

**PART ONE – CONDITIONS OF TENDER**  
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## 1 GENERAL INFORMATION AND TENDER LODGMENT

### 1.1 General (Core)

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- 1.1.1 In conducting this RFT, the Commonwealth is seeking an outcome that will:
- a. provide the Commonwealth with value for money;
  - b. meet the Commonwealth's current and future defence capability requirements;
  - c. provide significant and sustainable benefits to the Commonwealth, defence industry and the successful tenderer; and
  - d. [...INSERT SPECIFIC OBJECTIVES IF ANY...].

### 1.2 Interpretation of Terms (Core)

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- 1.2.1 Unless a contrary intention is indicated, this Request for Tender (RFT) is interpreted in the same manner, and its terms have the same meaning, as in the draft Contract.
- 1.2.2 This RFT is an invitation to treat, and must not be construed, interpreted, or relied upon, whether expressly or by implication, as an offer capable of acceptance by any person, or as creating any form of contractual, quasi-contractual, restitutionary or promissory estoppel rights, or rights based upon similar legal or equitable grounds.
- 1.2.3 No binding contract (including a process contract) or other understanding (including, without limitation, any form of contractual, quasi-contractual, restitutionary or promissory estoppel rights, or rights based upon similar legal or equitable grounds) will exist between the Commonwealth and a tenderer unless and until any resultant Contract is signed by the Commonwealth and a successful tenderer.

**Note to drafters: For information on whether a procurement is subject to the Mandatory Procurement Procedures see the DPPM.**

**Option A: For when the procurement is subject to the Mandatory Procurement Procedures in the CPGs.**

- 1.2.4 Tenderers acknowledge that the Mandatory Procurement Procedures in the CPGs apply to this RFT process.

**Option B: For when the procurement is not subject to the Mandatory Procurement Procedures in the CPGs.**

- 1.2.5 Tenderers acknowledge that the Mandatory Procurement Procedures in the CPGs do not apply to this RFT process.

### 1.3 Inconsistency (Core)

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- 1.3.1 If there is any inconsistency between any part of this RFT, a descending order of precedence shall be accorded to the:
- a. conditions of tender;
  - b. Annexes to the conditions of tender;
  - c. draft conditions of contract;
  - d. draft Statement of Work (SOW); and
  - e. Attachments to the draft conditions of contract, other than the SOW,
- so that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail.

#### **1.4 Amendment of RFT (Core)**

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- 1.4.1 The Commonwealth may amend this RFT upon giving tenderers timely written notice of an amendment.
- 1.4.2 If the Commonwealth amends this RFT under clause 1.4.1 after tenders have been submitted, it may seek amended tenders.
- 1.4.3 Tenderers will have no claim against the Commonwealth or its officers, employees or advisers in connection with either the exercise of, or failure to exercise the Commonwealth's rights under this clause 1.4.

#### **1.5 Termination, Suspension or Deferral of RFT (Core)**

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***Option A: For when the procurement is not subject to the Mandatory Procurement Procedures in the CPGs.***

- 1.5.1 Without limiting its rights at law or otherwise, the Commonwealth may, at its discretion, suspend, defer or terminate this RFT process at any time prior to the execution of a formal written Contract. The Commonwealth must notify tenderers to this effect.

***Option B: For when the procurement is subject to the Mandatory Procurement Procedures in the CPGs.***

- 1.5.2 Without limiting its rights at law or otherwise, the Commonwealth may, at its discretion, suspend, defer or terminate this RFT process where:
- a. it is in the public interest to do so;
  - b. no tenderer represents value for money;
  - c. no tenderer meets the Conditions of Participation, if any, at clause 3.4;
  - d. no tenderer meets the Essential Requirements, if any, at clause 3.5; or
  - e. no tenderer is fully capable of undertaking the conditions of contract, and the Commonwealth must notify tenderers to this effect.

