

UPDATE SUMMARY

ECI Head Contract – TWO CONTRACTOR PLANNING PHASE APPROACH

JANUARY 2025

***Note to readers: by virtue of the amendments made to clause 2 of the ECI Head Contract described below, the ECI Head Contract delivery model is now a two contractor planning phase approach (as summarised in the “Contract” section below).***

1. INVITATION TO REGISTER INTEREST

| Topic/Subject | Reference (if applicable) | Description |
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| AusTender | Clause 1.6(b) | Amendment to update the contact details for the AusTender Helpdesk. |
| Evaluation of Tenders | Clause 2(b)(iv) | Amendment to provide that the Commonwealth may (in its absolute discretion) decide not to evaluate or continue to evaluate any material provided in excess of any page limit specified in a Schedule. |
| Tender Minimum Form and Content Requirements and Evaluation Criteria | Clause 2(c) | Amendments to align with the updated ECI Head Contract Tender Documents minimum form and content requirements and evaluation criteria. |
| Shadow Economy Procurement Connected Policy | Clauses 3.1(b), 3.2(b) and 23, Paragraph (g) of the Registration of Interest Form and Schedule E – Statement of Tax Record | Amendments to reflect the updated Shadow Economy Procurement Connected Policy. |
| Tender Process Acknowledgement | Clause 5(d) | Amendment to clarify the Commonwealth’s right to vary, suspend, discontinue or terminate the registration of interest process at any time and for any reason. |
| Notification of Registrations of Interest | Clauses 6(a)(i)A and (ii) | Amendments to provide that Applicants will be notified in writing if their Registration of Interest is non-conforming, successful or unsuccessful, consistent with the updated Commonwealth Procurement Rules. |
| Australian Veterans | Clauses 19(c) and (d) | Amendments to provide that a successful Applicant’s Local Industry Capability Plan (at time of tender) must include information about the tenderer’s approach to providing opportunities for, and engagement of, Australian veterans. |
| Fraud and Corruption | Clause 22.6(f) | Amendments to include known or suspected Fraud or Corruption which is occurring or has occurred in connection with the registration of interest process as a new Strategic Notice Event, consistent with the Commonwealth Fraud and Corruption Policy. |
| Environmental Sustainability | Clause 25 | Amendments to include a new clause 25 which draws the Applicant’s attention to, and sets out relevant requirements in respect of, the Environmentally Sustainable Procurement Policy. |
| Australian Skills Guarantee | Clause 26 | Amendments to include a new clause 26 which draws the Applicant’s attention to, and sets out relevant requirements in respect of, the Australian Skills Guarantee Procurement Connected Policy. |
| Commonwealth Supplier Code of Conduct | Paragraph (e) of the Registration of Interest Form | Amendment to include an acknowledgement from the Applicant that it will at all times act consistently with the Commonwealth Supplier Code of Conduct and will otherwise ensure that is officers’ and employees’ dealings with Commonwealth personnel are at all times conducted in a professional, respectful and courteous manner and without harassment. |
| ESD and WOL Manager | Schedule A – Proposed Resources | Amendment to remove the requirement for Applicants to nominate an "ESD and WOL Manager", consistent with amendments to the ECI Head Contract Tender Documents and Conditions of Contract. |
| General | Various | Further amendments, including minor drafting and tidy-up amendments, amendments to the naming convention for the ECI Head Contract and consequential amendments. |

1. DISCLAIMER AND CONFIDENTIALITY aGREEMENT

| Topic/Subject | Reference (if applicable) | Description |
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| Tender Process Acknowledgement | Clause 4(c) | Amendment to clarify the Commonwealth’s right to vary, suspend, discontinue or terminate the Process at any time and for any reason. |
| Fraud and Corruption | Clauses 24(d), (g) and (q) | Amendments to include known or suspected Fraud or Corruption which is occurring or has occurred in connection with the Process as a new Strategic Notice Event, consistent with the Commonwealth Fraud and Corruption Policy. |
| General | Various | Further amendments, including minor drafting and tidy-up amendments, amendments to the naming convention for the ECI Head Contract and consequential amendments. |

