

PART 1 – CONDITIONS OF TENDER**TABLE OF CONTENTS**

	Page
1 GENERAL CONDITIONS	1-1
1.1 General (Core)	1-1
1.2 Interpretation of Request For Tenders (Core)	1-1
1.3 Inconsistency (Core)	1-1
1.4 Amendment of Request For Tender (Core)	1-2
1.5 Termination of Request For Tender Process (Core)	1-2
1.6 Other Commonwealth Rights (Core)	1-2
1.7 Australian Government Requirements (Core)	1-3
2 TENDER PREPARATION	2-1
2.1 Tenderers to Inform Themselves (Core).....	2-1
2.2 Language of Tenders (Core).....	2-1
2.3 Tender Preparation (Core).....	2-1
2.4 Responsibility for Tendering Costs (Core).....	2-1
2.5 Contact Officer for Request For Tender Inquiries (Core)	2-2
2.6 Preparation and Transmission of Classified Tenders (Optional)	2-2
2.7 Defence Security Clearance Requirements (Core)	2-2
2.8 Industry Briefing (Optional)	2-2
3 TENDER LODGMENT	3-1
3.1 Lodgment of Tenders (Core).....	3-1
3.2 Period of Tender (Core)	3-1
3.3 Copies of Tenders (Core)	3-1
3.4 Alterations, Erasures and Illegibility (Core).....	3-1
3.5 Unintentional Errors of Form (Core).....	3-1
4 MATTERS CONCERNING TENDER RESPONSE	4-1
4.1 Commercial-in-Confidence Information(Core)	4-1
4.2 Collusive Tendering (Core)	4-1
4.3 Unlawful Inducements (Core)	4-1
4.4 Improper Assistance (Core).....	4-1
4.5 Use of Former Defence Personnel in Tender Preparation and Process (Optional)	4-2
4.6 Conflict of Interest (Core).....	4-2
4.7 Unconditional Tenders (Core).....	4-2
4.8 Use of Tender Documents (Core).....	4-2
4.9 Return of Information to the Commonwealth (Core).....	4-2
4.10 Part, Joint and Alternative Tenders (Core)	4-3
4.11 Substitution of Tenderer (Core)	4-4
5 COMPETITIVE SELECTION PROCESS.....	5-1
5.1 Overview (Core).....	5-1
5.2 Cost Investigation of Tenders (Core).....	5-1
5.3 Tender Presentations (Optional).....	5-1
5.4 Tender Evaluation (Core).....	5-2
5.5 Minimum Content and Format Requirements (Optional)	5-2
5.6 Conditions of Participation (Optional)	5-2
5.7 Essential Requirements (Optional)	5-3

5.8 Clarification (Core) 5-3

5.9 Negotiation (Core)..... 5-3

5.10 Preferred Tenderer Status (Core)..... 5-3

5.11 Debriefing of Tenderers (Core) 5-4

6 TENDER EVALUATION CRITERIA 6-1

6.1 Tender Evaluation Criteria (Core) 6-1

ATTACHMENTS

TENDER DATA REQUIREMENTS LISTA-1

ANNEXES

A. Summary (Core) A-A1

B. Declaration by Tenderer (Core)..... A-B1

C. Commercial (Core) A-C1

D. Financial (Core) A-D1

E. Project Management (Core) A-E1

F. Technical and Operational Description (Core)A-F1

G. Techcial/Engineering (Core)..... A-G1

H. Australian Industry Involvement (Core) A-H1

1 GENERAL CONDITIONS

1.1 General (Core)

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

1.2 Interpretation of Request For Tenders (Core)

- 1.2.1 This RFT is an invitation to treat and must not be construed, interpreted, or relied upon, whether expressly or impliedly, 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.
- 1.2.2 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 a contract is signed by the Commonwealth and the successful tenderer.

Option A: For when the procurement is a covered procurement and is therefore subject to the Mandatory Procurement Procedures in the CPGs.