#### **1.6 Contact Officer for RFT Inquiries (Core)**

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- 1.6.1 The Contact Officer for this RFT is:  
[...INSERT CONTACT OFFICER DETAILS...]
- 1.6.2 Tenderers must direct any questions regarding this RFT to the Contact Officer in writing.
- 1.6.3 Tenderers may submit questions to the Contact Officer up until five Working Days prior to the Tender Closing Time.
- 1.6.4 Any question submitted by tenderers is submitted on the basis that the Commonwealth may circulate tenderers' questions and Commonwealth answers to all other tenderers without disclosing the source of the questions or revealing Commercial-in-Confidence Information or the substance of a proposed tender.

#### **1.7 Industry Briefing (Optional)**

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- 1.7.1 An industry briefing will be conducted at [...INSERT PLACE...] commencing at [...INSERT TIME...] on [...INSERT DATE...]. Representatives of prospective tenderers at the briefing will be limited to [...INSERT NUMBER...] personnel. Nominations to attend the briefing shall be forwarded in writing to the Contact Officer specified in clause 1.6 by [...INSERT TIME/DATE...]. The following details are required:
- a. tenderer's name and location; and
  - b. full name of tenderer's representatives.

**Option: For when a classified industry briefing is required**

- 1.7.2 Representatives of prospective tenderers shall hold a current personnel security clearance at a minimum of [...INSERT CLASSIFICATION LEVEL...] level. Prospective tenderers shall provide the following additional details for their representatives:
- a. nationality;
  - b. date and place of birth; and
  - c. current personnel security clearance and the Department which issued the clearance.

- 1.7.3 Industry briefings are conducted for the purpose of providing background information only. Tenderers should note the effect of clauses 1.4.1 and 2.4.2a. Tenderers shall not rely on a statement made at the industry briefing as amending or adding to this RFT unless that amendment or addition is confirmed by the Commonwealth in writing.

**1.8 Part, Joint and Alternative Tenders (Core)**

- 1.8.1 The Commonwealth will not consider a joint tender for the Services.
- 1.8.2 The Commonwealth will not consider a part tender for the Services.

**Option A: For when alternative tenders will not be considered**

- 1.8.3 The Commonwealth will not consider an alternative tender for the Services not meeting the draft SOW.

**Option B: For when alternative tenders will be considered**

- 1.8.4 The Commonwealth may, at its discretion consider a tender that does not comply with the draft SOW only if the tender:
- a. proposes a solution which satisfies the functionality of the draft SOW and any identified essential requirements in the draft SOW;
  - b. is otherwise a complete tender response;
  - c. fully describes the advantages, disadvantages, limitations and capabilities of the proposed solution; and
  - d. includes sufficient information to allow comparison of the alternative tender with tenders that comply with the draft SOW.
- 1.8.5 Failure to provide the information requested in clause 1.8.4 may result in the Commonwealth not considering the alternative tender.

**1.9 Alterations, Erasures or Illegibility (Core)**

- 1.9.1 Any alterations or erasures made to a tender by a tenderer shall be initialled by the tenderer. Tenders containing alterations or erasures that are not initialled, or pricing or other information that is not stated clearly and legibly, may be excluded from consideration.

**1.10 Unintentional Errors of Form (Core)**

- 1.10.1 If the Commonwealth considers that there are unintentional errors of form in a tender, the Commonwealth may request the tenderer to correct or clarify the error but will not permit any material alteration or addition to the tender.

**1.11 Copies of Tenders (Core)**

- 1.11.1 The tenderer must lodge the original and [...INSERT NUMBER OF COPIES...] hard copies of the tender and any supporting documentation (such as brochures, handbooks and sample drawings). The original shall be marked as the original and each copy sequentially marked with a copy number. In the event of any discrepancy between any copy and the original, the original takes precedence.

**Option: For when an electronic copy of the tender may be requested.**

- 1.11.2 Tenderers shall, in addition to lodging the hard copies required by clause 1.11.1, lodge with the original tender one electronically stored copy of the tender and supporting documentation, with read only access, which is machine readable in [...INSERT FORMAT...] format. In the event of any discrepancy between any electronically stored copy and the original, the original shall take precedence.