1. TENDER DOCUMENTS

| Topic/Subject | Reference (if applicable) | Description |
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| AusTender | Clause 1.2(b) | Amendment to update the contact details for the AusTender Helpdesk. |
| Environmental Sustainability | Clauses 3.1(b)(iv), 4(a)(x) and 30, Tender Schedule F - Commonwealth Procurement Rules Compliance, Tender Schedule L - Environmentally Sustainable Procurement and various consequential | Amendments to:   * include a new evaluation criterion and Tender Schedule L titled "Environmentally Sustainable Procurement" consistent with the Department of Climate Change, Energy, the Environment and Water’s "Environmentally Sustainable Procurement Policy"; * provide that the completion and lodgement of part of Tender Schedule L - Environmentally Sustainable Procurement is a minimum form and content requirement for Tenders; * include a new clause 30 which draws the Tenderer’s attention to, and sets out relevant requirements in respect of, the Environmentally Sustainable Procurement Policy; * move the environmental sustainability requirements previously set out in Tender Schedule F (previously G) - Commonwealth Procurement Rules Compliance into the new Tender Schedule L - Environmentally Sustainable Procurement; and * consequential amendments to defined terms, including to insert a definition for "Environmental Sustainability Principles" and to remove references to the ESD and WOL Manager. |
| Shadow Economy Procurement Connected Policy | Clauses 3.3(b) and 29 and Tender Schedule J – Statement of Tax Record | Amendments to reflect the updated Shadow Economy Procurement Connected Policy. |
| Industry Inclusion and Skills | Clauses 4(a)(v) and 31, Tender Particulars and Tender Schedule E - Industry Inclusion and Skills | Amendments to:   * provide for a new evaluation criterion and Tender Schedule E titled "Industry Inclusion and Skills" which incorporates the existing Indigenous Procurement Policy and local industry capability requirements and the new Department of Employment and Workplace Relations' "Australian Skills Guarantee Procurement Connected Policy"; * include a new clause 31 which draws the Tenderer’s attention to, and sets out relevant requirements in respect of, the Australian Skills Guarantee Procurement Connected Policy; and * insert two new Tender Particulars to reflect the application of the Major Construction Project and Flagship Construction Project provisions. |
| Minimum Warranty Periods | Clause 4(a)(ix)A and Item 3 of Tender Schedule I - Miscellaneous Matters For Evaluation | Amendments to insert a new item 3 (Minimum Warranty Periods) in Tender Schedule I - Miscellaneous Matters For Evaluation which provides for Tenderers to nominate minimum warranty periods for specified items. |
| Evaluation of Tenders | Clause 4(d)(iv) | Amendment to provide that the Commonwealth may (in its absolute discretion) decide not to evaluate or continue to evaluate any material provided in excess of any page limit specified in a Tender Schedule. |
| Tender Process Acknowledgement | Clause 7.3(b) | Amendment to clarify the Commonwealth’s right to vary, suspend or discontinue or terminate the tender process at any time and for any reason. |
| Notification of Tenders | Clauses 9(a)(i) and (ii)B | Amendments to provide that Tenderers will be notified in writing if their Tender is non-conforming or otherwise unsuccessful, consistent with the updated Commonwealth Procurement Rules. |
| Commercial in Confidence Information | Clause 20 and Tender Schedule I - Miscellaneous Matters For Evaluation | Amendments to provide that comments or feedback on the Design Documentation or any other matters in relation to the ECI Activities under the Contract would not be considered Commercial-in-Confidence Information. |
| Australian Veterans | Clauses 26.2(e)(i)A and (ii)B | Amendments to provide that a Tenderer’s Local Industry Capability Plan will be used by the Contractor and the Commonwealth during the term of the Contract to demonstrate and validate engagement of, and commitment to, opportunities provided for Australian veterans. |
| Statutory Declaration | (Previous) Statutory Declaration in the Tender Form, sections 1(f) and 11 of the Tender Form and various consequential | Amendments to:   * remove the Statutory Declaration previously included in Part 3 of the Tender Documents with consequential amendments throughout the Tender Conditions; and * streamline the declarations previously given under the Statutory Declaration and in certain Tender Schedules in a new section 1(f) and 11 of the Tender Form. |
| Commonwealth Supplier Code of Conduct | Section 10 of the Tender Form | Amendments to refer the Tenderer to, and for the Tenderer to agree that it will at all times act consistently with, the Commonwealth Supplier Code of Conduct. |
| Quality Plan | Tender Schedule A - Draft Project Plans | Amendment to request that the Tenderer provide details of its quality assurance procedure, system or framework in its response to Tender Schedule A - Draft Project Plans. |
| Local Industry Capability and Indigenous Procurement Policy | Sections 1(c), 1C, 2A(7) and (8) and 2B(3)(d) of Tender Schedule E - Industry Inclusion and Skills | Amendments to sections 1 (Indigenous Procurement Policy) and 2 (Local Industry Capability) of Tender Schedule E - Industry Inclusion and Skills to:   * require the Tenderer to include subcontracts proposed in its Indigenous Participation Plan when indicating the value, percentage and number of subcontracts which will be let to industry participants; * provide that the Tenderer may, for example, include a description of the process for assessing both potential local and Australian veteran-owned businesses in its response to section 2B(3); and * require the Tenderer to lodge details of its intended approach to Indigenous industry engagement, including Indigenous subcontractors. |
| General | Various | Further amendments, including minor drafting and tidy-up amendments, amendments to the naming convention for the ECI Head Contract and consequential amendments. |

