



Estate Works Program 2024 Suite Refresh

June 2024



This presentation will provide:

- a brief background on the refresh of the EWP templates
- an overview of significant changes to the EWP Medium Works:
 - Tender Documents
 - Conditions of Contract

as between the 2021 templates and the 2024 templates

- an outline of supporting EWP Medium Works template documents
- an overview of changes to the EWP Minor Works RFQ/Contract template (near to final)

Note: This presentation is a summary **only** and should not be used as an alternative for reviewing the relevant templates. The presentation is **not** legal advice and is not to be relied upon as such

- In 2021, CFI Branch undertook a comprehensive review and refresh of all CFI Suite templates including the Head Contract, Medium Works Contract, Managing Contractor Contract and Design Services Contract
- The CFI Suite refresh built on feedback from within CFI Branch, from industry, from PMCAs and also from CFI Branch's legal and probity advisory panel
- The key focus was to improve the tender process, including tenderer response requirements and to update contract conditions
- This review and refresh has now been undertaken for EWP templates. The revised EWP templates have been developed in close consultation with users (including the PDS Contractors) but at the same time seek to maximise alignment with the CFI Suite

Previous EWP Suite Products – Defence Website

CONSULTANCY SERVICES

- Disclaimer and Confidentiality Agreement
- Tender Documents
- Contract

DESIGN SERVICES

- Disclaimer and Confidentiality Agreement
- Tender Documents
- Contract

MEDIUM WORKS

- Disclaimer and Confidentiality Agreement
- Tender Documents
- Contract

MAJOR WORKS

- Disclaimer and Confidentiality Agreement
- Tender Documents
- Contract (MAWC)

REMEDIATION/DEMOLITION WORKS

- Disclaimer and Confidentiality Agreement
- Tender Documents
- Contract

MINOR WORKS

- Disclaimer and Confidentiality Agreement
- Tender Documents and Contract

'Refreshed' EWP Suite

```
graph TD; A["'Refreshed' EWP Suite"] --> B["Minor Works RFQ/Contract"]; A --> C["Medium Works"];
```

Minor Works RFQ/Contract

- Short form template for use with works of lower complexity and value (under \$4 million)
- Combined RFQ and contract in a single document – less than 35 pages in length
- D&C or Construct Only

Medium Works

- Disclaimer and Confidentiality Agreement, Tender Conditions, Conditions of Contract and Collateral Documents seek to broadly align with 'refreshed' CFI MW templates
- EWP-specific amendments made where necessary and following consultation
- D&C, novated D&C or Construct Only

Prior EWP Templates – Way Forward

- The previous EWP Consultancy Services, Design Services, Major Works and Remediation and Demolition Works packages are no longer being maintained as part of the EWP contract templates
- Where templates are required for higher value projects or design / consultancy services, EWP will have access to the templates maintained as part of the Defence Suite of Facilities Contracts, including the Head Contract (HC-1 2021), Design Services Contract (DSC-1 2021) and the Short Form Consultancy Agreement
- Where a template is required for remediation and demolition works, EWP should first consider using a contractor procured under the DIP-EHEE 2020 - 2025, noting that this panel includes Contamination Management and Contamination Remediation Works. If this is not available, then adopting a modified GRC-1 based on the panel terms may be an option



**EWP MEWC-1 (2024)
TENDER DOCUMENTS**



Tender Conditions and Tender Form

The Tender Conditions and Tender Form have been streamlined to avoid repetition

In the Tender Conditions:

- specified insurance departures are permitted without risking non-conformances
- clause 7 has been updated to consolidate procedures for Tenderer meetings and to include certain Tender process acknowledgements
- clause 24 has been updated to streamline the list of information the Tender Administrator may request from Tenderers in respect of their financial viability
- the Department of Finance's "Notification of Significant Events" policy requirements have been incorporated into the existing "Material Change or Defence Strategic Interest Issue" clause
- the "Contact Officer" is now referred to as the "Tender Administrator"

The Tender Form now includes provisions requiring information in relation to workplace gender equality, employee entitlements and country of tax residency

Conducting the Tender Process

Industry Briefings

One or more industry briefings (including Site visits) can be delivered to Tenderers in person or by videoconference

Restriction on use of personnel

The restriction has been limited to the use of personnel who were:

- *"an employee of the Department of Defence, or involved in any capacity in the planning or performance of the Contractor's Activities, the Works or the Project, at any time during the 12 months immediately preceding the date on which the Tender Documents were issued to the Tenderer..."* or
- *"Involved in any capacity in the Commonwealth's management of the tender process or preparation of the Tender Documents at any time"*

Debriefs

The Commonwealth can provide a debrief in respect of a non-conforming Tender (if requested by the Tenderer and if appropriate)

Tender Lodgement and Conforming Tender Requirements

- Departures from the Contract are not permitted, except to the extent:

provided for under clause 3.2 and expressly set out by the Tenderer in Tender Schedule H - Alternative Proposals

in respect of clauses 4.3 – 4.6 of the Contract only, as expressly set out by the Tenderer in item 2 of the new Tender Schedule I - Miscellaneous Matters For Evaluation

