

ATTACHMENT A

TENDER DATA REQUIREMENTS LIST

Note to drafters: The following format is provided for guidance only and may be amended as required. Delete 'Core' and 'Optional' designations before release of the RFT. Optional requirements that are not included should be annotated as 'Not used'.

Tender Data Requirement Number	Tender Response Volume
	Volume 1: Overview
A-1	Tenderer's Deed of Undertaking (CORE)
B-1	Statement of Non-Compliance (CORE)
	Volume 2: Commercial and Financial
C-1	Tendered Pricing Information – General Requirements (CORE)
C-2	Tendered Pricing Information – Specific Requirements (CORE)
C-3	Adjustments (OPTIONAL)
C-4	Australian Contract Expenditure (OPTIONAL)
C-5	Tenderer's Ability to Supply (CORE)
C-6	Defect Rectification (CORE)
C-7	Technical Data and Software Rights (CORE)
C-8	Insurance (CORE)
C-9	Subcontractors (CORE)
C-10	Defence Industry Security Program Physical and Information / Cyber Security requirement (OPTIONAL)
C-11	Liability (OPTIONAL)
C-12	Economic Benefit to the Australian Economy (OPTIONAL)
	Volume 3: Technical
D-1	Description of Proposed Solution (CORE)
D-2	Problematic Substances in Supplies (CORE)
D-3	Disposal Requirements (OPTIONAL)
D-4	Final Inspection and Test Plan (OPTIONAL)
	Volume 4: Australian Industry Capability
E-1	Australian Industry Capability Schedule Requirements (OPTIONAL)

ANNEX A TO ATTACHMENT A**RESPONSE VOLUME: OVERVIEW (CORE)****TENDERER'S DEED OF UNDERTAKING (CORE)**

Note to tenderers: Tenderers must provide a deed in the following format.

This deed poll is made on the **(INSERT DATE)**

BY:

(INSERT NAME, ACN/ABN and ARBN if APPLICABLE) (Tenderer)

1. DECLARATIONS (CORE)

- 1.1 This deed poll is for the benefit of the Commonwealth of Australia as represented by the Department of Defence ABN 68 706 814 312 ('**Commonwealth**').
- 1.2 This deed poll is provided in connection with the Request for Tender **[INSERT RFT NUMBER] (RFT)** issued by the Commonwealth and the tender submitted by the Tenderer in response to the RFT (**Tender**). Terms defined in the RFT will have the same meaning when used in this deed poll.
- 1.3 The Tenderer submits its Tender to provide the Supplies solicited by the RFT at the prices tendered and, subject to the Statement of Non-Compliance included as part of its Tender, in accordance with the draft Contract.

2. ACKNOWLEDGEMENTS (CORE)

- 2.1 The Tenderer acknowledges and agrees:
 - a. to the Commonwealth's rights as set out in the RFT and this deed poll, including the Commonwealth's rights to exclude the Tender;
 - b. that the Tender has been prepared in accordance with the RFT and is accurate, complete and not misleading;
 - c. that the Commonwealth can utilise all relevant information about the Tenderer's performance on Commonwealth procurement activities;
 - d. that the Tenderer has conducted and will conduct itself during the RFT process in a manner that is at least consistent with the requirements set out in the 'Promoting Confidence in Defence Procurement Processes' section of the Defence publication *Defence and the Private Sector – Working with Integrity* which is available at <https://www.defence.gov.au/business-industry/industry-governance/industry-regulations/defence-and-private-sector-working-integrity>;
 - e. that the Tenderer has relied entirely upon its own inquiries and inspection in preparing its Tender;
 - f. that the Tenderer has not relied on any representation, letter, document or arrangement, whether oral or in writing, or other conduct of the Commonwealth, as adding to or amending the RFT, except for any addendum issued by the Commonwealth that expressly add to or amend the RFT;
 - g. that the Tenderer does not have any judicial decisions against it (including overseas jurisdictions but excluding decisions under appeal or instances where the period for appeal or payment/settlement has not expired) relating to unpaid employee entitlements where the entitlements remain unpaid;
 - h. that Defence may provide any information collected or provided during the course of the RFT process (including regarding breaches of workplace relations law, work health and safety law or worker's compensation law) to other Commonwealth entities or regulatory bodies;
 - i. that Defence, as a Commonwealth agency, is subject to legislative and administrative accountability and transparency requirements of the Commonwealth, including

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disclosures to Ministers and other Government representatives, Parliament and its Committees and the publication of information in respect of the RFT process on the successful Tenderer and information on any resultant Contract in the AusTender website.

- 2.2 The Tenderer acknowledges and agrees that:
- a. the RFT and any communication or dealings of any kind in relation to the RFT (other than this deed poll) between the Commonwealth and the Tenderer, or between the Commonwealth and any other person with an interest in the RFT, do not constitute a contract between the Commonwealth and the Tenderer;
 - b. to the extent permitted by law, no binding contract (including a process contract) or other understanding on any basis whatsoever will exist between the Commonwealth and the Tenderer unless and until a Contract is signed by the Commonwealth and the Tenderer; and
 - c. to the extent permitted by law, the Commonwealth has no liability to the Tenderer, or any other person, for any compensation on any basis whatsoever in connection with the Tenderer's participation in the RFT.

3. ACCEPTANCE (CORE)

- 3.1 The Tender submitted by the Tenderer in response to the RFT shall remain open for the Tender Validity Period specified in the Tender Details Schedule (as extended under clause 2.8 of the Conditions of Tender, if applicable).
- 3.2 The Tenderer acknowledges and agrees that the Tender is an unconditional offer and, to the extent reasonably possible, the Tenderer will obtain any necessary Authorisations to enable it to enter into any resultant Contract on an unconditional basis.

4. UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES (CORE)

- 4.1 The Tenderer represents and warrants that there has not been and will not be any collusive tendering, anti-competitive conduct, or any other similar conduct (including the exchange of information with other tenderers) by it or its Related Bodies Corporate, or any officer, employee, agent or advisor of any of them, in relation to:
- a. the preparation or lodgement of tenders;
 - b. the evaluation and clarification of tenders; and
 - c. the conduct and content of negotiations, including final Contract negotiations,
- in respect of the RFT process.
- 4.2 The Tenderer represents and warrants:
- a. that the Tender has not been compiled:
 - (i) with the improper assistance of current or former Commonwealth Personnel or Defence Service Providers;
 - (ii) with the utilisation of information improperly obtained from the Commonwealth; or
 - (iii) in breach of an obligation of confidentiality to the Commonwealth;
 - b. that it and any Related Bodies Corporate, and their officers, employees, agents and advisers have and will, during the RFT process, comply with any applicable laws or Commonwealth policies regarding the offering of unlawful inducements in connection with their Tender; and
 - c. without limiting clause 4.2a, that it and any Related Bodies Corporate have not and will not, without prior written approval from the Commonwealth, permit any current or former Commonwealth Personnel, or Defence Service Provider to contribute to, or participate in, any process or activity relating to the preparation of the Tender or the RFT process, if:

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- (i) the person was involved at any time in the planning of the procurement to which this RFT relates, the preparation of this RFT, or the management of the RFT process; or
- (ii) the person was at any time during the 12 months immediately preceding the date of issue of the RFT involved in a Defence procurement process or activity relevant or related to the RFT; and
- d. it is aware of the provisions of Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and Division 137 of the *Criminal Code Act 1995* (Cth) and that its Tender does not contain any false, misleading or deceptive, claims or representations.
- 4.3 The Tenderer represents and warrants that the following is a complete list of any offences relating to bribery, misuse of public information, false accounting or corruption or attempted corruption of a public official or similar offences that would tend to undermine public trust of which the Tenderer or its Related Bodies Corporate have been convicted during the last 7 years, or of which the Tenderer or its Related Bodies Corporate are currently charged:
- [INSERT DETAILS OF ALL SUCH OFFENCES OR IF NONE EXIST INSERT THE WORDS 'NOT APPLICABLE']**
- 4.4 The Tenderer represents and warrants that if in relation to the RFT a conflict of interest exists, arises, or appears likely to arise, that the Tenderer has not previously disclosed, the Tenderer must notify the Commonwealth promptly in writing. The Tenderer agrees to take such steps as the Commonwealth may require to resolve or otherwise deal with a conflict notified under this clause or which otherwise comes to the attention of the Commonwealth during the RFT process. The following is a complete list of all current actual, potential or perceived conflicts of interest:
- [INSERT DETAILS OR IF NONE EXIST INSERT THE WORDS 'NOT APPLICABLE']**
- 4.5 The Tenderer acknowledges and agrees that the Commonwealth may exclude the Tender from further consideration if in the opinion of the Commonwealth:
- a. the Tenderer fails to take any steps required by the Commonwealth to resolve or deal with a conflict of interest;
- b. the Tenderer fails to comply in any other respect with this clause 4; or
- c. any representation or warranty of the Tenderer under this clause 4 is incorrect or misleading in any material respect.
- 4.6 The Tenderer represents and warrants that none of the Tenderer, its Related Bodies Corporate, or officers of either:
- a. have been found in the past 3 years to have committed a material breach; or
- b. are currently in material breach,
- of any law, regulation or code that would be relevant to any resultant Contract, including those in relation to employment or workplace relations (including regulations relating to ethical employment practices), WHS or the environment, other than the following:
- [INSERT DETAILS OF PREVIOUS OR CURRENT BREACHES, OR IF NONE EXIST INSERT THE WORDS 'NOT APPLICABLE']**
- and the following actions have been taken to remedy any such material breach:
- [INSERT DETAILS OF ACTIONS TAKEN (INCLUDING POLICIES IN PLACE) TO RESPOND TO EACH SUCH BREACH, OR IF NO BREACHES ARE LISTED ABOVE INSERT 'NOT APPLICABLE']**.
- 4.7 The Tenderer represents and warrants that, in accordance with clause 1.8.3 of the Conditions of Tender, it has obtained and holds as at the Closing Time all of the satisfactory and valid STRs required under Table C-1 (or an STR receipt confirming that the STRs required under Table C-1 were requested prior to the Closing Time) of any entity that the Tenderer proposes to engage as a direct Subcontractor, where the total value of the work under the Subcontract is expected to exceed \$4 million (inc GST).

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Option: Include clause 4.8 if clauses 11.7.6 to 11.7.10 (PT PCP clauses) are included in the COC.

Note to tenderers: Tenderers are to include the following clause if the tenderer is a Reporting Entity and clauses 11.7.6 to 11.7.10 have been included in the COC.

- 4.8 The Tenderer undertakes that if, in anticipation of entering into a resultant Contract with the Commonwealth, it enters into a Reporting Entity Subcontract, the tenderer shall include in that subcontract:
- a. an obligation to comply with the Payment Times Procurement Connected Policy (PT PCP); and
 - b. using its reasonable endeavours, a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract shall include:
 - (i) obligations equivalent to those in clause 4.8a; and
 - (ii) obligations equivalent to this clause 4.8b (such that the obligations in this clause 4.8b are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).

5. SURVIVAL (CORE)

- 5.1 This deed poll survives the termination or expiry of the RFT.

6. APPLICABLE LAW (CORE)

Note to drafters: Prior to release of the RFT drafters are to insert the same jurisdiction as selected at Item 9 of the Details Schedule of the draft COC.

- 6.1 The Tenderer agrees that the laws of [INSERT JURISDICTION] apply to this deed poll and the Tenderer submits to the non-exclusive jurisdiction of the courts of that State or Territory and of any court that may hear appeals from any of those courts, for any proceedings in connection with the RFT.

7. TERMINATION AND AMENDMENT (CORE)

- 7.1 This deed poll shall not be unilaterally terminated or amended unless such termination or amendment is reduced to writing and agreed in writing by the Commonwealth.

