



Australian Government

Department of Defence
Security and Estate Group

Defence Infrastructure Panel – Major Construction 2025 – 2030

Industry Briefing – AZ6546



Agenda

- Welcome and Introduction – Lisa Drummond, Defence (Manager of Defence Infrastructure Panel)
- Probity Briefing – Sunny Leow, Maddocks
- Conforming Tender Requirements – Lisa Drummond
- General Administration and Tender Lodgement (AusTender) – Lisa Drummond
- Overview of Scope of Works – Ese Rainey, Defence (Executive Director Capability)
- Tender Documents and Tender Process – Lisa Drummond and Ese Rainey
- Panel Agreement – Maddie Pywell, Clayton Utz
- Questions

Microsoft Teams Functionality

If, for some reason, the Microsoft Teams meeting drops out and it cannot be re-established the Commonwealth will issue an Information Document advising of the details for a rescheduled briefing

This Industry Briefing is being recorded via the Microsoft Teams functionality. The Commonwealth intends to make a recording of this Industry Briefing available on the Tender Webpage as an Information Document

Questions

Please hold your questions until the Q&A session at the end. Microsoft Teams allows for questions to be asked electronically via the 'Q&A' function. Alternatively, please use the 'raise hand' function and wait to be called upon

The Commonwealth may respond to or take such questions on notice during the Industry Briefing. Questions and answers from the Industry Briefing, including those taken on notice, may be provided by way of an Information Document

Defence Infrastructure Panel - Major Construction 2025 – 2030

Probity Briefing

Sunny Leow
Probity Adviser
Maddocks

"The industry briefing will be conducted for the purpose of providing background information only.

The Tenderer must not in any way rely upon the industry briefing for the purposes of preparing, amending or negotiating its Tender or entry into any contract with the Commonwealth with regard to the Panel Agreement in Part 5 or any Works."

Clause 3.3(e) of the Tender Conditions

The Tender will be undertaken in a manner which ensures the most highly qualified and experienced organisations are appointed to the Panel with the highest standards of probity being maintained throughout the procurement process

At this stage of the procurement, probity issues are often about “information management”. Accordingly, Defence is keen to ensure that you all have a fair and equitable opportunity to access the same, consistent information in a way that enables you to compete fairly and lodge a VFM submission

In order to manage that:

1. There is a single point of contact – the Contact Officer described in the Tender Documents – **dip.constructionpanel@defence.gov.au**
2. All inquiries or questions or other communications arising out of the Tender Documents, or the procurement process more generally, must be directed to, and only to, the Contact Officer
3. Please hold your questions until the Q&A session at the end of the industry briefing. Please ask your question via the Microsoft Teams 'Q&A' function or alternatively use the 'raise hand' function and wait to be called upon
4. If any question cannot be fully and accurately answered today, the question will be taken on notice and a reply distributed to all Tenderers in writing later, either as an Addendum or Information Document, depending on its effect

Other Matters:

- There are conforming Tender requirements that will be covered during today's briefing:
 - the Tender must remain valid for the duration of the Tender Validity Period
 - the Tenderer must complete and lodge Tender Schedule F - Statement of Tax Record; and
 - the Tenderer must accept (without departure, qualification, amendment, limitation or exclusion) the Panel Agreement in Part 5
- Business as Usual activities – Tenderers currently providing works to Defence can continue to do so, however, they must not discuss or seek to gain information on the procurement process. Any questions must be directed to the Contact Officer by email to **dip.constructionpanel@defence.gov.au**

Defence Infrastructure Panel – Major Construction 2025 – 2030

Conforming Tender Requirements

Lisa Drummond
Director Quality and Compliance
Capital Facilities and Infrastructure Branch

Conforming Tender Requirements – No. 1 & 2

1. The Tender must be lodged electronically via AusTender at **www.tenders.gov.au**
2. The Tender must be received before the ATM Close Date and ATM Close Time (at the date of this Industry Briefing, **17 September 2024 12:00pm (ACT Local time)**)

Note: No conditions for participation for this tender process

Non-Conforming Tenders – Lateness

- The Tenderer is responsible for lodging its Tender in accordance with clause 4.1(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 4.1(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 4.1(a) **was solely due to mishandling by the Commonwealth**