**1.12 Lodgment of Tenders (Core)**

- 1.12.1 Tenders shall be lodged in accordance with the Tender Lodgment Procedures and Late Tenders policy detailed in the DPPM, on or before 12.00 noon local time of the Tender Box Location on [...INSERT DATE...] ('the Tender Closing Time') at:  
[...INSERT TENDER BOX ADDRESS...] (the 'Tender Box Location').
- 1.12.2 Tenders lodged after the Tender Closing Time may be excluded from consideration in accordance with the policy set out in the DPPM. The tenderer must include [...INSERT RFT NUMBER...] on the packaging of the tender.

**1.13 Preparation and Transmission of Classified Tenders (Optional)****Note to tenderers: For information on preparation and transmission of classified tenders and for access to the Defence Security Manual (DSM), tenderers should contact the Contact Officer.**

- 1.13.1 Classified content in tenders shall be avoided where possible. If this cannot be achieved, tenders containing classified content shall be prepared and transmitted as follows:
- a. for Australian tenders, in accordance with Part 2:33 of the Defence Security Manual (DSM) as amended from time to time; and
  - b. for overseas tenders, in accordance with the applicable industry security information system regulations issued by the appropriate government security authority in their country. If transmission involves transmission by diplomatic bag, the overseas tenderer shall use the diplomatic bag of its own government.

**Option: For when a Security Classification and Categorisation Guide is required.**

- 1.13.2 Tenderers must classify information in their tenders in accordance with the Security Classification and Categorisation Guide at Attachment F to the draft conditions of contract.

- 1.13.3 If only part of a tender contains classified content, that part may be segregated from the remainder of the tender for separate transmission. However, both parts of the tender are subject to the Tender Closing Time specified in clause 1.12. Care should therefore be taken to ensure that sufficient time is allowed for tenders to be received by the Tender Closing Time when secure means of transmission are used.

**1.14 Defence Security Clearance Requirements (Core)**

- 1.14.1 On request by the Commonwealth, the tenderer shall comply with the Commonwealth personnel security clearance processes as detailed in Part 2:20 of the DSM as amended from time to time, including obtaining the level of security clearance required by the Commonwealth.

**1.15 Australian Government Requirements (Core)****Note to drafters: Please ensure the references in this clause are to the version of the policy current at the date of release of the document.**

- 1.15.1 Tenderers should familiarise themselves with the following Commonwealth policies:
- a. Australian Government policy and guidance on Australian Industry Capability as detailed in the Defence Procurement Manual (DPPM);

- b. Conflict of Interest policy as detailed in the DPPM;
- c. Contract Publication policy as detailed in the DPPM;
- d. Defence and Industry policy as detailed in the *Defence and Industry Policy Statement*;
- e. Defence Equity and Diversity policy as detailed in DI(G) PERS 35-3;
- f. Defence Stocktaking policy as detailed in DI(G) LOG 4-3-014;
- g. Equal Opportunity for Women in the Workplace policy as detailed in the DPPM;
- h. Fraud Control policy as detailed in DI(G) FIN 12-1;

**Option: For when the Services are valued over \$5million.**

- i. Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in the DPPM;
- j. Information Management policy as detailed in DIMPI 1/2004; DIMPI 5/2001; and DI(G) ADMIN 10-6;
- k. Hazardous Substances policy as detailed in the DPPM; and
- l. Ozone Depleting Substances Policy as detailed in DPPM.

**Note to drafters: The Contact Officer is responsible for ensuring that copies of the relevant documents are either publicly available or available on request.**

**Note to tenderers: Electronic copies of relevant Defence documents are available on the internet. Any other documents required can be provided by the Contact Officer.**

**An electronic version of the DPPM can be accessed via the 'Contracting' link on the DMO internet site at <http://www.defence.gov.au/dmo/>. The AusTender website may be found at <http://www.tenders.gov.au>.**

