

ANNEXES TO THE CONDITIONS OF TENDER

DECLARATION BY TENDERER (CORE).....1

STATEMENT OF NON-COMPLIANCE (CORE)4

INFORMATION TO BE PROVIDED BY TENDERERS (CORE).....5

EMPLOYER SPONSORED SUPERANNUATION (CORE)9

AUSTRALIAN INDUSTRY CAPABILITY (CORE)11

ANNEX A**DECLARATION BY TENDERER (CORE)****1. DECLARATION BY TENDERER (CORE)**

1.1 Tenderers must provide a declaration in the following format:

(...INSERT NAME OF TENDERER AND A.C.N./A.R.B.N. and A.B.N...) submits its tender to provide the Supplies solicited by this RFT [...INSERT RFT NUMBER...] at the prices tendered and, subject to the statement of non-compliance, in accordance with the draft Contract. In preparing this tender, the tenderer acknowledges that it is aware of Part V of the *Trade Practices Act 1974* and *Division 137* of the *Criminal Code* and that its tender does not contain any false, misleading or deceptive misrepresentations, claims or statements.

By submitting its tender, the tenderer acknowledges and agrees:

- a. to the Commonwealth's rights in the RFT;
- b. that tenders are prepared in accordance with the RFT and are 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 conducted itself in a manner that is at least consistent with the Commonwealth's obligations to act in accordance with the applicable Commonwealth procurement framework, for example to ensure certainty of costs and value for money;
- e. that the Commonwealth can rely on the tender in accurately assessing compliance with the RFT, risks and risk management options and value for money in accordance with the RFT;
- f. that representations made in the tender, when incorporated in any resultant Contract, will be fully complied with by the tenderer;
- g. that they have informed the Commonwealth about Services that contain any form of asbestos;
- h. that the tenderer has no judicial decisions against it (excluding decisions under appeal) relating to unpaid employee entitlements where the entitlements remain unpaid;
- i. that the tenderer has fully complied with any 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;

ANNEX A

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.

Note to tenderers: Delete this paragraph (j) if the tenderer does not have a commercial presence in Australia.

- j. that the tenderer is accredited or is seeking accreditation with the [Homeworkers' Code of Practice](#); and

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

- k. for its cleaning services within Australia, that the tenderer:
 - (i) provides its cleaning employees with the appropriate training, supervision, equipment and materials to enable them to perform their job safely and efficiently;
 - (ii) provides its cleaning employees with a written duty schedule at each site listing specific tasks to be completed; and
 - (iii) sets fair and reasonable workloads for all cleaning employees and provides adequate staff to achieve the required performance levels.

2. ACCEPTANCE (CORE)

2.1 This tender remains open for acceptance until (...INSERT DATE...), being (...INSERT NUMBER...) months from the Tender Closing Time.

3. IMPROPER ASSISTANCE (CORE)

3.1 This tender has been compiled without the improper assistance of employees or former employees of the Commonwealth, and without the use of information obtained unlawfully or in breach of an obligation of confidentiality to the Commonwealth.

REGISTERED OFFICE OR OTHER ADDRESS OF TENDERER:

POSTAL ADDRESS:

TELEPHONE NUMBER:

FACSIMILE NUMBER:

ANNEX A

Signature of tenderer of person authorised to sign the tender on behalf of the tenderer

SIGNATURE:

DATE OF SIGNATURE:

NAME (Block Letters):

POSITION HELD:

SIGNATURE OF WITNESS:

ADDRESS OF WITNESS:

NAME (Block Letters):

Company executive nominated to receive correspondence/inquiries

NAME (Block Letters):

TELEPHONE NUMBER:

FACSIMILE NUMBER:

ANNEX B

STATEMENT OF NON-COMPLIANCE (CORE)

1. STATEMENT OF NON-COMPLIANCE (CORE)

- 1.1 If tenderers are non-compliant with any clause of the RFT they must state their non-compliances in accordance with the Statement of Non-Compliance Format at Table 1. Responses must be in the order in which the clauses appear and refer to the relevant clause number, Annex or Attachment.
- 1.2 Tenderers are deemed to be compliant with all the clauses of the RFT, except where non-compliance is expressly stated in this Annex.
- 1.3 Responses to the effect of "partial compliance" will be evaluated by the Commonwealth as non-compliance.

Note to tenderers: Failure to indicate all non-compliances in Table 1 may constitute false, misleading or deceptive conduct for the purposes of Part V of the Trade Practices Act 1974 or Division 137 of the Criminal Code.