Conforming Tender Requirements – No. 3

3. The Tender must satisfy each **minimum form and content requirement** as follows:
- the Tender must remain valid for the duration of the Tender Validity Period (180 days from the ATM Close Date and ATM Close Time or if the procurement is suspended under the Judicial Review Act or in accordance with clause 19.2, 180 days extended by the period of suspension, up to a maximum of 360 days in total), during which period the Tenderer cannot withdraw its Tender;
 - the Tenderer must complete and lodge Tender Schedule F - Statement of Tax Record; and
 - the Tenderer must accept (without departure, qualification, amendment, limitation or exclusion) the Panel Agreement in Part 5

Non-Conforming Tenders – Minimum Form and Content Requirements


- If the Tender does not satisfy each minimum form and content requirement specified under clause 4.1(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 or due to mishandling by the Australian Taxation Office** in respect of Tender Schedule F – Statement of Tax Record
- 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, the Contact Officer will notify the Tenderer that there has been a failure to satisfy a minimum form and content requirement and that it requires the Tenderer to provide a response – in these circumstances 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

General Administration and Tender Lodgement (AusTender)

General Administration

- All enquiries must be directed to the Contact Officer in accordance with the process as outlined in the Tender Conditions at clause 3.2(a)
- All queries must be received under this process by no later than 7 days prior to the ATM Close Date and ATM Close Time – **12:00pm 10 September 2024** (as at the date of this industry briefing)
- Questions and answers or amendments to the Tender Documents will be issued through AusTender:
 - Information Documents - for information only; or
 - Addenda - to amend the Tender Documents
- The Commonwealth has published the Tender Webpage (<https://www.defence.gov.au/business-industry/training-events/defence-infrastructure-panel-major-construction-2025-2030-industry-briefing>) with certain information relating to the tender as an "Information Document". To the extent of any inconsistency between AusTender and the Tender Webpage, AusTender will prevail

Tender Lodgement (AusTender)

- Via the “Lodgement Page” button under the AZ number. AusTender will not allow the uploading of late Tenders 
- The Tenderer should not lodge any promotional, general corporate or other unsolicited information as part of its Tender
- The Tender should be completely self-contained, without hyperlinks, QR Codes or other material incorporated by reference
- The Tender Form and each Tender Schedule should be lodged in separate, standalone, unsecured, electronic files which meet the requirements in clause 4.3(b)(iii) of the Tender Conditions, including to be lodged in separate Microsoft Word and searchable PDF format (however this requirement does not apply to attachments or other documents received by the Tenderer from third parties (such as STRs) where it is not practicable to provide both a separate searchable PDF and Word file)

Defence Infrastructure Panel – Major Construction 2025 – 2030

Overview of Scope of Works

Ese Rainey
Executive Director Capability
Capital Facilities and Infrastructure Branch /
Infrastructure Division

Scope of Works

- Panel Contractors will be engaged under the Panel to deliver major construction and capital facilities projects and carry out related activities. The projects to be delivered under the Panel will:
 - generally (but need not) constitute a "work" as defined in the *Public Works Committee Act 1969* (Cth);
 - be carried out within Australia; and
 - be valued at or above \$200 million (exclusive of GST), with the average value of projects anticipated to be between \$200 million (exclusive of GST) and \$600 million (exclusive of GST)
- To the extent that the Department of Defence is the procuring agency, the types of projects which are anticipated to be delivered under the Panel include those relating to airfields, heavy civil, fuel infrastructure, UXO remediation, environmental remediation, marine, engineering services and utilities and explosive ordnance

Delivery Methods and Forms of Contract

- Panel Contractors may be engaged under any delivery method specified by the relevant Contract. Such delivery methods may include construct only, design and construct, document and construct, early contractor involvement and managing contractor (whether single or two phase)
- Panel Contractors may be engaged under varying forms of contract as specified by the Department of Defence or an Other Commonwealth Agency (as applicable) for the purposes of an Engagement and having regard to the specific circumstances of that Engagement
- To the extent that the Department of Defence is the procuring agency:
 - it is anticipated that the relevant Contract will be based upon the templates available on the Defence website including, but not limited to, the HC-1 (2021) (including construct only, design and construct and document and construct), the ECI HC-1 (2022) and the MCC-1 (2021); and
 - the Department of Defence may, but is not required to, elect to engage an external service provider to act as project manager and also contract administrator