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

Option B: For when the procurement is a non-covered procurement and is therefore not subject to the Mandatory Procurement Procedures in the CPGs.

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

- 1.2.5 Unless a contrary intention is indicated, this RFT is interpreted in the same manner, and its terms have the same meaning, as in the draft Contract.

1.3 Inconsistency (Core)

- 1.3.1 If there is any inconsistency between any part of this RFT, a descending order of precedence must be accorded to:
- the conditions of tender;
 - the TDRL at Attachment A to the conditions of tender and the Annexes to the TDRL;
 - the draft Contract in accordance with clause 1.5 of the draft conditions of contract; and
 - any other document provided by the Commonwealth to tenderers preceding or following the release of this RFT (other than formal changes made under this RFT),
- so that the term in the higher ranked document, to the extent of the inconsistency, prevails.
- 1.3.2 If a tenderer finds or reasonably believes it has found any discrepancy, error, ambiguity, inconsistency or omission in the RFT or any other information given or made available by the Commonwealth, the tenderer must notify the Commonwealth in writing setting out in sufficient detail such discrepancy, error, ambiguity, inconsistency, or omission.
- 1.3.3 The notice in clause 1.3.2 must be provided promptly and at least seven days prior to the date and time specified in 3.1 (or as soon thereafter as the tenderer becomes aware of such discrepancy, error, ambiguity, inconsistency, or omission) to enable the Commonwealth to take whatever corrective action, if any, it deems appropriate.
- 1.3.4 Any actual discrepancy, error, ambiguity, inconsistency or omission in the RFT or any other information given or made available by the Commonwealth will, if possible, be corrected (or the proper information made available) by the Commonwealth to all tenderers (without attribution to the tenderer that provided the notice).

1.4 Amendment of Request For Tender (Core)

- 1.4.1 The Commonwealth may, at its discretion, add to, vary, modify or amend this RFT upon giving the tenderers timely written notice of such addition, variation, modification or amendment. 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, such right.
- 1.4.2 If the Commonwealth adds to, varies, modifies or amends this RFT under clause 1.4.1 after tenders have been submitted, it may seek amended tenders.
- 1.4.3 If this RFT has been published through the AusTender internet site at <http://www.tenders.gov.au> and the Commonwealth amends the RFT prior to the Tender Closing Time specified in clause 3.1, then the Commonwealth will issue a formal amendment to the RFT via AusTender. An electronic advice will be issued automatically by AusTender to tenderers who have registered with AusTender for that purpose.
- 1.4.4 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 2.5.
- 1.4.5 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.

1.5 Termination of Request For Tender Process (Core)

Option A: For when the procurement is a non-covered procurement and is therefore 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 a covered procurement and is therefore 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 5.6;
 - d. no tenderer meets the Essential Requirements, if any, at clause 5.7; or
 - e. no tenderer is fully capable of undertaking the Conditions of Contract, and the Commonwealth must notify tenderers to this effect.

1.6 Other Commonwealth Rights (Core)

- 1.6.1 In addition to and without limiting its other rights in the RFT at law or otherwise, the Commonwealth may, at its discretion and at any stage of the RFT process, do all or any of the following:

Option: For when the procurement is a non-covered procurement and is therefore not subject to the Mandatory Procurement Procedures in the CPGs.

- a. consider and accept or reject any tender that is nonconforming or consider alternative tenders;
- b. consider any late tender in its discretion;
- c. terminate further participation in the RFT process by any tenderer for any reason, regardless of whether the tender submitted conforms with the requirements of this RFT;
- d. permit any person to participate as a tenderer in the RFT process prior to the final

- date for submission of tenders;
- e. accept a tender without prior notice to any other tenderer;
 - f. require additional information from any tenderer;
 - g. change the structure and timing of the RFT process and notify the tenderers under clause 1.4;
 - h. conduct a subsequent procurement process and, subject to the Commonwealth's IP and non-disclosure obligations, utilise information gained in this RFT process for that purpose;
 - i. alter or defer any activity in the RFT process including clarification discussions, offer definition activities or negotiations being conducted at any time with any tenderer by written notice;
 - j. negotiate with one or more tenderers;
 - k. request, attend or conduct any site inspections;
 - l. request, attend or observe any product, plant, equipment or other demonstration, trial or test; or

Option: For when the procurement is a covered procurement and is therefore subject to the Mandatory Procurement Procedures in the CPGs.