8. CONTACT DETAILS (CORE)

- 8.1 The Tenderer's contact details for the purpose of the RFT and this deed poll are set out below.

NAME (Block Letters):

TELEPHONE NUMBER:

EMAIL ADDRESS:

Note for Deed Signature: Guidance on executing agreements, including some statutory requirements to ensure the execution is effective, are detailed in the 'Executing Agreements Fact Sheet', found on the Commercial Division intranet page at:

- <http://ibss/PublishedWebsite/LatestFinal/%7B836F0CF2-84F0-43C2-8A34-6D34BD246B0D%7D/Item/EBDAF9B0-2B07-45D4-BC51-67963BAA2394>

This guidance is developed for Commonwealth Personnel and should be used to assess the Tenderer's execution of the Deed. The Tenderer should seek its own independent legal advice on its execution of the Deed.

Executed as a Deed Poll

(INSERT APPROPRIATE TENDERER'S EXECUTION CLAUSE)

ANNEX B TO ATTACHMENT A

RESPONSE VOLUME: OVERVIEW (CORE)

STATEMENT OF NON-COMPLIANCE (CORE)

1. STATEMENT OF NON-COMPLIANCE (CORE)

- 1.1 If a tenderer does not fully comply with any clause of the annexes to the TDRL (excluding Annex A), the draft COC and attachments, and the draft SOW and annexes, it is to state its non-compliances in a Statement of Non-Compliance in the format at Table B-1. Tenderers are to include details of:
- a. the extent, justification and impact of non-compliance;
 - b. any proposed drafting amendments; and
 - c. the location in the tender where further non-compliance details and comments (if any) can be found.
- 1.2 Responses are to be in the order in which the clauses appear and refer to the relevant clause number, annex or attachment.
- 1.3 A tenderer will be deemed to be fully compliant with any clause not listed in the Statement of Non-Compliance.

Note to tenderers: Failure to indicate all non-compliances in Table B-1 may constitute false, misleading or deceptive conduct for the purposes of Australian Consumer Law (Schedule 2 to the Competition and Consumer Act 2010 (Cth)) or Division 137 of the Criminal Code Act 1995 (Cth).

Table B-1: Statement of Non-Compliance Format

	Clause No.	Non-Compliance	Comments	Location in Tender
Annexes to the TDRL (excluding Annex A)				
Draft COC				
Attachments to the draft COC				
Draft SOW				
Annexes to the draft SOW				
Draft Data Item Descriptions				

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RESPONSE VOLUME: COMMERCIAL AND FINANCIAL (CORE)

1. TENDERED PRICING INFORMATION – GENERAL REQUIREMENTS (CORE)

Draft COC reference: clause 7, Attachment B

Note to drafters: In the note below, delete references to ACE if not applicable (refer [Annex E](#)).

Note to tenderers: The 'Complex Materiel Volume 1 Pricing Workbook' (CMV1PW) collects financial information for tenders. Specific worksheets will form the basis of Attachment B of any resultant Contract. The CMV1PW also enables calculation of Australian Contract Expenditure (ACE). Refer to the CMV1PW Guide and the [ACE Guide for ASDEFCON](#) (if applicable).

Note to drafters: Update the CMV1PW to support this annex. Amend the list of worksheets for the draft Contract; for example, select the 'Price and Delivery (simple)' worksheet if the expected value is less than \$4m and an AIC program will not apply. Remove reference to the 'Schedules of Rates' worksheets if not required. If applicable, an 'Adjustments' worksheet may be added.

- 1.1 Tenderers are to complete and submit tender pricing information within the Microsoft Excel® Workbook titled 'Complex Materiel Volume 1 Pricing Workbook' (CMV1PW), including the following worksheets:
- a. [...INSERT: 'Price and Delivery' OR 'Price and Delivery (simple)'...];
 - b. Schedules of Rates (including the Schedule of Margins, Labour Rates, Material and Other Direct Cost worksheets);
 - c. Specific Prices;
 - d. Further Quantities; and
 - e. if additional currencies are required, the Constants worksheet.
- 1.2 Prices for tendered Supplies are to be stated in Australian dollars except for any portion of the Supplies to be imported from overseas, which are to be stated in foreign currency. All prices tendered are to be in Base Date dollars.
- 1.3 Tendered prices are to be inclusive of all costs (and fees, including profit) of complying with the draft Contract and associated with providing the Supplies and carrying out all matters and doing all things necessary for the due and proper performance and completion of the proposed Contract. Tenderers are not to include any contingency for exchange rate fluctuations in their tendered price.
- 1.4 Tenderers are required to submit tender prices inclusive of all overseas taxes and charges, and all Australian (Federal, State and Local Government) taxes including GST, duties and charges that are applicable at the Base Date. For each item of the Supplies on which GST will be payable, the tenderer is to indicate the amount of GST to be applied.

Note to tenderers: The Defence Cost Principles can be found here:

- <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/cost-principles>.

The Australian Contract Expenditure (ACE) Measurement Rules can be found here:

- <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance>.

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Note to drafters: In accordance with Chapter 2 of the Defence Cost Principles V3.0, there are some cases where exceptions to the Defence Cost Principles may apply.

For guidance in relation to application of the Defence Cost Principles, refer to Commercial and Financial Analysis Directorate at:

- <http://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/3BB9D30D-0C40-4E83-9AF5-78D4731A0130>

or by email at:

- casg.cfa@dpe.protected.mil.au

Where the Defence Cost Principles are not applicable, drafters should ensure that the pricing response requirements of the RFT ensure sufficient transparency of pricing in order to evaluate and establish value for money.

Delete reference to ACE Measurement Rules if an AIC program is not applicable.

1.5 Tenderers are to apply:

Option: Include this clause if the Defence Cost Principals are being used to develop the tendered pricing for this procurement and any exception under Chapter 2 of the Defence Cost Principles does not apply.

- the Defence Cost Principles when preparing tendered prices; and
- the Australian Contract Expenditure (ACE) Measurement Rules, when defining the ACE and Imported Contract Expenditure (ICE) within tendered prices.