- 1.15.2 Tenderers acknowledge that as a Commonwealth agency, the Department of Defence is subject to legislative and administrative accountability and transparency requirements of the Commonwealth, including 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 on the AusTender internet site. Any Contract resulting from this RFT process will also be subject to these requirements, including that contractual provisions (and related matters) may be disclosed to Parliament and its Committees.
- 1.15.3 In addition, tenderers acknowledge that if they are chosen to enter into a Contract, the resulting Contract will oblige the contractor to give the Commonwealth access to the contractor's premises, and access to records and accounts relevant to or impacting upon performance of work under the resulting Contract, and the Commonwealth will be entitled to copy these records and accounts. The purposes for which the Commonwealth will be entitled to obtain access and make copies may include audits under the *Auditor-General Act 1997*. The contractor will also be obliged to ensure that Subcontracts contain equivalent obligations and rights.
- 1.15.4 The tenderer agrees that the Department of Defence may provide any information collected or provided during the course of this process (including regarding breaches of workplace relations law, occupational health and safety law or workers' compensation law) to other Commonwealth agencies or regulatory bodies.
- 1.15.5 The Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tenderer has not fully complied with a judgment against it from any Court or Tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or

payment/settlement has not expired) relating to a breach of workplace relations law, occupational health and safety law or workers' compensation law.

**Note to drafters: A procurement is a covered procurement if the estimated value of the property or services being procured is above \$80,000 and it is not exempt in accordance with Annex A to the CPGs. If the procurement is specifically exempt from complying with the Mandatory Procurement Procedures as a result of a Defence or DMO specific exemption (a list of Defence and DMO specific exemptions is found at chapter 1.2 of the DPPM) the procurement will still be classed as a covered procurement (albeit exempt from the MPPs) and the following clauses must be used if the procurement involves:**

- a. clothing and footwear; or
- b. cleaning services or building management services.

**The Procurement Method Approver is responsible for determining whether a Defence or DMO specific exemption applies to the procurement.**

**Option: For when the procurement is a covered procurement involving clothing and footwear.**

1.15.6 The Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tenderer is not accredited or seeking accreditation with the [Homeworkers' Code of Practice](#) prior to signing the Contract. This clause does not apply to tenderers that do not have a commercial presence in Australia.

**Option: For when the procurement is a covered procurement involving cleaning services or building management services.**

1.15.7 The Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tenderer does not, for its cleaning services within Australia:

- a. provide its cleaning employees with the appropriate training, supervision, equipment and materials to enable them to perform their job safely and efficiently;
- b. provide its cleaning employees with a written duty schedule at each site listing specific tasks to be completed; and
- c. set fair and reasonable workloads for all cleaning employees and provide adequate staff to achieve the required performance levels.

## **1.16 Publishing and Downloading this RFT on AusTender (Optional)**

**Note to drafters: These clauses must be used if this RFT will be published or made available for download through the AusTender internet site at <https://www.tenders.gov.au>.**

- 1.16.1 Tenderers acknowledge that access to and use of AusTender is subject to certain terms and conditions displayed on the AusTender internet site (<https://www.tenders.gov.au>). Tenderers must comply with those terms and conditions as well as any processes and procedures as advised on AusTender from time to time.
- 1.16.2 Tenderers should inform themselves of the security measures and other aspects of AusTender prior to using it for any matter related to this RFT. The Commonwealth makes no representations or warranties about the security or unauthorised access to any information transmitted via the internet to, or from, AusTender and accepts no responsibility arising from any use or attempted use of AusTender by a tenderer.
- 1.16.3 If the Commonwealth amends this RFT prior to the Tender Closing Time specified in clause 1.12, then the Commonwealth will issue an amendment to this RFT via

AusTender. The Commonwealth will endeavour to issue an electronic advice to tenderers who have registered with AusTender for that purpose. Tenderers acknowledge that it is their responsibility to ensure that their registration details are up to date and accurately recorded in order to receive notification of any amendment to this RFT.