Table 1: Statement of Non-Compliance Format

	Clause Number	Comments
Conditions of tender		
Annexes to the conditions of tender		
Draft conditions of contract		
Attachments to draft conditions of contract		

Note to tenderers: If appropriate, non-compliance may be indicated against groups of clauses e.g. clause 6.1 to 6.3 inclusive. If an offer does not comply with a particular clause, the tenderer must state:

- a. the extent, justification and impact of non-compliance;**
- b. full details of any alternative proposal, including for the draft conditions of contract an alternative clause; and**
- c. the location in the tender where non-compliance details and/or comments can be found.**

ANNEX C**INFORMATION TO BE PROVIDED BY TENDERERS (CORE)****1. TENDERER'S ABILITY TO SUPPLY (CORE)**

1.1 Tenderers must provide the following information:

- a. detail of how they would complete the Commonwealth's requirements as outlined in the Statement of Work at Attachment A to the draft Contract;
- b. details of the tenderer's background, experience and resources relevant to its ability to meet the requirement;
- c. 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 firm or company, details of its registration, incorporation and place of business in Australia, the name of any Australian representative and its A.C.N./A.R.B.N. and its A.B.N. as applicable;
 - (vi) if an Australian company, its A.C.N./A.R.B.N. and its A.B.N. as applicable;
 - (vii) if the company has any third party quality certification (i.e. International Standards Organisation (ISO) compliance), details of that certification; and
 - (viii) if the tenderer is a Small Business;
- d. details of the personnel the tenderer proposes to use i.e. names of the individuals, intended extent of involvement in the assignment, and the individuals' qualifications and experience; and
- e. information on other assignments or any other matter which the tenderer considers to be relevant to its competence.

2. TENDER PRICES AND PRICE BASIS (CORE)

- 2.1 Tenderers must provide a statement of proposed price based on the tenderer's intended approach and basis for pricing. To assist evaluation of the offer the statement should distinguish between service fees (that include overheads and profits) and other costs that might be associated with conduct of the assignment, such as travel and accommodation costs to which overhead and profit shall not be applied. These associated costs should be identified as separate line items. Separate line items should include the amount of GST associated with each item.
- 2.2 Prices are to be tendered in Australian dollars, and the Commonwealth will make contractual payments on that basis.
- 2.3 Tendered prices are to be inclusive of all costs of complying with the conditions of tender and associated with providing the Services and carrying out all matters and doing all things necessary for the due and proper performance and completion of the draft Contract. These include licence fees, royalty payments, arranging customs clearance and services of representatives. Prices and charging rates offered in the tender may not be modified during tender evaluation.

Note to tenderers: The successful tenderer will be responsible for ensuring that it is registered in accordance with the requirements of the GST Act (as amended). Tenderers who are non-residents of Australia and are not currently registered for GST, are advised to obtain independent advice on whether they will be required to be registered for GST purposes in accordance with the GST Act.

ANNEX C

If the successful tenderer fails to quote an A.B.N. in its dealings with the Commonwealth, the Commonwealth may be required to withhold a percentage of all payments under any resultant Contract in accordance with Australian taxation legislation.

- 2.4 The tenderer will be responsible for all overseas taxes and charges and all Australian (Federal, State and Local Government) taxes and charges.
- 2.5 A Goods and Services Tax (GST) is applicable to Services which are taxable supplies within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act). Tender prices shall be GST inclusive.

3. INSURANCE (CORE)

Note to tenderers: On the basis of the details and pricing information provided by a tenderer, the Commonwealth may require the tenderer's current insurance policy be maintained or extended and any proposed insurance policies be obtained. The Commonwealth may also require that additional insurance policies be obtained following negotiation with the preferred tenderer.

- 3.1 Tenderers shall detail whether they are currently insured in respect of the requirements of the draft Contract. Such detail shall include:
- a. name of the insurance provider;
 - b. type of insurance;
 - c. terms and coverage of the insurance including conditions and exclusions;
 - d. limits of liability per claim or occurrence and details of any aggregate limits or relevant sublimits which apply;
 - e. for a current policy, whether or not any past or current claims made under the policy have materially affected, or are likely to materially affect, the tenderer's ability to meet its obligations under any resultant Contract;
 - f. deductible amounts; and
 - g. period of insurance,
- and shall include evidence of such policies.

4. SUBCONTRACTORS (CORE)

- 4.1 Tenderers shall 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...]. Such detail shall include (for each proposed Subcontractor) the name and A.C.N./A.R.B.N. and A.B.N. of the company, the elements of work to be subcontracted, the technical significance of the work and the cost of the Subcontract.