2. TENDERED PRICING INFORMATION – SPECIFIC REQUIREMENTS (CORE)

Note to drafters: Drafters are to select the appropriate Price and Delivery worksheet as follows:

- **'Price and Delivery', if any resultant Contract will include an AIC program; or**
- **'Price and Delivery (simple)', for use when an AIC program is not required.**

Include applicable worksheet in the clauses below. Refer to the CMV1PW Guide for guidance.

2.1 **Price and Delivery Schedule.** Tenderers are to indicate their compliance with the Commonwealth's delivery requirements (if any) set out in the [... INSERT 'Price and Delivery' OR 'Price and Delivery (simple)' ...] worksheet of the CMV1PW, and indicate the best delivery that can be effected having regard to other commitments.

Note to drafters: Delete the following requirement if not applicable.

Note to tenderers: Where an 'Economic Order Quantity' is identified (if any), the Commonwealth may amend the quantity to be procured prior to the Effective Date of any resultant Contract.

2.2 **Economic Order Quantity.** Tenderers are to provide details in the 'Economic Order Quantity' columns of the [... INSERT 'Price and Delivery' OR 'Price and Delivery (simple)' ...] worksheet of the CMV1PW, if an order for a quantity of items different to that requested by the Commonwealth would offer better value for money to the Commonwealth.

Note to drafters: Delete the following requirement if not applicable.

2.3 **Further Quantities and Optional Extras.** Tenderers are to indicate if they are prepared to supply further quantities of the Supplies and/or optional extras, including any that are identified in the 'Further Quantities' worksheet of the CMV1PW. If so, tenderers are to provide details within the 'Further Quantities' worksheet, including the time period to exercise the option, and any other aspect that differs from the initial tender. Do not include further quantities and/or optional extras within the Price and Delivery Schedule worksheet.

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3. ADJUSTMENTS (OPTIONAL)

Draft COC reference clause 7.4

Note to drafters: Adjustments for exchange rates may apply if payments will be in Australian dollars only. Adjustments for labour and materials costs may apply if the Contract will not be completed within a year of the Base Date. If adjustments are applicable, refer to the CMV1PW Adjustments worksheet, and the ASDEFCON Clausebank for clauses:

- <http://drnet.defence.gov.au/casq/commercial/CommercialPolicyFramework/Pages/ASDEFCON-Templates.aspx>.

If adjustments are not applicable, the heading should be annotated as '(Not used)'.

4. AUSTRALIAN CONTRACT EXPENDITURE (OPTIONAL)

Note to drafters: If AIC program will apply to any resultant Contract (refer to clause 4 of the COC), ACE is to be identified using the 'Price and Delivery' worksheet in the CMV1PW (ie, hide the 'Price and Delivery (simple)' worksheet). If an AIC program is not required, delete the clauses below and annotate the heading as 'Not used' and amend TDRs C-1.1 and C-2 accordingly.

Note to tenderers: For guidance, refer to the [ACE Guide for ASDEFCON](#).

- 4.1 When preparing the CMV1PW, tenderers are to apply the ACE Measurement Rules to determine the planned ACE and the planned ICE for each line in the Price and Delivery Schedule, and the total planned ACE value for any resultant Contract.

Option: Include this clause if alternate / additional deeming rates are added to Attachment B.

- 4.2 In determining the ACE and ICE within the Price and Delivery Schedule, tenderers are to use the deeming rates listed in section 3 of the ACE Measurement Rules and the alternate and additional deeming rates specified by the Commonwealth under clause 4 of Attachment B to the draft COC.

Note to tenderers: The Total ACE Value (refer COC clause 4.2) may be different to but should be consistent with the ACE values in the Price and Delivery Schedule in the CMV1PW.

- 4.3 Tenderers are to propose a Total ACE Value to be achieved in accordance with clause 4.2.3 of the draft Contract.

5. TENDERER'S ABILITY TO SUPPLY (CORE)

- 5.1 Tenderers are to provide the following information:

- a. the following details of the tenderer, as applicable:
 - (i) the full name of the tenderer;
 - (ii) any trading or business name;
 - (iii) if a company, the registered office, principal place of business and an outline of the company structure;
 - (iv) the date and place of incorporation;
 - (v) for a foreign entity, details of its registration, incorporation and place of business in Australia, the name of any Australian representative and its ABN (if any); and
 - (vi) if an Australian company, its ACN/ARBN and ABN as applicable;
- b. details of how the tenderer would complete the requirements outlined in the draft SOW;
- c. details of the tenderer's background, experience and resources relevant to its ability to perform any resultant Contract;
- d. details of any other matters relating to commercial, technical or financial capacity that may materially affect the tenderer's ability to perform any resultant Contract;

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- e. details of the personnel the tenderer proposes to use (ie, names of the individuals, intended extent of involvement in the assignment, and the individuals' qualifications and experience);
- f. information on other assignments or any other matter which the tenderer considers to be relevant to its competence; and

Note to drafters: If a tenderer states that it is participating in the ACVP, refer to the ACVP register for confirmation. Information on eligibility criteria and participating suppliers is available at:

- <http://ibss/PublishedWebsite/LatestFinal/%7B836F0CF2-84F0-43C2-8A34-6D34BD246B0D%7D/Item/683f4f8b-b6af-4a7d-8388-ca7b493a114c>

Note to Tenderers: The Approved Contractor Viability Program (ACVP) prequalifies, as financially viable, a small number of key suppliers. Information on the ACVP, including eligibility criteria and the register of participating suppliers, is available at:

- <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/program-guidelines>.

- g. whether the company is a participant in the Approved Contractor Viability Program (ACVP) (ie, listed in the ACVP register at the time of tender lodgement).

- 5.2 Tenderers are to provide a written statement as to whether or not they, and their officers, employees, agents or any proposed subcontractors, have had any non-compliances with the Commonwealth Supplier Code of Conduct. The statement is to include a description of the circumstances of any such non-compliance.