- m. terminate further participation in the RFT process by any tenderer:
 - (i) where that is in the public interest;
 - (ii) whose tender does not meet the Conditions of Participation, if any, at clause 5.6;
 - (iii) whose tender does not represent value for money; or
 - (iv) who is not fully capable of undertaking the conditions of contract.

1.6.2 Any time or date in this RFT is for the convenience of the Commonwealth. The establishment of a time or date in this RFT does not create an obligation on the part of the Commonwealth to take any action or exercise any right established in the RFT or otherwise. The Commonwealth must notify affected tenderers of any changes to the RFT or the RFT process in accordance with clause 1.4, but will not be obliged to provide any reasons for its actions.

1.7 Australian Government Requirements (Core)

Note to drafters: Prior to any RFT release and prior to execution of any resultant contract, the Glossary at Attachment M to the draft conditions of contract should be updated to reflect the version of the following documents and policies current at the time of RFT release and signature of any resultant contract, as applicable. Version numbers should not be included in this clause as they are set out in the Glossary at Attachment M to the draft conditions of contract.

Note to tenderers: The Glossary at Attachment M to the draft conditions of contract lists the version of the following documents and policies current at the time of RFT release.

1.7.1 Tenderers should familiarise themselves with the following Commonwealth policies:

Option: For when the procurement is a non-covered procurement and is therefore not subject to the Mandatory Procurement Procedures in the CPGs.

- a. Australian Government Policy and Guidance on Industry Development and Local Purchasing as detailed in the DPPM;

Option: For acquisition contracts valued at more than \$10 million dollars.

- b. Company ScoreCard policy as detailed in the *Defence Company ScoreCard Policy Statement*;
- c. Defence and Industry Policy Statement 2007;

- d. Contract Gazettal policy as detailed in the DPPM;
- e. Conflict of Interest policy as detailed in the DPPM;
- f. Contract publication policy as detailed in the DPPM;
- g. Defence Equity and Diversity policy as detailed in: the *Defence Plain English Guide to Managing and Reporting Unacceptable Behaviour*; Defence Personnel Instruction 1/2001- Equity and Diversity in the Department of Defence; and Defence Instruction (G) Personnel 35-3;
- h. Defence Stocktaking policy as detailed in the Defence Instruction (G) LOG 4-3-014;
- i. Equal Opportunity for Women in the Workplace policy as detailed in the DPPM;
- j. Freedom of Information policy as detailed in the DPPM;
- k. Hazardous Substances policy as detailed in the DPPM;
- l. Industry Capability Network policy as detailed in the DPPM;

Option: For when acquisition contracts valued at more than \$5 million dollars.

- m. Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in the DPPM; and
- n. Ozone Depleting Substances policy as detailed in the DPPM.

Note to tenderers: 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/>. An electronic version of the Defence Equity and Diversity policies can be accessed at <http://www.defence.gov.au/equity>. An electronic version of the Company ScoreCard policy can be accessed at the 'Business' section via the 'Industry Resources' link on the DMO internet site at <http://www.defence.gov.au/dmo/>.

- 1.7.2 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 in the AusTender internet site. Any contract resulting from this RFT process will also be subject to these requirements, including that contractual terms (and related matters) may be disclosed to Ministers, other Government representatives, Parliament and its Committees.
- 1.7.3 In addition, tenderers acknowledge that if they are chosen to enter 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 Approved Subcontracts contain equivalent obligations and rights.