Minimum Requirements

The specific requirements for the Works will be set out in the relevant Contract. However, it is anticipated that as a minimum the relevant Contract will require compliance with:

- applicable Government policy (including any reporting requirements) including the Defence Policy for Industry Participation (in the case of the Department of Defence), the Australian Industry Participation policy, the Indigenous Procurement Policy, the WHS Accreditation Scheme, the Shadow Economy Procurement Connected Policy, the Workplace Gender Equality Procurement Principles, the Payment Times Procurement Connected Policy, the Commonwealth Supplier Code of Conduct, the Environmentally Sustainable Procurement Connected Policy and the Australian Skills Guarantee Procurement Connected Policy;
- applicable Statutory Requirements and applicable technical standards and requirements including Australian Standards, the Building Code of Australia and the National Construction Code;
- minimum standards relating to quality, including in respect of the integration of the quality assurance systems and processes implemented for an Engagement by the Contractor with that established by the Contractor under the Panel Agreement;
- requirements in relation to information security, including (where the Department of Defence is the procuring agency) in respect of the Defence Industry Security Program; and
- requirements in relation to insurances and the provision of security

Related Goods and Services

As part of undertaking the activities forming part of an Engagement, Panel Contractors may be required to:

- undertake design, programming and cost planning;
- develop project plans, drawings, operations and maintenance manuals and other documentation;
- participate in early contractor involvement processes;
- undertake stakeholder consultation;
- provide support in connection with obtaining Government and other approvals;
- engage specialist subcontractors, including in accordance with any process prescribed in the relevant Contract; and
- participate in project reporting and governance activities

Defence Infrastructure Panel – Major Construction 2025 – 2030

Tender Documents and Tender Process

Lisa Drummond

Director Quality and Compliance
Capital Facilities and Infrastructure Branch

Ese Rainey

Executive Director Capability
Capital Facilities and Infrastructure Branch / Infrastructure
Division

Tender Form and Tender Schedules

- Tender Form
- Tender Schedule A – Organisational Past Performance
- Tender Schedule B – Approach to Organisational Quality
- Tender Schedule C – Commonwealth Procurement Rules Compliance
- Tender Schedule D – Schedule of Rates
- Tender Schedule E – Information Security
- Tender Schedule F – Statement of Tax Record
- Tender Schedule G – WHS Accreditation Scheme

Tender Schedules and Tender Process

Evaluation Criteria and Tender Schedules

- The evaluation criteria are as set out in clause 5.3 of the Tender Conditions
- Tender Schedules are designed to:
 - assist Tenderers to clearly demonstrate their ability to satisfy the evaluation criteria; and
 - assist the Commonwealth in evaluating each Tender
- Tenderers should respond to all the information sought in the Tender Schedules and, where applicable, complete their response in the table format provided in the Tender Schedules
- The Commonwealth may obtain information from its own enquiries and investigations

Information Document No. 01 - Tender Checklist

- Should **not be** submitted with your Tender
- Should not be relied upon in substitution for your own comprehensive review of the Tender Documents and you remain responsible for ensuring your Tender meets the requirements of the Tender Documents
- It is provided for information purposes only

Information Document No. 02 - FAQs

- Frequently asked questions in relation to the Panel, the Tender Documents and the Tender process and the Commonwealth's responses to each of these

Financial Viability Assessment

- The Commonwealth considers that it is essential that the Tenderer has sufficient financial viability to carry out the Works and otherwise meet its obligations under a Contract if it is a successful Tenderer and for this purpose proposes to undertake a Financial Viability Assessment in accordance with clause 25 of the Tender Conditions in respect of the Tenderer
- If the Commonwealth considers (in its absolute discretion), and whether as a result of a Financial Viability Assessment or otherwise, that the Tenderer does not have the necessary financial viability to carry out the Works and otherwise meet its obligations under a Contract if it is a successful Tenderer, the Commonwealth may (in its absolute discretion):
 - decide not to evaluate a Tender (or continue to evaluate a Tender); or
 - decide to discontinue negotiations or dealings with any preferred Tenderer