Option: Include this clause if the procurement is at or above the relevant procurement threshold, and does not meet the exemptions set out at Appendix A to the CPRs.

Note that if a Defence specific exemption from Division 2 of the CPRs applies, this option is still to be used.

Note to tenderers: In performing any resultant Contract, the tenderer is to comply with its obligations under the Workplace Gender Equality Act 2012 (Cth). Information about the coverage of the Workplace Gender Equality Procurement Principles is available from the Workplace Gender Equality Agency at:

- <https://www.wgea.gov.au/what-we-do/compliance-reporting/wgea-procurement-principles>

- 5.3 If the tenderer is a Relevant Employer, the tenderer is to:

- a. provide a current letter of compliance issued by the Workplace Gender Equality Agency (WGEA) as part of its tender; or
- b. advise that it is a Relevant Employer as part of its tender and provide a current letter of compliance issued by WGEA prior to executing any resultant Contract with the Commonwealth.

- 5.4 For the purposes of clause 5.3, Relevant Employer means an employer who has been a Relevant Employer under the Workplace Gender Equality Procurement Principles for a period of not less than 6 months. The Supplier will continue to be obligated as a Relevant Employer until the number of its employees falls below 80.

Option: This clause must be used when a procurement is conducted by open tender, is subject to the CPRs, and has an estimated value over \$4 million (inc GST).

Note to tenderers: The Shadow Economy Procurement Connected Policy obligates the Commonwealth to obtain satisfactory and valid Satisfactory Tax Records (STRs) from tenderers. For further information about this policy, refer to:

- <https://treasury.gov.au/policy-topics/economy/shadow-economy/procurement-connected-policy>.

- 5.5 Tenderers are to:

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- a. provide as part of their tender any of the following STRs that are applicable to the tenderer; and
- b. in accordance with clause 1.8.3 of the Conditions of Tender, obtain and hold any of the following STRs that are applicable to a relevant Subcontractor:

Table C-1: Tenderer: Subcontractor STR Requirements

If the tenderer / subcontractor (as the case may be) is:	STRs required:
(a)	(b)
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 any resultant Contract or Subcontract (as applicable);
c. a trustee acting in its capacity as trustee of a trust;	a satisfactory and valid STR in respect of the: (i) trustee; and (ii) the trust;
d. 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;
e. 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;
f. a member of a GST Group;	a satisfactory and valid STR in respect of the: (i) the GST Group member; and (ii) the GST Group representative.

- 5.6 If a tenderer has requested any of the STRs required under clause 5.5 but the STR has not been issued by the Australian Taxation Office prior to the Closing Time, the tenderer is to provide as part of their tender the STR receipt issued by the Australian Taxation Office confirming that the STR was requested prior to the Closing Time.

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Option: This clause must be used when a procurement has an estimated value above \$4 million (inc GST) and is not subject to a Defence exemption under paragraph 2.6 of the CPRs.

Note to tenderers: The Payment Times Procurement Connected Policy imposes obligations on Commonwealth contractors with an annual income of over \$100 million to pay invoices under their subcontracts (up to \$1 million (inc GST)) within 20 days. For further information, refer to:

- <https://treasury.gov.au/small-business/payment-times-procurement-connected-policy>.

5.7 Tenderers are to include the boxes below in their tender, and identify whether or not the Tenderer is a 'Reporting Entity' for the purposes of the Payment Times Procurement Connected Policy (PT PCP) by ticking the appropriate box.

- The tenderer **is** a Reporting Entity.
- The tenderer **is not** a Reporting Entity.

Note: A Reporting Entity means a 'Reporting Entity' within the meaning of Payment Times Reporting Act 2020 (Cth) (PTR Act).

Note to drafters: This clause 5.8 must only be used if the Commonwealth intends to use the PEPPOL framework for any resultant Contract, and the parties agree to use that framework. However, if the Commonwealth Pay On-Time Policy does not apply (refer to the link in the note to tenderers), the PEPPOL framework and this clause should be removed prior to RFT release.

Note to tenderers: Commonwealth Pay On-Time Policy requires the Commonwealth to make payments within maximum payment terms, depending on the applicability of the Pan-European Public Procurement On-Line (PEPPOL) framework. The maximum payment term will be:

- 5 days, where both parties have the capability to deliver and receive electronic invoices (e-invoices) through the PEPPOL framework and have agreed to use e-invoicing; or
- 20 days where the PEPPOL framework does not apply.

Further information on the Pay On-Time Policy is available at:

- <https://www.finance.gov.au/publications/resource-management-guides/supplier-pay-time-or-pay-interest-policy-rmg-417>.

5.8 Tenderers are to include the boxes below in their tender, and identify whether or not the Tenderer has the capability to use electronic invoicing through the Pan-European Public Procurement On-Line (PEPPOL) framework.

- The tenderer **does** have the capability for the PEPPOL framework to apply.
- The tenderer **does not** have the capability for the PEPPOL framework to apply.

Option: Include these clauses if the procurement is valued at over \$200,000 (GST Inclusive).

Note to tenderers: In accordance with the Buy Australian Plan and to support transparency in Australian Government procurements, tenderers for contracts worth over \$200,000 (GST Inclusive) are required to disclose their country of tax residency. For further information, see the Department of the Treasury, Department of Finance and the Australian Tax Office:

- <https://treasury.gov.au/policy-topics/taxation/country-tax-residency-disclosures>;
- <https://www.finance.gov.au/business/buyaaustralianplan>; and
- <https://www.ato.gov.au/businesses-and-organisations/international-tax-for-business/working-out-your-residency>.

This information will not be used to exclude a tenderer from participating in the RFT process. Queries relating to the collection and use of data identifying an entity's country of tax residency can be directed to the Department of the Treasury at MNETaxTransparency@treasury.gov.au.