5. GOVERNMENT FURNISHED MATERIAL (OPTIONAL)

- 5.1 Tenderers must provide details of any Government Furnished Material (GFM) they require for the performance of the Services. If the use of GFM is proposed, tenderers must provide details (including, but not limited to, the impact on the tendered price) of the effect of non-provision of GFM.
- 5.2 The decision as to whether or not GFM will be provided will be made at the sole discretion of the Commonwealth.)

6. INTELLECTUAL PROPERTY (CORE)

Note to tenderers: Tenderers should familiarise themselves with the Defence Intellectual Property Policy 2008, which can be accessed at <http://www.defence.gov.au/dmo/>.

ANNEX C

- 6.1 Tenderers must provide a list of Background IP, Foreground IP and Third Party IP that will be brought into or created under any resultant Contract.

7. COMMERCIAL-IN-CONFIDENCE INFORMATION (CORE)

- 7.1 Tenderers must provide a list of all Contract clauses and attachments considered to be Commercial-in-Confidence Information and which are therefore proposed for listing in Attachment D of the draft conditions of contract. For each clause or attachment tenderers must identify the reason the clause or attachment is considered to be Commercial-In-Confidence Information (with reference to the six reasons listed in Attachment D) and provide additional justification as to why the reason applies.

8. CONFLICT OF INTEREST (CORE)

- 8.1 Tenderers are to advise the Contact Officer (identified in conditions of tender clause 1.6):
- a. if they have any conflict of interest; or
 - b. if any conflict of interest arises in the course of tender evaluation or Contract negotiation;
- in relation to the subject matter of the tender.

9. COST INVESTIGATION OF SOLE SOURCE TENDERS (OPTIONAL)

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

- 9.1 To facilitate any cost investigation conducted by the Commonwealth 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, tenderers are to provide a cost break-down showing all elements included in the tendered price.

10. LIABILITY (CORE)

Draft conditions of contract reference: clause 6.3

Option A: For when no limitation of liability will be accepted under any resultant Contract.

Note to tenderers: Tenderers should note that the Contractor's liability under any resultant Contract shall be assessed according to common law principles.

ANNEX C

Option B: For when limitation of liability may be accepted under any resultant Contract.

Note to drafters: Prior to RFT release, drafters must conduct a liability risk assessment in accordance with the standard Defence methodology described in the Liability Risk Management Process (LRMP) guide, which can be accessed at: <http://intranet.defence.gov.au/dmoweb/sites/PP/comweb.asp?page=74269&Title=Liability%20Risk%20Management>. The liability risk assessment provides the basis for determining the limitation of liability amounts in clause 6.3 of the conditions of contract.

Note to tenderers: The Commonwealth's preference is for liability under any resultant Contract to be assessed according to common law principles. If tenderers propose a limitation of liability, they must familiarise themselves with the Defence Liability Risk Management Process (LRMP) (which can be accessed at <http://www.defence.gov.au/dmo/>). The tenderer must provide a liability risk assessment which has been conducted in accordance with the LRMP, clear details of its proposed alternative liability regime and reasons for the approach. The Commonwealth will consider the tenderer's proposed alternative regime on its merits and in the context of value for money considerations, provided the tenderer furnishes the information requested in this clause.

- 10.1 Tenderers must specify the basis for Contractor liability that they propose will apply to the Contract.
- 10.2 If a tenderer proposes to limit its liability, or limit its liability on an alternative basis to that set out in clause 6.3 of the draft conditions of contract (eg. by proposing a liability limitation or exclusion additional to those set out in clause 6.3), the tenderer must provide the following details:
- a. the terms of the limitation on the tenderer's liability;
 - b. an explanation as to why the tenderer requires a limitation of its liability regime or requires a different to that proposed in clause 6.3 of the draft conditions of contract;
 - c. a detailed assessment of the risks associated with the procurement and the likelihood and consequences of each identified risk eventuating;
 - d. a cost/benefit analysis of the proposed limitation of liability; and
 - e. full pricing details for a liability regime based on the liability regime detailed in clause 6.3 of the draft conditions of contract.

ANNEX D

EMPLOYER SPONSORED SUPERANNUATION (CORE)

Note to drafters: Further advice on how to determine the Commonwealth's liability with respect to Superannuation may be found in the DPPM.

The Superannuation Guarantee (Administration) Act 1992 provides that employees not otherwise covered by employer-sponsored superannuation shall, from 1 July 1992, receive an appropriate level of employer contribution. If the tenderer is an individual they must provide information required for eligibility assessments. The Superannuation liability of the Commonwealth in respect of the Contractor will be considered as part of the tendered price.