2 TENDER PREPARATION

2.1 Tenderers to Inform Themselves (Core)

- 2.1.1 The Commonwealth makes no representations or warranties that the information in this RFT or any information communicated or provided to tenderers during the RFT process is, or will be, accurate, current or complete.
- 2.1.2 Tenderers are 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.
- 2.1.3 Tenderers prepare and lodge a tender based 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 terms other than as expressly stated by the Commonwealth in writing;
 - b. they have relied entirely upon their own inquiries and inspection in respect of the subject of their tender;
 - c. 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
 - d. they are aware of the impact of the *Auditor General Act 1997* on their participation in the RFT and any resultant contract.

2.2 Language of Tenders (Core)

- 2.2.1 Any tender, including all attachments and supporting documentation, must be written in English.
- 2.2.2 All measurements must be expressed in Australian legal units of measurement unless otherwise specified.

2.3 Tender Preparation (Core)

- 2.3.1 Unless otherwise agreed, tenderers must complete and provide the information requested in the Annexes to the TDRL at Attachment A of these conditions of tender and must do so in the manner requested in the Annexes to the TDRL at Attachment A to the conditions of tender.
- 2.3.2 Supporting documentation may be provided to enhance the proposal contained in the tender. Supporting documentation relevant to a particular volume must be indicated in that volume.

2.4 Responsibility for Tendering Costs (Core)

- 2.4.1 The tenderer's participation in any stage of the RFT process, or in relation to any matter concerning the RFT, is at the tenderer's sole risk, cost and expense. The Commonwealth will not be responsible for any costs or expenses incurred by any tenderer in preparation or lodgment of a tender or taking part in the RFT process.
- 2.4.2 In addition to clauses 1.2.1 and 1.2.2, the Commonwealth is not liable to the tenderer for any costs on the basis of any promissory estoppel, quantum meruit or any other contractual, quasi contractual or restitutionary grounds whatsoever as a consequence of any matter or thing relating to, or incidental to the tenderer's participation in the RFT process, including without limitation, instances where:
- a. a tenderer is not engaged to undertake the performance of any resultant contract;

- b. the Commonwealth varies or terminates the evaluation and selection process or any negotiations with a tenderer in accordance with this RFT;
- c. the Commonwealth decides not to proceed with the RFT process in accordance with its rights in this RFT;
- d. the Commonwealth's defence capability requirements change; or
- e. the Commonwealth exercises any other right under the RFT or at law.

2.5 Contact Officer for Request For Tender Inquiries (Core)

- 2.5.1 The Contact Officer for this RFT is:
[...INSERT CONTACT OFFICER DETAILS...]
- 2.5.2 Tenderers must direct any questions regarding this RFT to the Contact Officer in writing and may direct any complaints regarding this RFT process to the Contract Officer.
- 2.5.3 Any question submitted by tenderers is submitted on the basis that the Commonwealth may circulate tenderer's 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 the proposed tender.

2.6 Preparation and Transmission of Classified Tenders (Optional)

- 2.6.1 Classified content in tenders must be avoided where possible. If this cannot be achieved, tenders containing classified content must be prepared and transmitted as follows:
 - a. for Australian tenders, in accordance with Part I (Defence Industrial Security Program) and Part C (Information Security) of the DSM, as amended from time to time; and
 - b. for overseas tenders, in accordance with the applicable industrial security information system regulations issued under the industrial security program authority in their country. Where transmission involves transmission by diplomatic bag, the overseas tenderer must use the diplomatic bag of its own Government.
- 2.6.2 Tenderers must classify information in their tenders in accordance with the Security Classification Grading Document at Attachment I to the draft conditions of contract.
- 2.6.3 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 3.1. 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.

2.7 Defence Security Clearance Requirements (Core)

- 2.7.1 On request by the Commonwealth, the tenderer must comply with the Commonwealth security clearance process, including obtaining the level of security clearance required by the Commonwealth.

2.8 Industry Briefing (Optional)

- 2.8.1 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 must be forwarded in writing to the Contact Officer specified in clause 2.5 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.