- 1.16.4 The Commonwealth accepts no responsibility if a tenderer fails to become aware of any alteration, correction or notice, which would have been apparent from a visit to the AusTender internet site or from other information available from the Contact Officer specified in clause 1.6.
- 1.16.5 Tenderers acknowledge that it is their responsibility to download any amendment to this RFT via AusTender. The RFT or any amendment published through the AusTender internet site will take precedence over any other version of the RFT or amendment if there is any inconsistency.
- 1.16.6 All queries and requests for AusTender technical or operational support must be directed to the AusTender Help Desk, telephone: 1300 651 698, email: tenders@finance.gov.au. The AusTender Helpdesk is available between 9am and 5pm Australian Capital Territory (ACT) Local Time, Monday to Friday (excluding ACT and national public holidays). Tenderers should note that all questions related to this RFT must be addressed to the Contact Officer in accordance with clause 1.6.

#### **1.17 Public Announcements (Optional)**

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- 1.17.1 Tenderers must not make any public announcement or other statement which refers or is connected to the RFT process, including on any matter related to the Commonwealth's evaluation of tenders, the proposed contractual arrangements or the Services, without first consulting the Contact Officer, except as otherwise required by law or the rules of any stock exchange or similar body on which the tenderer is listed. This clause does not apply to routine marketing activities promoting a tenderer's product or to information that is public knowledge other than by breach of this clause.

## **2 MATTERS CONCERNING TENDER RESPONSE**

### **2.1 Period of Tender (Core)**

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- 2.1.1 The Commonwealth requires that tenders submitted in response to this RFT remain open for acceptance for a period of not less than [...INSERT PERIOD...] after the Tender Closing Time.
- 2.1.2 The Commonwealth may request an extension of the period identified in clause 2.1.1.

### **2.2 Language of Tenders (Core)**

---

- 2.2.1 The tender, including all attachments and supporting documentation, shall be written in English.
- 2.2.2 All measurements in the tender are to be expressed in Australian legal units of measurement unless otherwise specified by the Commonwealth.

### **2.3 Tender Preparation (Core)**

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- 2.3.1 Unless otherwise agreed in writing, tenderers are to complete and provide the information requested in the Annexes to these conditions of tender and must do so in the manner requested in the Annexes to the conditions of tender.

### **2.4 Tenderers to Inform Themselves (Core)**

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- 2.4.1 Tenderers are solely responsible for:
- a. examining this RFT, any documents referenced in or attached to this RFT and any other information made available by the Commonwealth to tenderers in connection with the RFT process;
  - b. obtaining and examining all further information which is obtainable by the making of reasonable inquiries relevant to the risks, contingencies, and other circumstances having an effect on their tenders; and
  - c. satisfying themselves as to the accuracy and completeness of their tenders including tendered prices.
- 2.4.2 Tenderers prepare and lodge a tender on the tenderers' acknowledgment and agreement that:
- a. they do not rely on any representation, letter, document or arrangement, whether oral or in writing, or other conduct as adding to or amending these conditions other than amendments in accordance with clause 1.4;
  - b. they do not rely upon any warranty or representation made by or on behalf of the Commonwealth, except as are expressly provided for in this RFT, but they have relied entirely upon their own inquiries and inspection in respect of the subject of their tender;
  - c. the Commonwealth shall not be responsible for any costs or expenses incurred by tenderers in complying with the requirements of this RFT;
  - d. neither these conditions nor the tender give rise to contractual obligations between the Commonwealth and the tenderer;
  - e. they are aware of Part V of the *Trade Practices Act 1974*, and Division 137 of the *Criminal Code* under which giving false or misleading information is a serious offence; and
  - f. they are aware of the impact of the *Auditor General Act 1997* on their participation in the RFT and any resultant Contract.