Tender Form - Financial Viability Assessment

The Tender Form includes a declaration that, subject to any disclosures made, the Tenderer, among other things:

- has the necessary financial viability to carry out the Works and otherwise meet its obligations under a Contract if it is a successful Tenderer; and
- is compliant with any Statutory Requirement which requires it to satisfy any prescribed minimum financial requirements, including for the purpose of holding any relevant licence necessary to carry out the Works

The Tender Form also requests the Tenderer to identify whether it proposes that a Related Body Corporate will provide a Deed of Guarantee and Undertaking in the form published on the Defence Website for the relevant form of contract applicable to an Engagement and, if so, to provide details of, and a letter of confirmation from, the Related Body Corporate

Where a Deed of Guarantee and Undertaking is proposed, the Commonwealth may, among other things, use and rely upon this for the purposes of undertaking a Financial Viability Assessment in accordance with clauses 5.2 and 25 of the Tender Conditions

Tender Form

The Tenderer is requested to:

- provide the details set out in the Tender Form; and
- duly execute the Tender Form

Note: Each legal entity which seeks to be appointed to the Panel and therefore eligible to be approached in respect of specific Engagements is required to lodge a discrete Tender. If a supplier operates through multiple legal entities, that supplier must ensure that each such legal entity lodges a Tender in its own right if that legal entity wishes to be appointed to the Panel (refer to Information Document No. 03)

Tender Form

- The Tenderer's approach to Modern Slavery is an evaluation criteria and item 10 of the Tender Form outlines the information the Commonwealth is seeking in this respect
- The Tender Form includes a declaration that, subject to any disclosures made the Tenderer has the capacity to obtain the insurances described in item 15 of the Tender Form and comply with any Statutory Requirement which requires it to satisfy prescribed minimum insurance requirements
- The Tender Form also requires Tenderers to complete other important information, including to:
 - nominate their proposed Panel Manager (together with a CV); and
 - identify any specific information that the Tenderer wishes the Commonwealth to keep confidential (Commercial-In-Confidence Information)

Tender Form

- The Tenderer is requested to identify the Australian states and/or territories in which it would prefer to be engaged to carry out the Works, noting that it must have the capacity, and be licensed (see below), to carry out works of a similar nature to the Works in each of the Australian states and/or territories listed
 - This information is provided for the benefit of the Commonwealth in its administration of the Panel but will not be evaluated by the Commonwealth in determining successful Tenderers
- The Tenderer is requested to provide each of its architectural, builders' or equivalent registration/licence numbers or, alternatively, accreditation details of the professional body (or bodies) applicable to the Tenderer
- Note also the item relating to financial viability, as previously discussed

Tender Schedule A – Organisational Past Performance

The Tenderer is requested to provide (in the table format provided) details of its previous performance as follows:

- relevant organisational projects:
 - currently in progress or completed in the five (5) years prior to the ATM Close Date and ATM Close Time (maximum five (5) projects); and
 - valued in the vicinity of \$200 million or above (excluding GST), noting that in identifying projects the Tenderer may allow an appropriate amount on account of inflation over the original value of the contract
- a detailed narrative setting out the reasons why the Tenderer considers that the projects identified above are relevant to the Works set out in the Scope of Works (including as a result of the size, nature or type of works to which the project relates)

Tender Schedule A – Organisational Past Performance

- Where the Tenderer allows an amount on account of inflation over the original value of a contract for a project, it must provide clear details of the extent of the amount allowed on account of inflation and the basis upon which it has been calculated (including by reference to the original contract date). The Commonwealth will have regard to the integrity of the allowance and its calculation on undertaking the evaluation
- The Tenderer is requested to ensure its response to this Tender Schedule (among other things):
 - addresses paragraphs 2, 4(b), 4(c), 4(d) and 9 of the Scope of Works, including for the purposes of collectively demonstrating the Tenderer's past performance at an organisational level; and
 - does not exceed eighty (80) A4 pages, including any title pages and preamble
- Referees nominated must have been directly involved in the project as a senior client representative and able to provide information regarding the Tenderer that is relevant to the tender process
- Referees must also have consented prior to lodgement of the Tender to being nominated as a referee