5.9 Tenderers are to provide:

ANNEX C TO ATTACHMENT A

	a.	the tenderer's country of tax residency; and
	b.	the tenderer's ultimate parent entity's country of tax residency.
5.10		In responding to clause 5.9, if the tenderer or the tenderer's ultimate parent entity has multiple tax residencies, each of the countries of which they are a tax resident shall be disclosed.
5.11		Tie-breaker rules (where an entity is considered a resident of one treaty country only for the purposes of that treaty) are not relevant in determining how to respond to clauses 5.9 and 5.10.

6. DEFECT RECTIFICATION (CORE)

Draft COC reference: clause 8.2

- 6.1 Tenderers are to provide details of any warranties, for significant items of Supplies, available from relevant manufacturers or suppliers that will extend beyond the relevant Defect Rectification Period.

7. TECHNICAL DATA AND SOFTWARE RIGHTS (CORE)

Draft COC reference: clause 5

Note to tenderers: Tenderers are to ensure that any restrictions in the tendered TDSR Schedule would not materially limit the achievement of Commonwealth objectives in respect of the Supplies or the tenderer's compliance with warranties under clause 5 of the draft COC. The ASDEFCON Technical Data and Intellectual Property Commercial Handbook can be accessed at:

- <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/intellectual-property-framework>.

- 7.1 Tenderers are to provide a draft TDSR Schedule in the form of Attachment C to the draft COC by specifying any proposed restrictions that will apply to the Commonwealth's rights to sublicense specified TD and Software under clause 5.2.2b(ii) of the draft COC.

8. INSURANCE (CORE)

Draft COC reference: clause 9

Note to tenderers: Refer to clause 9.1 of the draft Contract information on the Approved Contractor Insurance Program (ACIP) and the current ACIP status of participating companies. For insurance policies other than ACIP approved insurance policies, the Commonwealth will seek comprehensive details from the preferred tenderer(s) during negotiations for any resultant Contract. The Commonwealth reserves the right to request additional insurance policies based on any circumstances assessed as being relevant to the Commonwealth's risk assessments.

- 8.1 Tenderers are to indicate in their Statement of Non-Compliance the extent to which they do not comply with the insurances required by the draft COC (provided that tenderers with ACIP status are deemed compliant in relation to the insurances that are within their ACIP approval).
- 8.2 Tenderers are to identify in the 'Specific Prices' worksheet of the CMV1PW, details of all costs associated with the insurance policies covered in the tenderer's insurance response.

9. SUBCONTRACTORS (CORE)

Draft COC reference: clause 11.7

Note to drafters: In the clause below, consider the expected value of the procurement in determining an appropriate value threshold for subcontracts of interest to the Commonwealth.

- 9.1 Tenderers are to provide details of any Subcontractors that the tenderer proposes to use under the Contract where the value of the work to be subcontracted exceeds \$[...DRAFTER TO INSERT PRIOR TO RELEASE OF RFT...] in the 'Subcontractors' worksheet of the CMV1PW.

ANNEX C TO ATTACHMENT A

10. DEFENCE INDUSTRY SECURITY PROGRAM PHYSICAL AND INFORMATION / CYBER SECURITY REQUIREMENT (OPTIONAL)

Draft COC reference: clause 11.8

Note to drafters: Include this clause if DISP membership at Level 1 or above applies. If the RFT is to include classified information, drafters should consult their Project Security Officer.

Note to tenderers: Refer to the Details Schedule in the draft COC regarding the DISP membership level for Physical Security and Information / Cyber Security elements, and Communications Security (COMSEC) material transmission requirements, for any resultant Contract.

For further information and access to the Defence Security Principles Framework (DSPF), refer to the Security Classification and Categorisation Guide attached to the draft Contract, or contact the Contact Officer specified in Tender Details Schedule.

- 10.1 Tenderers are to provide the following details for all premises proposed in their tender to be used for the storage of classified documents, classified assets, or the housing of ICT systems for the processing of data, up to and including the Physical Security and Information / Cyber Security DISP membership levels identified in the Details Schedule of the draft COC:
- a. physical address of facility;
 - b. facility accreditation(s) held (type and level), when granted and by whom; and
 - c. ICT system accreditations(s) held (type and level), when granted and by whom.
- 10.2 If appropriate DISP membership levels are not held, then tenderers are to indicate their willingness to undergo the process to obtain the requisite DISP membership.
- 10.3 Tenderers are to provide the above information in relation to all proposed Subcontractors who will require access to security classified information.

11. LIABILITY (OPTIONAL)

Draft COC reference: clause 10.6 and 9

Note to drafters: Refer to clause 10.6 of the draft COC for notes on liability risk assessments.

Note to tenderers: Liability caps and insurance requirements in clauses 10.6 and 9 of the draft COC are based on a Commonwealth liability risk assessment conducted in accordance with the Defence Liability Principles and Liability Risk Assessment template, which can be accessed at:

- <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/liability-risk-management>.

- 11.1 If a tenderer proposes to limit its liability on an alternative basis to that set out in clause 9.6 of the draft COC (eg, by proposing a liability limitation or exclusion additional to those set out in clause 10.6 of the draft COC), the tenderer is to provide the following details:
- a. the terms of the tenderer's proposed limitation of liability, including their proposed Limitation Amount set out in clause 10.6.1 [or ' cap for clause 10.6.3' if Option B in clause 10.6 of the draft COC is selected] of the draft COC;
 - b. an explanation of why the tenderer requires a limitation of its liability regime different to that proposed in clause 10.6 of the draft COC; and
 - c. the impact (if any) of these changes on the insurance requirements of the draft COC.

ANNEX C TO ATTACHMENT A

12. ECONOMIC BENEFIT TO THE AUSTRALIAN ECONOMY (OPTIONAL)

Note to drafters: This clause must be included if the expected value of any resultant Contract is above \$1 million (including GST).

Note to tenderers: For an explanation of economic benefit considerations, refer to:

- https://www.finance.gov.au/sites/default/files/2024-07/consideration-of-broader-economic-benefits-in-procurement_july-2024.pdf

12.1 Tenderers are to provide details of the direct economic benefits that any resultant Contract would achieve for the Australian economy.