## **2.5 Use of Tender Documents (Core)**

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- 2.5.1 Tenderers submit documents in response to this RFT on the basis that the Commonwealth may use, retain and copy the information contained in those documents for the purposes of:
- a. evaluation, selection and preparation of any result Contract with respect to this RFT;
  - b. verifying the currency, consistency and adequacy of information provided under any other RFT process conducted by the Commonwealth; and
  - c. the development of any other RFT process conducted by the Commonwealth.
- 2.5.2 In addition to clause 2.5.1, tenderers should note that the Commonwealth may provide the tender documentation, or any part of the tender documentation, to a third party for the purposes of assisting the Commonwealth in tender evaluation and in the preparation of any resultant Contract. The Commonwealth may, at its discretion, obtain appropriate confidentiality undertakings from the third party prior to disclosure.
- 2.5.3 Tenders will be treated by the Commonwealth as Commercial-in-Confidence Information. The Commonwealth may require a tenderer to execute a deed of confidentiality before being provided with some or all of the information included in the RFT. Whether or not such a deed is required, and without limiting a tenderer's obligations under the deed, tenderers must:
- a. treat the RFT and any information provided to tenderers by or on behalf of the Commonwealth in connection with the RFT process as Commercial-in-Confidence Information;
  - b. not disclose or use that information except as strictly required for the purpose of developing a tender in accordance with the RFT; and
  - c. not disclose that information to another tenderer.
- 2.5.4 Nothing in clause 2.5 affects the ownership of the Intellectual Property in the information contained in the tender documents.

## **2.6 Unconditional Tenders (Core)**

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- 2.6.1 Each tenderer must make an unconditional offer and, to the extent reasonably possible, obtain any necessary government or other approvals, consents or authorisations to enable it to enter into any resultant Contract on an unconditional basis. Before any tender is accepted, the tenderer may be required to confirm that its tender is unconditional and that it is able to enter into any resultant Contract on an unconditional basis.

## **2.7 Return of Information to the Commonwealth (Core)**

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- 2.7.1 Without limiting the provisions of any deed of confidentiality that may be required by the Commonwealth under clause 2.5.3, the Commonwealth may, at its discretion and at any stage during or after the RFT process, require that all information (whether Commercial-in-Confidence or otherwise) provided to tenderers in any tangible form (including all copies of the information) be:
- a. returned to the Commonwealth, and that tenderers promptly return all such information to the address identified by the Commonwealth; or
  - b. destroyed by the tenderer, in which case the tenderer must promptly destroy all such information and provide the Commonwealth with written certification of such destruction.

## **2.8 Collusive Tendering (Core)**

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- 2.8.1 Tenderers and their officers, employees, agents and advisers must not engage in any collusive tendering, anti-competitive conduct, or any other similar conduct in relation to:

- a. the preparation or lodgment of tenders;
  - b. the evaluation and clarification of tenders; and
  - c. the conduct and content of negotiations, including final Contract negotiations, in respect of this RFT or RFT process or any other RFT process being conducted by the Commonwealth in respect of its defence capability requirements.
- 2.8.2 For the purposes of clause 2.8.1, collusive tendering, anti-competitive conduct, or any other similar conduct may include the disclosure, exchange and clarification of information (in any form) whether or not such information is Commercial-in-Confidence to the Commonwealth or any other tenderer or any other person or entity.
- 2.8.3 In addition to any other remedies available under any law or any Contract, the Commonwealth may, at its discretion, immediately reject any tender lodged by a tenderer that, in the Commonwealth's reasonable opinion, has engaged in any collusive tendering, anti-competitive conduct, or any other similar conduct with any other tenderer or any other person in relation to the preparation or lodgment of tenders whether in respect of this RFT or RFT process or any other RFT process being conducted by the Commonwealth in respect of its defence capability requirements.

## **2.9 Unlawful Inducements (Core)**

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- 2.9.1 Tenderers and their officers, employees, agents and advisers must, at all times during the RFT process, comply with any applicable laws or Commonwealth policies regarding the offering of unlawful inducements in connection with the preparation of their tender.

## **2.10 Improper Assistance (Core)**

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- 2.10.1 Tenders that, in the opinion of the Commonwealth, have been compiled:
- a. with the improper assistance of employees of the Commonwealth or former employees of the Commonwealth, including its agency Department of Defence or contractors or former contractors of the Commonwealth;
  - b. with the utilisation of information unlawfully obtained from the Commonwealth;
  - c. in breach of an obligation of confidentiality to the Commonwealth; or
  - d. contrary to the conditions of tender in this RFT,
- may be excluded from further consideration.