1. CONTRACT

| Topic/Subject | Reference (if applicable) | Description |
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| Environmental Sustainability | Clauses 1.1, 17 and 18.18, Annexure 5 - Supplier Environmental Sustainability Plan and various consequential | Amendments to:   * delete the ESD and WOL Plan and its associated requirements and definitions, including to delete references to the ESD and WOL Manager and to remove the ESD requirements from clause 17 so that it relates to whole of life only; * re-name the Environmental Management Plan to the "Environmental Management and Sustainability Plan" and include a requirement that the Environmental Management and Sustainability Plan address all matters in the Smart Infrastructure Handbook and the Sustainable Procurement Guide; and * insert a new clause 18.18 which provides that the Contractor must comply with, and periodically report against, its Supplier Environmental Sustainability Plan annexed at Annexure 5,   consistent with the requirements of the Environmentally Sustainable Procurement Policy. |
| Australian Skills Guarantee | Clauses 1.1, 18.19 and 18.20, the Contract Particulars and Annexure 6 - Gender Equality Action Plan | Amendments to insert a new:   * clause 18.19 which provides that the Contractor must meet, and periodically report against, the Skills Guarantee Targets in its performance of the Contractor’s Activities; and * clause 18.20 and corresponding Contract Particular which provides that the Contractor must (if applicable) comply with, and report its compliance against, the Gender Equality Action Plan annexed at Annexure 6,   consistent with the requirements of the Australian Skills Guarantee Procurement Connected Policy. |
| Fraud and Corruption | Clauses 1.1, 5.11 and 21.5 | Amendments to:   * include known or suspected Fraud or Corruption which is occurring or has occurred in connection with the Contract or the Contractor’s Activities as a new Strategic Notice Event; and * streamline the Contractor’s obligations in respect of Fraud and Corruption, including to replace the previous "Fraud Control" provision with a new Strategic Notice Event and a new clause 21.5 which sets out additional obligations with which the Contractor must comply in respect of known or suspected Fraud or Corruption,   consistent with the Commonwealth Fraud and Corruption Policy. |
| Two phase ECI Head Contract – Two Contractor Planning Phase approach | Formal Agreement, definition of “Date for Delivery Phase Proposal”, “Delivery Phase Proposal”, “Other ECI Contractor”, Clauses 2.1(b), 2.3(f), 2.9, 2.10, 2.11 and 2.12 and Contract Particulars | Amendments to reflect Defence’s early contractor involvement (ECI) contract delivery model – two contractor planning phase approach, including:   * acknowledgement that the Commonwealth has entered into an initial contract for the Planning Phase with each of the Contractor and the Other ECI Contractor; * during the Planning Phase:   + each of the Contractor and Other ECI Contractor will have early involvement in the design, planning, programming and cost planning of the Works; and   + a key purpose of this model is to maximise the achievement of the ECI Objectives; * at the end of the Planning Phase and following a value for money assessment by the Commonwealth of the Delivery Phase Proposal submitted by the Contractor (and, if applicable, the delivery phase proposal of the Other ECI Contractor), the Commonwealth may:   + notify whether or not the Commonwealth wishes to proceed with the Contractor to seek to reach agreement as to the Delivery Phase Terms; and   + if so notified and subject to the achievement of Delivery Phase Approvals, elect to proceed to the Delivery Phase with the Contractor; and * if Delivery Phase Approval is not achieved under the Contract, allows the Commonwealth to proceed to have the Works executed by a third party including the Other ECI Contractor. |
| Shadow Economy Procurement Connected Policy | Clause 18.14 | Amendments to reflect the updated Shadow Economy Procurement Connected Policy. |
| Commonwealth Supplier Code of Conduct | Clause 18.17 | Amendment to include requirements in respect of, and require that the Contractor comply with, the Commonwealth Supplier Code of Conduct, consistent with the updated Commonwealth Procurement Rules. |
| Minimum Warranty Periods | Clause 3 of Annexure 1 - Estate Information | Amendment to provide that the minimum warranty period for the items specified in clause 3 of Annexure 1 - Estate Information will be inserted by the Commonwealth following selection of the successful Tenderer. |
| General | Various | Further amendments, including minor drafting and tidy-up amendments, amendments to the naming convention for the ECI Head Contract and consequential amendments. |

**DISCLAIMER:**

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