Employers' Liability Insurance. |
| Strategic Notice Events | Clauses 1.1, 19 and various consequential | Amendments to incorporate the Department of Finance's "Notification of Significant Events" policy requirements into the existing "Material Change or Defence Strategic Interest Issue" clause and consequential amendments to certain defined terms and other clauses. |
| Exclusion of Consequential Loss and Limitation on Liability | Clause 5.7 and Contract Particulars | Amendments to include an exclusion of Consequential Loss and a limitation on the Consultant's liability to the Commonwealth arising out of or in connection with the Contract.  |
| Program of the Services | Clause 8.2(a)(i) | Amendment to provide that the program of the Services prepared by the Consultant must (in addition to being based upon the Commonwealth's Program) be otherwise developed based on the initial program lodged by the Consultant in its tender for Services. |
| Time for submission of payment claims | Contract Particular for clause 11.2(a) | Amendment to: * reflect that Tenderers are required to provide in their Tenders proposed times for submission of payment claims; and
* provide that monthly submission of payment claims are, where applicable, subject to the achievement of the applicable milestone in the Fee Payment Schedule.
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| Number of business days for payment | Contract Particular for clause 11.5(b) | Amendment to the number of business days for payment, for alignment with amendments to the *Building and Construction Industry (Security of Payment) Act 2009* (ACT). |
| Joint and Several Liability | Clause 11 of the Special Conditions | Amendment to include a new Special Condition to be used where the Consultant is comprised of a joint venture.  |
| General | Various  | Further amendments, including minor drafting and tidy-up amendments, updates to hyperlinks and references to legislation and consequential amendments. |

1. Brief

| Topic/Subject | Reference (if applicable) | Description |
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| Introduction of template DSC Brief | N/A | Introduction of a template Design Services Contract Brief which is to be amended on a project-specific basis and form the basis of the Brief set out in Annexure 1 to the Contract.  |

**DISCLAIMER:**

The summary is not intended to be a substitute for legal advice or for reading the actual documents, and nothing in the summary will alter or affect the respective rights, obligations and liabilities of the parties under any document or contract. The summary is provided for information only and no responsibility will be taken by the Commonwealth of Australia or its advisers for its contents, use or any reliance upon it.