ANNEX D TO ATTACHMENT A

RESPONSE VOLUME: TECHNICAL (CORE)

1. DESCRIPTION OF PROPOSED SOLUTION (CORE)

Draft Statement of Work reference: Annex A

Note to tenderers: Where a standard (approved by a recognised body) is specified in the Specifications at Annex A to the draft SOW, tenderers are to show in their tender responses, their capability to meet that standard.

Note to drafters: Amend the following clause to the needs of the procurement.

- 1.1 Tenderers are to provide a description of their proposed solution for satisfying the requirements defined in the Specification at Annex A to the draft SOW, including:
- a. the identification of each product / component including hardware and Software that, as a discrete portion, perform a function of the end item, and/or are discrete items identified for maintenance purposes, or to control the product's design (ie, configuration items);
 - b. a description of the products / components in sufficient detail so that it is clear to the Commonwealth how the required functionality will be met, including a description of:
 - (i) each product and component within the proposed Supplies;
 - (ii) internal interactions or interfaces between the products and components; and
 - (iii) any interfaces between the products / components and the external environment;
 - c. if any external elements are required to enable the functionality to be met (eg, utilities, other facilities elements, consumables), a description of these external elements;
 - d. if installation is required, a brief description of the installation requirements;

Note to tenderers: In the following clause 'obsolete' refers to, for hardware, that the item is no longer in production, and for Software, that the item is no longer supported.

- e. the expected remaining life of the products and components before they are classified as obsolete, and the expected support to be available once classified as obsolete; and

Note to tenderers: The following subclause seeks to identify any significant development that is required. This should not be interpreted as an invitation to tender developmental solutions.

- f. if any development is required, details of:
 - (i) the level of development for each product or component; and
 - (ii) the perceived technical risks and the tenderer's approach to mitigating each risk.
- 1.2 Tenderers may provide product brochures in responding to clause 1.1; however, these brochures are to be accompanied by any additional information that is needed to address the requirements of clause 1.1 and to demonstrate that the required functionality will be met.

Option: If existing support is not relevant to tender selection, this option can be deleted.

Note to tenderers: Responses to clause 1.3 should be no more than five pages of text (not including printed material eg, certificates, brochures, etc).

- 1.3 Tenderers are to describe the existing support available for the Supplies, as applicable to:
- a. engineering support, including local capabilities for modifying the Supplies and any additional capabilities that would need to be sought from overseas;
 - b. maintenance support, including local maintenance venues and capabilities and any additional capabilities that would need to be sought from overseas;
 - c. supply support, including the availability of spares, local distribution points, lead times, etc; and
 - d. training support, including the availability of local training, location of training venues, required qualifications of instructors, etc.

ANNEX D TO ATTACHMENT A

Note to drafters: Develop clause 1.4 for each procurement. A simple support concept may be included below; otherwise, refer to a separate document provided with the tender request. Recommended Support Resources and Training should be based on the support concept and, subject to negotiations, included in the Price and Delivery Schedule of any resultant Contract.

(Example) The Commonwealth is seeking tenderer recommendations for Support Resources (see clause 1.5) and Training to enable the following support concepts and needs to be satisfied:

- a. **equipment may be deployed on operations anywhere in Australia for periods up to 30 days with any resupply requiring up to eight days;**
- b. **equipment may be operated at three different locations simultaneously and sharing of spares between the locations is not feasible;**
- c. **Defence personnel will undertake user / unit-level Maintenance on equipment, while deeper levels of Maintenance will be undertaken by a support contractor;**
- d. **all equipment that will be owned by the Commonwealth will require Codification;**
- e. **Defence Personnel operating equipment Supplies will have the following minimum qualifications: [...DRAFTER TO INSERT...];**
- f. **Defence Personnel maintaining equipment Supplies will have the following minimum qualifications: [...DRAFTER TO INSERT...];**
- g. **other than a basic toolkit, no additional equipment or materials will be available to the Defence maintainers, other than the equipment and materials provided as Supplies; and**
- h. **equipment and Support Resources may be transported by [...DRAFTER TO INSERT...].**

1.4 [...INSERT DESCRIPTION OF THE SUPPORT CONCEPTS AND NEEDS...].

Note to drafters: Amend the following clause to the specific needs of the procurement.

- 1.5 Tenderers are to provide recommendations for the following categories of Support Resources, which they consider should be acquired by the Commonwealth to satisfy the support concepts and needs described in clause 1.4:
- a. spare parts;
 - b. packaging (ie, special-to-type packaging or other high-value packaging);
 - c. Support and Test Equipment (S&TE);
 - d. Technical Data, including operating and maintenance publications, storage and transportation procedures, drawings and Training Materials, as applicable;
 - e. installation drawings, if installation is required in Commonwealth facilities / vehicles; and
 - f. Training Equipment.
- 1.6 Tenderers are to provide the following information for each of the Support Resources recommended in response to clause 1.5:
- a. the item name and manufacturer's part number;
 - b. the name and address of the item manufacturer or distributor;
 - c. if codified in the NATO codification system, the NATO Stock Number (NSN);
 - d. if a spare part, the nature of the spare (ie, repairable or non-repairable);
 - e. the recommended quantity of each item;
 - f. the unit price and delivery details for each item / group of items (to be included within the Price and Delivery Schedule required under TDR C-2).
- 1.7 Tenderers are to provide a brief justification (ie, no more than one page) for the recommended range and quantity of Support Resources.
- 1.8 Tenderers are to describe their proposal for Training, as applicable to the requirements of the draft Contract and which enable the support concepts defined in clause 1.4, including:
- a. course descriptions (eg, course name, duration and an outline of the syllabus);
 - b. if applicable, required participant competencies and any other prerequisites;

ANNEX D TO ATTACHMENT A

- c. any constraints on course delivery (eg, location, class size and/or delivery dates); and
- d. the price and delivery details for each course (to be included within the Price and Delivery Schedule required under TDR C-2).