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

c. current security clearance and the Department which issued the clearance

- 2.8.3 Industry briefings are conducted for the purpose of providing background information only. Tenderers should note the effect of clauses 1.4.1 and 2.1.3. Tenderers should not rely on a statement made at an industry briefing as amending or adding to this RFT, unless that amendment or addition is confirmed by the Commonwealth in writing.

3 TENDER LODGMENT

3.1 Lodgment of Tenders (Core)

- 3.1.1 Tenders must 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 on [...INSERT DATE...] (the 'Tender Closing Time') at:
[...INSERT TENDER BOX ADDRESS...].
- 3.1.2 Tenders lodged after the Tender Closing Time may be excluded from consideration in accordance with the policy set out in the DPPM.

3.2 Period of Tender (Core)

- 3.2.1 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.
- 3.2.2 The Commonwealth may request an extension of the period identified in clause 3.2.1.

3.3 Copies of Tenders (Core)

- 3.3.1 The tenderer must lodge the original and [...INSERT NUMBER OF COPIES...] copies of the tender and any supporting documentation (such as brochures, handbooks and sample drawings). The original must 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 must take precedence.
- 3.3.2 The tenderer must, in addition to lodging the hard copies required by clause 3.3.1, 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 must take precedence.

3.4 Alterations, Erasures and Illegibility (Core)

- 3.4.1 Any alterations or erasures made to a tender by a tenderer must be initialled by that 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.

3.5 Unintentional Errors of Form (Core)

- 3.5.1 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.

4 MATTERS CONCERNING TENDER RESPONSE

4.1 Commercial-in-Confidence Information (Core)

- 4.1.1 The Commonwealth may require a tenderer to execute a deed of confidentiality 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 unless that tenderer is a member of a consortium which is preparing a tender in accordance with clause 4.10.

4.2 Collusive Tendering (Core)

- 4.2.1 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.
- 4.2.2 For the purposes of clause 4.2.1, 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.
- 4.2.3 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 lodgement 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.

4.3 Unlawful Inducements (Core)

- 4.3.1 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.

4.4 Improper Assistance (Core)

- 4.4.1 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 the 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.

4.5 Use of Former Defence Personnel in Tender Preparation and Process (Optional)

Note to drafters: Drafters are to include the following clauses when it is expected that any resultant contract will be either valued at over \$5 million, or valued at under \$5 million but considered to be commercially sensitive.

- 4.5.1 Without limiting the operation of clause 4.4, a tenderer must not, in the absence of 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 the person:
- a. at any time during the six months immediately preceding the date of issue of this RFT, was an employee of, service provider to, or otherwise engaged by, the Department of Defence or the ADF ('Employee of Defence');
 - b. at any time during the 12 months immediately preceding the date of issue of this RFT, was an Employee of Defence involved in the planning or performance of the project or activity to which the RFT relates; or
 - c. at any time, was an Employee of Defence involved in the preparation of this RFT or management of the RFT process.

4.6 Conflict of Interest (Core)

- 4.6.1 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.
- 4.6.2 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 to 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.

4.7 Unconditional Tenders (Core)

- 4.7.1 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 a contract on an unconditional basis. Before any tender is accepted, and as part of a deed of offer or otherwise, the tenderer may be required to confirm that its tender is unconditional and that it is able to enter into a contract on an unconditional basis.

4.8 Use of Tender Documents (Core)

- 4.8.1 All tender documents submitted in response to this RFT become the property of the Commonwealth. 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 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.
- 4.8.2 In addition to clause 4.8.1, the Commonwealth may disclose tender documents or any part of the tender documents to a third party for the purposes of assisting the Commonwealth in the conduct of the RFT process, including tender evaluation, negotiation and preparation of any contract. The Commonwealth may, at its discretion, obtain appropriate confidentiality undertakings from the third party prior to disclosure.
- 4.8.3 Nothing in clause 4.8 changes or affects the ownership of IP in the information contained in the tender documents.

4.9 Return of Information to the Commonwealth (Core)

- 4.9.1 Without limiting the provisions of any Deed of Confidentiality that may be required by the Commonwealth under clause 4.1, 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.

