

ATM ID: *[INSERT]*

PROJECT NO: *[INSERT]*

PROJECT NAME: *[INSERT]*

TENDER DOCUMENTS

EARLY CONTRACTOR INVOLVEMENT HEAD CONTRACT (iNTERNATIONAL) (ECI HCI-2022)

ADDENDUM NO. [##]

***[NOTE TO DEFENCE/TENDER ADMINISTRATOR (TO BE DELETED PRIOR TO THIS ADDENDUM BEING ISSUED): EACH OF THE AMENDMENTS TO THE TENDER DOCUMENTS SET OUT IN THIS ADDENDUM ARE REQUIRED BY COMMONWEALTH POLICY AND ACCORDINGLY MUST BE INCLUDED IN ALL PROCUREMENTS WHERE THE CLOSING DATE AND TIME IS ON OR AFTER 1 OCTOBER 2024.***

***DEFENCE/TENDER ADMINISTRATOR TO CAREFULLY REVIEW AND SEEK LEGAL ADVICE IF REQUIRED]***

To: All Tenderers

Pursuant to clause 2.2(d) of the Tender Conditions, Tenderers are advised of the following amendments to the Tender Documents:

**Amendments to the Tender Conditions in Part 1**

1. Delete clause 3.3(b)(ii) of the Tender Conditions in Part 1 and replace it with the following:

“*(ii) 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.*

*For the purposes of paragraphs (b)(i) and (b)(ii), to the extent that the correction of the unintentional error involves the provision of any valid and satisfactory STRs required for the Tenderer’s entity type, such STRs must be provided by no later than 10 business days after the date of the Commonwealth’s notice under paragraph (b)(i). If the Tenderer fails to meet this timeframe, the Tender will be non-conforming; and*”

1. Delete clause 27 of the Tender Conditions in Part 1 in its entirety and replace it with the following:

**“*27. STATEMENT OF TAX RECORD***

*27.1 Tenderer to provide valid and satisfactory STRs*

*Clause 27.1 applies unless the Tender Particulars state that it does not apply.*

*(a) 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/shadow-economy/procurement-connected-policy.*

*(b) As part of its Tender, the Tenderer must complete and lodge Tender Schedule I - Statement of Tax Record, which includes:*

*(i) providing all of the valid and satisfactory STRs required for the Tenderer’s entity type under (and as set out in) Tender Schedule I ‑ Statement of Tax Record; and*

*(ii) signing a Declaration in the form set out in item B.*

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

*(c) The Tenderer's attention is also drawn to the Declaration in item B of Tender Schedule I - Statement of Tax Record.*

*(d)* ***Note to Tenderers not registered or resident in Australia:*** *The**Shadow 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.*

*27.2 Tenderer to confirm it holds valid and satisfactory STRs*

*Clause 27.2 does not apply unless the Tender Particulars state that it applies.*

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

*(b) As part of its response to the Invitation to Register Interest, the Tenderer was required to provide all of the valid and satisfactory STRs required for its entity type as specified under Schedule G - Statement of Tax Record of the Invitation to Register Interest.*

*(c) If any STR provided by the Tenderer as part of any Invitation to Register Interest process in respect of the Project or otherwise as part of the tender process is or will be no longer valid and satisfactory at the time of the proposed Award Date (as notified by the Tender Administrator 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 required for its entity type that will be valid and satisfactory on such proposed Award Date.*

*(d) The Tenderer must obtain and hold valid and satisfactory STRs required for the entity type of each subcontractor that it will engage for the Contractor's Activities or the Works under a subcontract with an expected value of over $4 million (GST inclusive), if known as at the Closing Date and Time.*

*27.3 Acknowledgement*

*This clause 27.3 applies where either of clause 27.1 or 27.2 applies.*

*The Tenderer acknowledges and agrees that (irrespective of any STR lodged by the Tenderer as part of any Invitation to Register Interest process in respect of the Project or otherwise as part of the tender process) the Commonwealth:*

*(a) will only enter into a contract with a Tenderer that, on the proposed Award Date whether as notified by the Tender Administrator under clause 27.2(c) or otherwise, holds and has provided to the Tender Administrator copies of all STRs required for its entity type in accordance with the Shadow Economy Procurement Connected Policy that will be valid and satisfactory on such Award Date; and*

*(b) may (in its absolute discretion) exclude the Tenderer from further consideration if the Tenderer does not satisfy the requirement under paragraph (a).*

*27.4 Definitions*

*For the purposes of this clause 27:*

*(a) an STR is taken to be:*

*(i)* ***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*

*(ii)* ***valid*** *if the STR has not expired as at the date on which the STR is required to be provided or held; and*