## **2.11 Conflict of Interest (Core)**

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- 2.11.1 A tenderer must not, and must ensure that its officers, employees, agents and advisers do not, place themselves in a position that may or does give rise to an actual, potential or perceived conflict of interest between the interests of the Commonwealth and the tenderer's interests during the RFT process.
- 2.11.2 If during the RFT process a conflict of interest arises, or appears likely to arise, the tenderer must notify the Commonwealth immediately in writing and take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the conflict. If the tenderer fails to notify the Commonwealth or is unable or unwilling to resolve or deal with the conflict as required, the tender may be excluded from further consideration.

### 3 EVALUATION OF TENDERS

#### 3.1 Cost Investigation of Sole Source Tenders (Optional)

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**Note to drafters: This clause should only be included in sole source RFTs.**

3.1.1 For the purposes of establishing, in respect of a sole source tender, that the tendered price is fair and reasonable and constitutes value for money for the Commonwealth, the Commonwealth's cost investigation staff may, prior to signature of any resultant Contract, conduct a cost investigation of the tendered price. On request by the Commonwealth the tenderer shall facilitate any such cost investigation.

#### 3.2 Tender Evaluation (Core)

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3.2.1 Tenders will be evaluated on the basis of best value for money consistent with Commonwealth procurement policies.

#### 3.3 Minimum Content and Format Requirements (Optional)

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**Note to drafters: This clause should be used when the procurement is subject to the Mandatory Procurement Procedures in the CPGs.**

3.3.1 Subject to clause 1.10, the Commonwealth will exclude a tender from further consideration if the Commonwealth considers that:

- a. the tender does not meet the requirements set out in clause 2.2.1; or
- b. the tenderer has not provided a signed Declaration by Tenderer in the form required at Annex A to the conditions of tender.

#### 3.4 Conditions of Participation (Optional)

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**Note to drafters: This clause should be used when the procurement is subject to the Mandatory Procurement Procedures in the CPGs.**

3.4.1 The Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tenderer does not comply with the Commonwealth's security requirements set out in clause 1.13 and 1.14.

#### 3.5 Essential Requirements (Optional)

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**Note to drafters: Select option A or B where the tender includes essential requirements in the Statement of Work.**

**Option A: For when the procurement is subject to the Mandatory Procurement Procedures in the CPGs and the SOW contains essential requirements.**

3.5.1 The Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tender does not comply with an essential requirement identified in the draft SOW.

**Option B: For when the procurement is not subject to the Mandatory Procurement Procedures in the CPGs and the SOW contains essential requirements.**

3.5.2 The Commonwealth may exclude a tender from further consideration if the Commonwealth considers that the tender does not comply with an essential requirement identified in the draft SOW.

### 3.6 Evaluation Criteria and Process (Core)

**Note to drafters: Additional or alternative evaluation criteria may be included in the following list where appropriate.**

**Option A: For when the procurement is subject to the Mandatory Procurement Procedures in the CPGs.**

3.6.1 Subject to clause 3.2 to 3.5 the criteria to be applied for the purposes of evaluation will include the following, not in any order of importance:

**Option B: For when the procurement is not subject to the Mandatory Procurement Procedures in the CPGs.**

3.6.2 Subject to clause 3.2 the criteria to be applied for the purposes of evaluation will include the following, not in any order of importance:

- a. the tenderer's degree of overall compliance with the RFT;
- b. the extent to which the tendered solution is assessed as meeting the draft SOW;
- c. the extent to which the tenderer is compliant with the draft conditions of contract and the assessed level of risk relating to the negotiation of a Contract acceptable to the Commonwealth;
- d. past performance of contractual obligations of the tenderer;
- e. the nature and extent to which the tender response proposes IP rights to the Commonwealth and the assessed level of risk relating to the negotiation of IP provisions acceptable to the Commonwealth;
- f. the proposed corporate structure and the financial and corporate viability and capability of the tenderer and Subcontractors to fulfil Contract obligations;
- g. the extent to which the tender response satisfies the AIC requirements contained within this RFT; and
- h. the tendered prices and pricing structure, including proposed payment schedule.