4.10 Part, Joint and Alternative Tenders (Core)

Option A: For when part tenders will not be considered.

4.10.1 The Commonwealth will not consider a tender for part of the Supplies.

Option B: For when part tenders will be considered.

4.10.2 The Commonwealth will consider a tender for part of the Supplies.

4.10.3 Without limiting the Commonwealth's rights, the Commonwealth intends to enter into a contract with a single legal entity that will be the party responsible for the performance of any resultant contract. If tenderers submit a consortium tender for the Supplies, the consortium tender must:

- a. include in the tender the information sought in the RFT for each member of the consortium;
- b. describe in detail in the tender the relationship between each member of the consortium and the structure proposed for management of the consortium; and
- c. provide in the tender that each member of the consortium is jointly and severally liable for the performance of all members of the consortium under any resultant contract or that one member of the consortium is fully liable for the performance of all members of the consortium; and
- d. include such other information that the Commonwealth requires to undertake a risk assessment of the proposed consortium tender.

4.10.4 The Commonwealth will not consider a joint tender other than a tender submitted in accordance with clause 4.10.2.

4.10.5 The Commonwealth may, at its discretion, consider tenders proposing alternative solutions to those requested in this RFT on condition that the tenderer:

- a. demonstrates that such alternative solution may be more beneficial to the Commonwealth than the requirements specified in this RFT and will deliver the outcomes sought by the Commonwealth;
- b. provides a tender that conforms to the requirements specified in this RFT in addition to the alternative tender;
- c. proposes a solution which satisfies the defence capability requirements including the functionality of the draft SOW and the essential requirements in the draft specification;
- d. provides a complete tender response for the alternative solution;
- e. fully identifies in detail the proposed alternative solution;
- f. justifies, with explicit reasons and supporting verifiable data, the proposed alternative solution including the advantages, disadvantages, limitations and capabilities of the proposed solution;
- g. explains in detail the financial impact on the tender price, the schedule impact and any other consequences of the proposed alternative solution; and
- h. includes sufficient information to allow a comparison of the alternative tender with tenders that fully address the draft SOW.

4.10.6 The Commonwealth may evaluate any alternative tender in accordance with the RFT.

4.11 Substitution of Tenderer (Core)

- 4.11.1 If during the period following the submission of the tender and prior to execution of any resultant contract with the successful tenderer, there occurs:
- a. any of the events described in clause 12.2.1a to h of the draft conditions of contract; or
 - b. any other event that has the effect of substantially altering the composition or control of the tenderer or the business of the tenderer,
- the Commonwealth may allow at its discretion, in limited circumstances and on such terms as the Commonwealth considers appropriate, the substitution of that tenderer with another legal entity upon receipt of a joint written request from or on behalf of the tenderer and the other legal entity.
- 4.11.2 If no request for substitution is made, or the Commonwealth chooses not to allow the substitution under clause 4.11.1, the Commonwealth may, at its discretion, decide not to consider the tender any further or, in considering it, may take into account the impact of the event on the information provided in the tender.
- 4.11.3 Where the Commonwealth allows the substitution under clause 4.11.1, the Commonwealth will evaluate the tender in its original form prior to the event, except that the impact of the event on the information provided in the tender may be taken into account.

5 COMPETITIVE SELECTION PROCESS

5.1 Overview (Core)

5.1.1 Subject to the Commonwealth's rights in this RFT, the major phases, processes and activities of this RFT process after issue of this RFT are outlined in this section.

5.2 Cost Investigation of Tenders (Core)

5.2.1 For the purposes of establishing:

- a. in respect of a sole source tender process; or
- b. where in the Commonwealth's reasonable opinion, a tenderer has not provided sufficient information in accordance with the RFT,

that the tendered price is fair and reasonable and constitutes value for money for the Commonwealth, the Commonwealth may, at its discretion, conduct a cost investigation of tendered prices by its cost investigation staff.