*(b)* ***Statement of Tax Record*** *or* ***STR*** *has the meaning given in the Shadow Economy Procurement Connected Policy.*”

**Amendments to the Tender Schedules in Part 4**

1. Delete Tender Schedule I - Statement of Tax Record in its entirety and replace it with the following:

**“*TENDER SCHEDULE I***

***STATEMENT OF TAX RECORD***

***[THIS TENDER SCHEDULE I - STATEMENT OF TAX RECORD WILL ONLY APPLY IF CLAUSE 27.1 OF THE TENDER CONDITIONS APPLIES. OTHERWISE DELETE THE CONTENTS OF THIS TENDER SCHEDULE AND MARK IT "NOT USED"]***

*The Tenderer’s attention is drawn to clause 18.6 of the Conditions of Contract in Part 5 and clause 27 of the Tender Conditions.*

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

***The Tenderer must complete and lodge Tender Schedule 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 27.1(d) of the Tender Conditions, 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. The Tenderer is to provide and attach each of the valid and satisfactory STRs referred to in the table below as required for the Tenderer’s entity type:*

|  |  |
| --- | --- |
| ***If the Tenderer is:*** | ***STRs required:*** |
| *(a) a body corporate or natural person* | *a valid and satisfactory STR in respect of that body corporate or person* |
| *(b) 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)* |
| *(c) a trustee acting in its capacity as trustee of an Australian trust* | *a valid and satisfactory STR in respect of:**(i) the trustee; and**(ii) the Australian trust* |
| *(d) a trustee acting in its capacity as trustee of a foreign trust without an Australian tax record of at least 4 years* | *a valid and satisfactory STR in respect of:**(i) the trustee; and**(ii) the foreign trust* |
| *(e) 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* |
| *(f) 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* |
| *(g) the head company in a Consolidated Group* | *a valid and satisfactory STR in respect of the head company in the Consolidated Group* |
| *(h) a member of a GST Group* | *a valid and satisfactory STR in respect of:**(i) the GST Group member; and* *(ii) the GST Group representative* |

*B. DECLARATION*

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

*The Tenderer declares that:*

*1. it has complied with the requirements in item A of Tender Schedule I ‑ Statement of Tax Record to provide and attach each of the valid and satisfactory STRs referred to in the table in paragraph 1 of item A as required for the Tenderer’s entity type;*

*2. it has obtained and holds valid and satisfactory STRs required for the entity type of each subcontractor that it will engage for the Contractor's Activities or the Works under a subcontract with an expected value of over $4 million (GST inclusive), if known as at the Closing Date and Time;*

*3. if it is the successful Tenderer, it will ensure that:*

*(a) any subcontractor that it subsequently engages for the Contractor's Activities or the Works under a subcontract with an expected value of over $4 million (GST inclusive) provides it with valid and satisfactory STRs required for the subcontractor’s entity type prior to entering into the relevant subcontract; and*

*(b) it retains a copy of all STRs held by any subcontractor referred to in paragraph (a) and, on request by the Commonwealth, provide to the Commonwealth a copy of any such STR;*

*4. if any STR provided by it as part of any Invitation to Register Interest process in respect of the Project or otherwise as part of the tender process is or will be no longer valid and satisfactory at the time of the proposed Award Date (as notified by the Tender Administrator 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 required for its entity type that will be valid and satisfactory on such proposed Award Date;*

*5. if it is the successful Tenderer, it will ensure that it holds all STRs required for the Tenderer’s entity type at all times during the Contractor’s Activities and the Works and, on request by the Commonwealth, provide to the Commonwealth a copy of any such STR; and*

*6. if it is the successful Tenderer and it fails to comply with its obligations under clauses 18.6(e)(i) and (ii) of the Conditions of Contract in Part 5, it will be a breach of the Contract.*

*The Tenderer acknowledges and agrees that the Commonwealth:*

*7. 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 required for its entity type in accordance with the Shadow Economy Procurement Connected Policy that will be valid and satisfactory on such Award Date; and*

*8. may (in its absolute discretion) exclude the Tenderer from further consideration if the Tenderer does not satisfy the requirement under paragraph 7.*

***[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]*”

**Amendments to the Contract in Part 5**

1. In the definition of “Shadow Economy Procurement Connected Policy” in clause 1.1 of the Conditions of Contract in Part 5, delete the words “*March 2019*” and replace them with the words “*October 2024*”.
2. Delete clause 8.5(g) of the Conditions of Contract in Part 5 and replace it with the following:

*“(g) must obtain and hold all satisfactory and valid STRs required for the entity type of any subcontractor referred to in paragraph (a) where the subcontract price is valued (or estimated) to be over $4 million (inclusive of GST). For the purposes of this paragraph (g), a reference to “satisfactory” and “valid” has the meaning given in clause 18.6(f).*”

1. Delete clause 18.6 of the Conditions of Contract in Part 5 in its entirety and replace it with the following:

“*18.6 Shadow Economy Procurement Connected Policy*

*(a) Clause 18.6 does apply unless the Contract Particulars state that it does not apply.*

*(b) Without limiting the operation of clause 8.5, the Contractor must not enter into a subcontract with a subcontractor (or agree to a novation of a subcontract to a subcontractor) if the total value of all work under the subcontract is expected to exceed $4 million (inclusive of GST) unless the Contractor has obtained and holds the STRs required for the relevant subcontractor’s entity type referred to in the table below.*

|  |  |
| --- | --- |
| ***If the subcontractor to enter into the subcontract is:*** | ***STRs required:*** |
| *a. a body corporate or natural person* | *a satisfactory and valid STR in respect of that body corporate or person.* |
| *b. a partner acting for and on behalf of a partnership* | *a satisfactory and valid 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 the subcontract.* |
| *c. a trustee acting in its capacity as trustee of an Australian trust* | *a satisfactory and valid STR in respect of:**(i) the trustee; and**(ii) the Australian trust.* |
| *d. a trustee acting in its capacity as trustee of a foreign trust without an Australian tax record of at least 4 years* | *a satisfactory and valid STR in respect of:**(i) the trustee; and**(ii) the foreign trust.* |
| *e. a joint venture participant* | *a satisfactory and valid 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.* |
| *f. a member of a Consolidated Group* | *a satisfactory and valid STR in respect of:**(i) the relevant member of the Consolidated Group; and**(ii) the head company in the Consolidated Group.* |
| *g. the head company in a Consolidated Group* | *a satisfactory and valid STR in respect of the head company in the Consolidated Group.* |
| *h. a member of a GST Group* | *a satisfactory and valid STR in respect of:**(i) the GST Group member; and* *(ii) the GST Group representative.* |

*(c) The Contractor must obtain and hold additional STRs in the circumstances set out in the table below within 10 business days of the Contractor becoming aware of the circumstances arising:*

|  |  |
| --- | --- |
| ***If the Contractor or subcontractor is:*** | ***Additional STRs required:*** |
| *a. a partner acting for and on behalf of a partnership* | *a satisfactory and valid STR in respect of any additional partner that becomes directly involved in the delivery of the Contract or subcontract (as applicable).* |
| *b. a trustee acting in its capacity as trustee of an Australian or foreign trust* | *a satisfactory and valid STR in respect of any new trustee appointed to the trust.* |
| *c. a joint venture participant* | *a satisfactory and valid STR in respect of:**(i) any new participant in the joint venture; and**(ii) any new joint venture operator if the new operator is not already a participant in the joint venture.* |
| *d. a member or head company of a Consolidated Group*  | *a satisfactory and valid STR in respect of any new head company of the Consolidated Group.* |
| *e. a member of a GST Group* | *a satisfactory and valid STR in respect of any new representative for the GST Group.* |

*(d) The Contractor must provide the Commonwealth with copies of the STRs referred to in paragraph (b) or paragraph (c) within 5 business days after a written request by the Commonwealth.*

*(e) The Contractor:*

*(i) warrants that at the Award Date it holds all valid and satisfactory STRs required for its entity type in accordance with the requirements of the Shadow Economy Procurement Connected Policy;*

*(ii) must hold all valid and satisfactory STRs required for its entity type in accordance with the requirements of the Shadow Economy Procurement Connected Policy at all times during the Contractor's Activities and the Works and, on request by the Contract Administrator, provide to the Contract Administrator a copy of any such STR;*

*(iii) must ensure that any subcontractor, if the total value of all work under the subcontract is expected to exceed $4 million (inclusive of GST), holds all valid and satisfactory STRs required for its entity type at all times during the term of the relevant subcontract;*

*(iv) must obtain and retain a copy of any STR held by any subcontractor in accordance with subparagraph (iii) and must, on request by the Contract Administrator, provide to the Contract Administrator a copy of any such STR; and*

*(v) acknowledges and agrees that a failure by the Contractor to comply with its obligations under subparagraph (i) or (ii) will be a breach of the Contract.*

*(f) For the purposes of the Contract, an STR is taken to be:*

*(i)* ***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*

*(ii)* ***valid*** *if the STR has not expired as at the date on which the STR is required to be provided or held.*”

Please acknowledge receipt of this Addendum.

Dated: [##]

Signed:

Tender Administrator on behalf of the Commonwealth