**Option B: For when the procurement is not subject to the Mandatory Procurement Procedures in the CPGs.**

3.6.3 Tenderers should note that the list of criteria in clause 3.6.2 is not exhaustive.

3.6.4 The Commonwealth may use material tendered in response to one evaluation criterion in the evaluation of other criteria and consider additional information related to any evaluation criteria.

3.6.5 The Commonwealth may, subject to its IP and Commercial-in-Confidence obligations, use material tendered by the tenderer in other RFT processes conducted by the Commonwealth for purposes consistent with the Commonwealth's procurement objectives.

3.6.6 Tender responses which are incomplete or clearly non-competitive may be excluded from consideration at any time during the evaluation process at the Commonwealth's discretion but the Commonwealth may still consider such tenders and seek clarification under clause 3.6.10.

3.6.7 The Commonwealth may develop a shortlist of tenders at any time during the evaluation process. Shortlisting will be conducted on the basis of an assessment of the tenders against the requirements of this RFT and tenders that are not included on any shortlist will not generally be considered further.

**Note to tenderers: Tenderers should note in relation to clause 3.6.8 that most contractors are engaged subject to an obligation not to disclose information obtained through the services they provide to the Commonwealth.**

- 3.6.8 Tenderers shall not use the improper assistance of employees, or former employees of the Commonwealth, or information obtained unlawfully or in breach of an obligation of confidentiality to the Commonwealth in compiling their tenders. Tenderers should note the requirement in Annex A to provide a declaration to this effect. The Commonwealth may not further consider a tender that has been compiled using such assistance or information.
- 3.6.9 Nothing in this RFT nor in any tender received shall be construed as to give rise to contractual obligations, express or implied. Neither the lowest priced tender nor any tender will necessarily be accepted by the Commonwealth. No contract shall be created in relation to a tender until a formal Contract is executed between the Commonwealth and the tenderer.
- 3.6.10 The Commonwealth may seek clarification from, and enter into discussions with, any or all of the tenderers in relation to their tender. The Commonwealth may seek additional information in respect of any aspect of a tender at any time. The Commonwealth may request to visit the facilities of tenderers and their proposed Subcontractors to verify or clarify attributes of the tendered Services. The Commonwealth may use such information in interpreting the tender and in evaluating the cost and risk to the Commonwealth of accepting the tender. The Commonwealth is not under any obligation to take into account additional information provided by a tenderer in response to a request and will not do so where that would introduce unfairness into the evaluation process.
- 3.6.11 If a tenderer is found to have made a false, misleading or deceptive claim or statement, the Commonwealth may exclude the tender from further consideration at any time.

### **3.7 Use of Former Defence Personnel in Tender Preparation (Optional)**

**Note to drafters: the following clauses are to be used where the Services are commercially sensitive or are valued over \$5 million.**

- 3.7.1 Without limiting the operation of clause 3.6.8, the tenderer shall not, without written approval from the Commonwealth, permit a person to contribute to, or participate in, any process relating to the preparation of the tenderer's tender or the RFT process, if:
- a. the person was involved at any time in the planning of the project to which this RFT relates, the preparation of this RFT, or the management of the RFT process; or
  - b. the person was at any time during the six months immediately preceding the date of issue of this RFT:
    - (i) employed by the Department of Defence;
    - (ii) a member of the ADF; or
    - (iii) a consultant or other service provider engaged by the Department of Defence or the ADF to provide services relating to Defence procurement processes.

### **3.8 Negotiation (Core)**

- 3.8.1 The Commonwealth may conduct negotiations with one or more tenderers.

### **3.9 Debriefing of Tenderers (Core)**

- 3.9.1 Tenderers may request an oral or written tender debriefing following the award of a Contract in relation to this RFT. Tenderers requiring a debriefing should contact the Contact Officer specified in clause 1.6.1.

- 3.9.2 Tenderers will be debriefed against the evaluation criteria contained in clause 3.6. In accordance with Commonwealth policy, a tenderer will not be provided with information concerning other tenders, except for publicly available information such as the name of the successful tenderer and the total price of the winning tender. No comparisons with other tenders will be made.