2. PROBLEMATIC SUBSTANCES IN SUPPLIES (CORE)

Draft Statement of Work reference: clause 7.1

Note to drafters: Policies in the note below may need to be provided to tenderers if not available on Defence's internet site. Include known 'Approved Substances' in Annex C to the draft SOW.

Note to tenderers: See the Defence Safety Manual for Hazardous Chemicals and DEFLOGMAN Part 2 Volume 3 Chapter 3 for Ozone Depleting Substances and Synthetic Greenhouse Gases. Refer to the Defence Radiation Safety Manual for Problematic Sources. Problematic Substances and Problematic Sources will not be Approved if their use infringes on any legislation of the Commonwealth, State or Territory of Australia (eg, asbestos containing materials).

Refer to Annex C to the draft SOW for Problematic Substances and Problematic Sources that are pre-Approved. Any other Problematic Substances are to be identified by the preferred tenderer.

- 2.1 Tenderers are to identify the existence and location of any of the following in the Supplies:
- a. Hazardous Chemicals comprising:
 - (i) prohibited carcinogens or restricted carcinogens, each as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
 - (ii) hazardous chemicals where use is restricted by regulation 382 of the *Work Health and Safety Regulations 2011* (Cth), including polychlorinated biphenyls; and
 - (iii) lead that, in relation to supporting the Supplies, requires a lead process as described by regulation 392 of *Work Health and Safety Regulations 2011* (Cth);
 - b. Dangerous Goods;
 - c. Ozone Depleting Substances and/or Synthetic Greenhouse Gases; and
 - d. Problematic Sources.

3. DISPOSAL REQUIREMENTS (OPTIONAL)

Draft Statement of Work reference: clause 4.4

Note to drafters: If disposal requirements are known, delete this clause and amend the TDRL.

- 3.1 Tenderers are to summarise all aspects of the requested Supplies that have special disposal requirements due to legislative, regulatory, security, environmental, or any other restrictions.

4. FINAL INSPECTION AND TEST PLAN (OPTIONAL)

Draft Statement of Work reference: clause 5.1

Notes to drafters: Only request a draft FI&TP if it is relevant to tender evaluations. Only include additional clauses from DID-V&V-MGT-FI&TP in Table D-1 if relevant to the tender evaluation.

Notes to tenderers: FI&T activities described in the draft FI&TP should address the full scope of the Supplies (indicating an ability to meet specified requirements), even if only briefly.

- 4.1 Tenderers are to provide a draft FI&TP in accordance with at least the sections of DID-V&V-MGT-FI&TP identified in Table D-1.

Table D-1: Minimum requirements for the draft FI&TP

Section	Name
6.2.1	General (6.2.1.1 to 6.2.1.4)
6.2.2	FI&T Procedures (6.2.2.1 and 6.2.2.4e only)
	[... INSERT ANY ADDITIONAL REQUIREMENTS FOR TENDER ...]

ANNEX E TO ATTACHMENT A

RESPONSE VOLUME: AUSTRALIAN INDUSTRY CAPABILITY (OPTIONAL)

Draft COC reference: clause 4

Note to drafters: Include this annex if an AIC program will apply to any resultant Contract (refer to COC clause 4). If the Contract Price could exceed \$20m, seek advice from AIC Division. If an AIC program is not required, the clauses can be deleted and the heading annotated as 'Not used'.

Note to tenderers: Tenderers should familiarise themselves with Australian Industry Capability (AIC) policy and guidance available at:

- <https://www.defence.gov.au/business-industry>;
- <https://www.defence.gov.au/about/strategic-planning/defence-industry-development-strategy>; and
- <https://www.defence.gov.au/business-industry/export/strategy>.

1. AUSTRALIAN INDUSTRY CAPABILITY SCHEDULE REQUIREMENTS (OPTIONAL)

1.1 Tenderers are to:

- a. provide a draft Australian Industry Capability (AIC) Schedule in the format of Table E-1 below; and
- b. describe their approach to maximising participation of competitive Australian Industry in their supply chain for the provision of the Supplies.

ANNEX E TO ATTACHMENT A

Table E-1: Australian Industry Capability Schedule

Note to tenderers: The AIC Schedule should include all items of Supplies and related work performed by Australian Industry. If necessary, break the scope of work into separate line items to better describe each activity performed by Australian Industry.

Number	AIC Activity Description	Company Name and ACN/ABN/NZBN	Price and Delivery Schedule Cross-Reference	ACE Value (AUD)	Location (including Postcode)	SME (Y/N)	Veterans (Y/N)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
01							
02							
03							

Notes on Table E-1:

- (a) **Number:** Identification number for each entry.
- (b) **AIC Activity Description:** A description of the Supplies to be provided by, and/or related work to be undertaken by, Australian Industry. A separate AIC activity description (and line in the table) is required for each work package and company.
- (c) **Company Name and ACN/ABN/NZBN:** Name of the Australian Entity (ie, Contractor or Subcontractor in Australia and New Zealand) undertaking the activity ('various' is not an acceptable response). Include the ACN (or ARBN or ABN) or the NZCN (or NZBN), as applicable.
- (d) **Price and Delivery Schedule Cross-Reference:** Each line item in the table (above) should be traceable to one or more line items in Attachment B to the COC, or the Price and Delivery Schedule in the tenderer's response to Annex C of the tender data requirements.
- (e) **ACE Value:** Value of work performed by Australian Industry (as at the Base Date), determined in accordance with the ACE Measurement Rules. It is the GST exclusive dollar value (to the nearest \$1000) of work committed in the Contract that will be performed by Australian Industry.
- (f) **Location:** Set out the location (including the postcode) where the majority of the work for the activity will be performed.
- (g) **SME:** Set out whether the entity is a Small to Medium Enterprise (SME).
- (h) **Veterans:** Has the organisation signed the Veterans Employment Commitment (yes/no)? (refer: veteransemployment.gov.au).