- This means that Tenderers can propose departures in respect of specified insurance requirements without needing to lodge an Alternative Proposal
- Tenderers only need to lodge Tender Schedule H - Alternative Proposals if they actually wish to lodge an Alternative Proposal

Comparison of refreshed Tender Schedules

Previous Tender Schedules

Tender Schedule A - Workload and Proposed Resources

Tender Schedule B – Task Appreciation and Methodology

Tender Schedule C - Previous Performance

Tender Schedule D - Program

Tender Schedule E - Security and Insurance Details

Tender Schedule F - Miscellaneous Contract Particulars

Tender Schedule G - Tenderer's Commercial-in-Confidence Information

Tender Schedule H - Information Security

Tender Schedule I - Local Industry Capability Plan

Tender Schedule J – Indigenous Procurement Policy

Tender Schedule L - Statement of Tax Record (if applicable)

Tender Schedule M - Contract Price

Tender Schedule N - Alternative Proposals – Design Documents

"Refreshed" Tender Schedules

Tender Schedule A - Project Understanding

Tender Schedule B – Workload and Proposed Resources

Tender Schedule C - Previous Performance

Tender Schedule D - Program

Tender Schedule E - Indigenous Procurement Policy

Tender Schedule F - Commonwealth Procurement Rules Compliance

Tender Schedule G - Financial

Tender Schedule H - Alternative Proposals

Tender Schedule I - Miscellaneous Matters for Evaluation (includes security, insurance, commercial-in-confidence and information security sections)

Tender Schedule J - Statement of Tax Record

Tender Schedule K - WHS Accreditation Scheme Accreditation

Tender Schedule A – Project Understanding

- This Tender Schedule:
 - is a revised form of the previous Tender Schedule B – Task Appreciation and Methodology
 - includes items relating to task appreciation and methodology, draft Project Plans and a preliminary design solution (design and construct delivery method only)
- Tenderers are now requested to provide a draft Site Management Plan (in addition to a draft Work Health and Safety Plan) at time of Tender
- It is still open for the Tender Particulars to include additional Project Plans for the purposes of Tender Schedule A

Tenderers must provide details in respect of their proposed resources and "Proposed Subcontractors, Consultants and Material Suppliers"

Now addresses local industry capability and proposed veteran participation (with two different options as to the information sought from Tenderers depending on whether the value of the Contractor's Activities and the Works is more or less than \$7.5 million)

Tender Schedule C – Previous Performance

Tenderers are required to provide details of a number of relevant projects (maximum of 5) carried out and completed within the specified timeframe (2 years) prior to the ATM Close Date and ATM Close Time in respect of **previous performance generally** and, separately, **work health and safety previous performance**

Amended to clarify that the maximum number of projects that can be provided applies to Joint Bid parties cumulatively

Tender Schedule D – Program

Tender Schedule D – Program has been amended to:

Allow the Commonwealth
to specify an "assumed
Award Date"

Allow the Commonwealth
to specify a "nominated
Date for Completion"

A new Tender Schedule F - Commonwealth Procurement Rules Compliance has been inserted to:

expressly address requirements set out in the CPRs (which were previously part of the Tender Form and Statutory Declaration)

better align with the CPR requirements in relation to establishing value for money

Tender Schedule H – Alternative Proposals

Tender Schedule H – Alternative Proposals (formerly Tender Schedule M - Alternative Proposals - Design Documents) has been amended such that:

Alternative proposals are no longer limited to being in respect of the "Design Documents" only

- The structure of the Tender Schedule comprises items 1 and 2 whereby Tenderers must provide the requested:
- detail regarding any alternative proposal, excluding pricing/financial information (item 1)
 - pricing/financial information regarding any alternative proposal (item 2)

Tender Schedule I – Miscellaneous Matters For Evaluation

- Tender Schedule I – Miscellaneous Matters for Evaluation is a new Tender Schedule that combines the following former Tender Schedules:

Security and
Insurance Details
(formerly Tender
Schedule E)

Tenderer's
Commercial-in-
Confidence
Information
(formerly Tender
Schedule G)

Information
Security
(formerly Tender
Schedule H)

- Tenderers may specify non-conformances with specified insurance requirements set out in the Contract without needing to lodge an Alternative Proposal
- In item 1 of Tender Schedule I, Tenderers are required to confirm whether their proposed security for the project is exactly the same as the Approved Security set out in the Schedule of Collateral Documents

- A new Tender Schedule K - WHS Accreditation Scheme Accreditation has been included to reflect the updated requirements of the WHS Accreditation Scheme and the Federal Safety Commissioner
- In particular, note requirements:
 - that Tenderers must hold WHS accreditation at the Award Date proposed by the Commonwealth
 - relating to accreditation in circumstances where a Tender is lodged on a Joint Bid Basis



EWP MEWC-1 (2024) CONTRACT



Amendments have been made to the risk and insurances regime, including:

Updates to clauses 4.3
– 4.6

Insertion of a new
clause "Exclusion of
Consequential Loss
and Limitation on
Liability"*