5.2.2 The cost investigation under clause 5.2.1 may be conducted at any time prior to selection of any preferred tenderer(s) or prior to signature of any resultant contract, as the Commonwealth elects.

5.2.3 On request by the Commonwealth, the tenderer must facilitate any cost investigation conducted under clause 5.2.1.

5.2.4 The Commonwealth may, without limitation, in any cost investigation conducted under clause 5.2.1, evaluate how tendered prices reflect actual costs to the tenderer of the proposed contract, and:

- a. how those costs relate to costs included in other contracts between the Commonwealth and the tenderer, or a Related Body Corporate or a special purpose vehicle in which the tenderer is or has been involved;
- b. how costs will be allocated between any resultant contract and other contracts between the tenderer and/or a Related Body Corporate and the Commonwealth, including where the same facilities, assets (including tangible or intangible) or personnel are used for more than one contract involving the Commonwealth and the tenderer or a Related Body Corporate or a special purpose vehicle in which the tenderer is or has been involved;
- c. whether the tendered price is sufficient to adequately cover actual costs of performance of the contractor's obligations under the proposed contract and to provide a rate of return to the contractor; and
- d. whether the tenderer or Related Body Corporate or a special purpose vehicle in which the tenderer is or has been involved, in this proposed contract or any other contract with the Commonwealth, proposes to or has engaged in any cross-subsidisation or transfer-pricing with related bodies corporate or a special purpose vehicle in which the tenderer is or has been involved.

5.2.5 The tenderer must, for the purpose of clause 5.2 and on request by the Commonwealth:

- a. allow access for Commonwealth cost investigation personnel to tenderer and Related Body Corporate (including parent company and subsidiary) or special purpose vehicle records, officers, employees, agents and advisers relevant to the matters referred to in clause 5.2.4; and
- b. provide detailed information in response to any requests from the Commonwealth in connection with the matters referred to in clause 5.2.4, including information which will allow a breakdown of the tenderer's prices and costs.

5.3 Tender Presentations (Optional)

5.3.1 The Commonwealth may, after close of tenders and having provided tenderers with reasonable notice, require any or all tenderers to provide a presentation on the tenderer's proposal at [...INSERT LOCATION...].

5.4 Tender Evaluation (Core)

- 5.4.1 Tenders will be evaluated on the basis of best value for money consistent with Commonwealth procurement policies, utilising the tender evaluation criteria at clause 6. Neither the lowest priced tender nor any tender will necessarily be accepted by the Commonwealth.
- 5.4.2 The Commonwealth may:
- a. consider additional information related to any evaluation criteria;
 - b. use material tendered in response to one evaluation criterion in the evaluation of other criteria; or
 - c. 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.
- 5.4.3 If additional criteria are intended to be applied for the purposes of evaluation, the Commonwealth will notify tenderers in accordance with clause 1.3 who will be given an opportunity to respond.
- 5.4.4 Tenders which are incomplete or clearly non-competitive may be either excluded from consideration at any time during the evaluation process at the Commonwealth's discretion or the Commonwealth may consider such tenders and seek clarification under clause 5.8.

Note to drafters: Drafters are required to insert the relevant TDRs as required by the following clause.

- 5.4.5 Without limiting clause 5.4.4, the Commonwealth may exclude a tender from further consideration if the tenderer does not provide the following information as required by the relevant TDRs in the Annexes to Attachment A to the conditions of tender:
- a. [...TDR C-2 Limitation of Liability...];
 - b. [...TDR C-3 Insurance...];
 - c. [...TDR E-1 Past Performance...]; and
- [...INSERT OTHERS AS APPLICABLE...].
- 5.4.6 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.

5.5 Minimum Content and Format Requirements (Optional)

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

- 5.5.1 Subject to clause 3.5, 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 2.2.2; or
 - b. the tenderer has not provided a signed Declaration by Tenderer in the form required at Annex B to the TDRL.