Tender Schedule B – Approach to Organisational Quality

- The Tenderer is requested to identify the quality assurance framework and processes that it has put in place (or proposes to put in place) to optimise the performance of its obligations under the Panel Agreement and any Engagement, including (as a minimum) the matters specified in paragraphs (a) to (d) of the Tender Schedule
- The Tenderer is requested to ensure its response to this Tender Schedule (among other things):
 - provides sufficient detail so as to allow the Commonwealth to appropriately evaluate the Tenderer's response; and
 - does not exceed six (6) A4 pages, including any title pages and preamble

Tender Schedule D – Schedule of Rates

- The Tenderer is requested to provide its standard hourly and daily rate and proposed Panel hourly and daily rates (including discount, if any)
- The Commonwealth does not require the Tenderer to discount its proposed Panel hourly and daily rates, and it is a matter for the Tenderer whether it chooses to do so. The Commonwealth however does strongly encourage the Tenderer to propose a discounted rate(s) in pursuit of greater value for money
- To the extent that the Tenderer does not propose to discount its proposed Panel hourly and daily rates, it is requested to provide an explanation as to its position
- The Commonwealth reserves the right to negotiate the rates and prices submitted by the Tenderer before entering into the Panel Agreement with the successful Tenderer
- **All amounts submitted should be GST-exclusive**

Role of Schedule of Rates

The Schedule of Rates has the following roles:

- where the Contractor is engaged in whole or in part on a schedule of rates basis, the Schedule of Rates to the extent applicable and subject to the terms of the relevant Contract will apply;
- where the Contractor is engaged on a phased basis, the Schedule of Rates may be taken into account in determining the adjustment (if any and subject to the terms of the relevant Contract) of the contract price for any subsequent phase;
- the Schedule of Rates may, subject to the terms of the relevant Contract, be used for the valuation of any "Variation" under any Engagement; and
- to the extent determined by the Commonwealth, as part of any value for money assessment of a tender

Tenderers are referred to clause 5.1 of the Panel Conditions and also to Information Document No. 03

Tender Schedule C – Commonwealth Procurement Rules Compliance

- The Tenderer's compliance with the Commonwealth Procurement Rules

Tender Schedule E – Information Security

- Confirmation of whether or not the Tenderer currently holds DISP membership and, if so, details of such membership
- If the Tenderer does not currently hold DISP membership, they will be required to complete the questionnaire

Tender Schedule G – WHS Accreditation Scheme

- The Tenderer's ability to satisfy clause 28 of the Tender Conditions and the WHS Accreditation Scheme

Tender Schedule F – Statement of Tax Record

- The Tenderer must complete and lodge Tender Schedule F - Statement of Tax Record. **This is a minimum form and content requirement for its Tender**
- **Item A** – provide and attach either:
 - each of the valid and satisfactory Statements of Tax Record (**STRs**) as applicable to the Tenderer (refer to the table in item A of Tender Schedule F);
OR
 - a receipt from the ATO confirming that the STR(s) was requested before the ATM Close Date and ATM Close Time

If the Tenderer provides a receipt from the ATO, then the Tenderer must provide all of the required valid and satisfactory STRs to the Contact Officer by email within 4 business days after the ATM Close Date and ATM Close Time. If the Tenderer fails to do so, except to the extent that the failure was **solely due to mishandling by the Australian Taxation Office**, the Commonwealth may (in its absolute discretion) decide not to evaluate (or continue to evaluate) the Tender

- **Item B** – complete the declaration

Defence Infrastructure Panel - Major Construction 2025 – 2030

Panel Agreement

Maddie Pywell

Senior Associate

Clayton Utz

Panel Agreement Structure

Each successful Tenderer will enter into a Panel Agreement with the Commonwealth

- Section 1 - Introduction
- Section 2 - Panel Conditions
- Section 3 - Engagement Process
- Section 4 - Scope of Works