To specify in the Contract Particulars the
maximum aggregate liability of the
Contractor to the Commonwealth arising
out of or in connection with the Contract

**The cap on liability is subject to a number of exceptions*

The fitness for purpose warranty has been amended (clause 5.3)

Now, "fitness for purpose" is to be determined by reference to the purposes *"as set out in, or reasonably to be inferred from, the Works Description"*

Contractor's program must be based on the initial program lodged in the Contractor's tender as may be updated prior to the Award Date with the approval of the Commonwealth (clause 9.2)

The Contract Administrator may review and comment on the Contractor's program

The Contractor now "owns the float" for the purposes of the EOT regime

The Contractor must "*regularly and diligently progress the Contractor's Activities*" rather than the former requirement to progress the Contractor's Activities in a manner and at a rate of progress satisfactory to the PDS Contractor

The causes of delay in clause 9.4 have been streamlined and amended by:

- incorporating the new term "Act of Prevention"
- moving the list of causes of delay to the Contract Particulars

The Contractor must submit a written claim to the Contract Administrator not later than 28 days after the commencement of the delay (rather than within 14 days) should it wish to claim an Extension of Time (EOT) (clause 9.4(b))

Agreed Damages are now referred to as "Delay Damages" and are specified as a maximum daily cap rather than an agreed "day rate" (clause 9.6)

Delay Damages are payable where the Contractor is granted an EOT due to a breach of Contract by the Commonwealth

Clause 24.2 (Interpretation) amended to clarify that "extra costs" includes a reference to extra costs reasonably incurred by the Contractor as a direct result of the applicable event delaying the Contractor

The clause for "Conditions Precedent to Submission of Payment Claim" has been substantially streamlined and recast as "Certification to Accompany Submission of Payment Claim" in clause 11.3

The contractual options for different jurisdictions regarding payment of workers and subcontractors has been deleted. New requirement in clause 11.14 for the Contractor to provide with each payment claim "a duly completed declaration" in the format set out in the Schedule of Collateral Documents for each applicable jurisdiction

The former clauses 11.19 – Quantities in Schedule of Rates and 11.20 - Limits of Accuracy have been deleted as the Contract no longer provides for a schedule of rates

Amendments have been made to the definition of "business days" and the Contract Particular for the number of business days for payment in order to better align the contractual payment processes with the requirements of the various security of payment regimes in jurisdictions across Australia

The Contract now allows correction of a Defect by an Other Contractor where the Contractor fails to comply with an instruction by the Contract Administrator for it to correct a Defect

The Contract Administrator can agree to a longer period for the Contractor to respond to a Variation Price Request in clause 10.1

The Pandemic Adjustment Event clause has been amended to remove the Pandemic Management Plan requirements, clarify that a plan that may be requested by the Contract Administrator and provide that the Site Management Plan must address the procedure for managing the effects of the Pandemic

A number of amendments to the information security provisions, including to address all information security provisions in a single clause and specify updated requirements in respect of the DISP

The Department of Finance's "Notification of Significant Events" policy requirements have been incorporated into the existing "Material Change or Defence Strategic Interest Issue" clause

Annexure 1:

Amended to clarify the requirements for submission of Estate Information, including to better align with and reflect the Spatial Data Management Plan and O&MM Instructions

The table of as-constructed drawings and documents in clause 2 has been revised accordingly and to clarify that project-specific amendments to this table may be appropriate

Other Amendments – Special Conditions

New Special Conditions have been inserted:

- Clause 16 - Preliminary Design Solution
- Clause 21 - Contract Administrator's Representative
- Clause 22 - Contract Administrator's Office
- Clause 26 - Joint and Several Liability
- Clause 27 - Electronic Document Management System
- Clause 28 - UXO Containing Area - Engagement of UXO Subcontractor

Historical or now redundant Special Conditions have been deleted:

- Clause 6 - Extra Land Required
- Clause 16 - Construction Contracts Act (Western Australia)
- Clause 18 - Interpretation of Technical Documents
- Clause 24 - Information Security - Sensitive and Classified Information

Updates have also been made to the following documents in order to reflect the amendments to the core templates:

Disclaimer and
Confidentiality
Agreement

Schedule of
Collateral
Documents

Proforma
Notices

A detailed Update Summary is available on the Defence website page



**EWP MINOR WORKS
RFQ/CONTRACT**



Refreshed Minor Works RFQ/Contract Template

- Designed for either sole source or competitive tender
- Short form RFQ Conditions included
- Tenderers complete and lodge:
 - relevant Contract Details (including name and contact details)
 - Attachments 1, 2 and 3 detailing their resources and methodology, Contract Price and rates/prices for the Table of Variation Rates and Prices

Guidance Notes

RFQ Conditions and Lodgement Checklist

Contract Details

Contract Conditions

Attachments:

1. Contractor's Resources and Methodology
2. Contract Price
3. Table of Variation Rates and Prices
4. Works Description

END OF PRESENTATION

Note further changes are likely to be required in respect of two new Procurement Connected Policies:

- Environmentally Sustainable PCP
- Australian Skills Guarantee PCP

Awaiting model clauses in respect of these