A response to each question below is required to determine the liability of the Commonwealth to contribute to a Regulated Superannuation Fund.

Table 1: Questions to determine Eligibility

Questions to Determine Eligibility	Tenderer's Response
1. Are you contracting as a natural person rather than a company or trust?	
2. If you are contracting as a company or trust, how many employees are there in the company or trust?	
3. If you are a partner in a partnership, do you tender for the Contract in your own personal capacity rather than on behalf of the partnership?	
4. Is the value of the labour component of this tender more than 50% of the total value of this tender?	
5. Do you already have employer-sponsored superannuation of any type for this tender?	
6. Is the value of the labour component of the tender more than \$450 in any month when payments are made? Superannuation entitlements are only to be paid when the payment for a single calendar month equals or exceeds \$450. If the total payment is less than \$450 for a calendar month, the contractor is not eligible to receive superannuation entitlements for that month. Monthly payments of less than \$450 do not accumulate with successive monthly payments.	
7. What is the full name of the person to whom the superannuation benefit will accrue and into whose fund the benefit will be paid if a Contract is awarded in response to this tender?	
8. Please state that person's address.	
9.	
a. Are you a member of either the Commonwealth Superannuation	

ANNEX D

<p>Scheme or the Public Sector Superannuation Scheme, or are you eligible to have contributions made to either of these superannuation funds? Persons who are eligible to have contributions paid into either of the Commonwealth schemes should do so.</p> <p>b. Do you have an account with the Australian Government Employees Superannuation Trust (AGEST)? If the answer is yes please provide details. AGEST is the default fund for a person who does not make an election about where their Superannuation Guarantee contribution is to be placed.</p>	
<p>10. What is the name and business address of the preferred Regulated Superannuation fund into which the benefit is to be paid? Does the fund accept electronic transfer of contributions? The payment of contributions may not be acceptable to Defence unless they can be processed electronically.</p>	

I declare that the answers provided to the above questions are true and accurate.

Signature.....Name.....Date.....

ANNEX E

AUSTRALIAN INDUSTRY CAPABILITY (CORE)

1. AUSTRALIAN INDUSTRY CAPABILITY SCHEDULE

Note to drafters: if Industry Requirements are identified or if the expected value of the Contract exceeds \$50 million, more extensive AIC clauses will be required. In this case drafters should refer to the AIC provisions contained in the ASDEFCON (Support) template or contact the Director AIC Implementation for assistance.

An Industry Requirement exists where a Priority Industry Capability (PIC) applies to the procurement or the project identifies Project Specific Industry Capabilities (PSICs). Drafters can consult the PIC Fact Sheet at <http://www.defence.gov.au/dmo/> to identify if a PIC applies or contact the Director AIC Implementation for assistance.

Note to tenderers: Tenderers must refer to the Australian Industry Capability (AIC) Toolkit at <http://www.defence.gov.au/dmo/> to complete the requirements of this Annex.

Defence requires tenderers to market test local industry. Local industry means the local industries of Australia and New Zealand.

Other references detailing Defence policy for industry are collocated at the above web site and include:

- a. **the Defence and Industry Policy Statement;**
- b. **Doing Business with Defence; and**
- c. **the DPPM.**

The Commonwealth prefers that Local Industry Activities including those derived from commercial opportunities do not impose additional costs or time premiums over and above the costs or schedule that would be applicable if the work were to be performed overseas.

- 1.1 Tenderers must provide a draft AIC Schedule in accordance with Table 1 below.
- 1.2 Tenderers must provide evidence that they have market tested local industry.

TABLE 1: AIC SCHEDULE

LIA Number	Line Item Description	Line Item Value (AUD)	LIA Line Item Value (AUD)	Company Details	Value of Imported Content in line item (AUD)
	(a)	(b)	(c)	(d)	(e)
LIA-01		\$	\$		\$
LIA-02		\$	\$		\$
LIA-03		\$	\$		\$
TOTAL			\$		\$

When preparing this Schedule, include all items of Services. If necessary, break the AIC Schedule Line Item into sub line items to better describe the Local Industry Activities.

ANNEX E

- a. *Line item description – a description of the Services to be performed by local industry.***
- b. *Total value of the Line Item – from Attachment A to the draft conditions of contract.***
- c. *Value of LIA in the line item.***
- d. *Identify the local company performing the LIA. If more than one company, detail the value of the work to each company.***
- e. *Indicate value of Imported Content in the line item.***