To submit a conforming Tender, you must accept the Panel Agreement without departure, qualification, amendment, limitation or exclusion

Panel Conditions – Administration of Panel

- Establishes the framework for the supervision and administration of the Panel
- Defines the relationship between the contracting parties and includes continuing obligations throughout the Term
- The Term of the Panel includes an initial period of five (5) years, with the Panel Agreement including options for the Commonwealth to extend for up to a further three (3) additional years
- Mandatory training session for the Contractor (including, as a minimum, the Contractor's Panel Manager) in Canberra or by Webinar (or equivalent) as advised by the Commonwealth and on a date or dates notified by the Commonwealth

(Clause 2 of the Panel Conditions)

Panel Conditions – Administration of Panel

- A copy of the Panel Agreement may be given to Other Commonwealth Agencies and an Other Commonwealth Agency may engage the Contractor to carry out the Works
- If the Commonwealth requires the performance of the Works, it may engage the Contractor through a process generally consistent with that set out in Section 3 of the Panel Agreement. The form and terms of a Contract for a particular Engagement will be as set out in the relevant procurement documentation. Note however that there is no guarantee of work
- Where a Tenderer has proposed with its Tender that it will provide a deed of guarantee and undertaking from a Related Body Corporate, this will be a condition of the Commonwealth entering into any Contract with that Tenderer (if successful) as part of any Engagement

(Clauses 2 and 10 of the Panel Conditions and Section 3 of the Panel Agreement)

Panel Conditions – Appointed Jurisdictions

- The Panel Particulars will identify the jurisdictions in which the Contractor has been appointed to the Panel
- The Contractor must have effected as at the Execution Date and thereafter maintain for the Term the licences, accreditations and authorisations required under applicable Statutory Requirements or the Panel Agreement to carry out the Works in such jurisdictions
- If after the Execution Date, the Contractor demonstrates to the satisfaction of the Commonwealth that it has obtained a licence under applicable Statutory Requirements to carry out the Works in a jurisdiction not specified in the Panel Particulars, the Commonwealth may, after considering such information as it requires, amend the Panel Particulars to include that jurisdiction

(Clause 2.2 of the Panel Conditions)

Panel Conditions – Personnel

- Panel administered by the Commonwealth's Panel Manager and the Assistant Commonwealth's Panel Manager
- Contractor's Panel Manager
 - The key point of contact between the Commonwealth and the Contractor for the purposes of the Panel Agreement
 - Minimum specified responsibilities
 - Requirement for the Commonwealth's written approval for the replacement of the Contractor's Panel Manager
- Contractor obligations in respect of maintenance of resourcing, including that it must ensure that for the duration of the Term it retains at all times sufficient appropriate, experienced and suitably qualified personnel with the capability to tender for and carry out the activities contemplated by the Scope of Works

(Clause 3 of the Panel Conditions)

Panel Conditions – Other Matters to Note

- Schedule of Rates (clause 5 and Appendix 2)
- Quality Assurance, including obligations to implement the quality assurance systems and process in the Tenderer's submission for inclusion on the Panel (clause 8)
- Insurance, obligations for which will be set out in each Contract, however note warranties in relation to capacity to obtain insurances (clause 4)
- Unsatisfactory Performance (clause 2.6) and Performance Management (clause 9)
- Compliance with WHS Legislation and maintenance of accreditation under the WHS Accreditation Scheme (clause 10)

Panel Conditions – Commonwealth Policy and Legislative Compliance

- Clause 13 (Compliance with Government Policy), including workplace gender equality, fraud control, modern slavery and Commonwealth Supplier Code of Conduct
- Information security, including the Defence Industry Security Program (DISP) (clause 14)
- Strategic Notice Event (Material Change, Defence Strategic Interest Issue or a Significant Event) (clause 15)
- Clause 18 (General), including privacy, freedom of information and long service leave
- Payment Times Procurement Connected Policy (clause 19)
- Shadow Economy Procurement Connected Policy (clause 20)

Questions