5.6 Conditions of Participation (Optional)

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

- 5.6.1 The Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tenderer does not comply with:
- a. the Commonwealth's security requirements set out in clause 2.6 and 2.7;
 - b. clauses 4.2 and/or 4.3;
 - c. clauses 4.4, 4.5 and 4.6; and
 - d. clauses 5.4.6 and 5.5.1.

5.7 Essential Requirements (Optional)

Note to drafters: Select option A or B where the tender includes essential requirements in the SOW.

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

- 5.7.1 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 a non-covered procurement and is therefore not subject to the Mandatory Procurement Procedures in the CPGs AND the SOW contains essential requirements.

- 5.7.2 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.

5.8 Clarification (Core)

- 5.8.1 The Commonwealth may, at any time during the RFT process, 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 Supplies. 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.
- 5.8.2 Without limiting the Commonwealth's rights in the RFT, the Commonwealth may at any time during the RFT process, select:
- a. two or more tenderers to conduct negotiations; or
 - b. one preferred tenderer with which to conduct contract negotiations.
- 5.8.3 The Commonwealth intends that it will not select a preferred tenderer until all material technical, commercial, legal, financial and operational aspects of the tender have been agreed and documented.
- 5.8.4 Tenderers may seek clarification of the meaning of the content of the RFT, or request additional information beyond that contained in the RFT or tender briefings, if any, from the Contact Officer up until five Working Days prior to the Tender Closing Time.
- 5.8.5 The Commonwealth may make any questions or clarification from tenderers, and the reply, available to all prospective tenderers, without disclosing the identity of the tenderer asking the clarification or any commercially sensitive information.

5.9 Negotiation (Core)

- 5.9.1 The Commonwealth may engage one or more tenderers in detailed discussions and negotiations with the goal of maximising the benefits of the RFT as measured against the evaluation criteria set out in clause 6 and fully understanding a tenderer's offer, including risk allocation. As part of this process, tenderers may be asked to clarify, improve or consolidate any of the technical, commercial, legal, financial and operational aspects of their tenders.

5.10 Preferred Tenderer Status (Core)

- 5.10.1 The Commonwealth may select a tenderer as preferred tenderer, but such selection:
- a. does not affect or limit the Commonwealth's rights or the tenderer's obligations under the RFT;
 - b. is not a representation that a contract will be entered into between the Commonwealth and that tenderer,

and the Commonwealth may recommence or commence negotiations under the RFT with any other tenderer whether or not a tenderer has been selected as preferred tenderer.

5.11 Debriefing of Tenderers (Core)

- 5.11.1 Following the award of any resultant contract, unsuccessful tenderers will be notified of the final decision and may request a tender debriefing. Tenderers requiring a debriefing should contact the Contact Officer specified in clause 2.5.
- 5.11.2 Tenderers will be debriefed against the evaluation criteria contained in clause 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.

6 TENDER EVALUATION CRITERIA

6.1 Tender Evaluation Criteria (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 a covered procurement and is therefore subject to the Mandatory Procurement Procedures in the CPGs.

6.1.1 Subject to clauses 5.4 to 5.7, 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 a non-covered procurement and is therefore not subject to the Mandatory Procurement Procedures in the CPGs.

6.1.2 Subject to clause 5.4, the criteria to be applied for the purposes of evaluation will include the following, not in any order of importance:

Option: For Contracts valued at \$10 million or more

- a. past performance of contractual obligations of the tenderer, any proposed Approved Subcontractors and any Related Bodies Corporate;
- b. the tenderer's degree of overall compliance with the RFT;
- c. the extent to which the tendered solution for the Mission System is assessed as meeting the function and performance requirements stated in the draft SOW, including any specifications;
- d. the extent to which the tenderer is compliant with the draft Ethics Letter;
- e. the extent to which the tenderer's management proposal is assessed as meeting the requirements of the draft SOW
- f. 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;
- g. 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;
- h. the proposed corporate structure and the financial and corporate viability of the tenderer and Approved Subcontractors to fulfil contract obligations;
- i. the tendered prices and pricing structure, including proposed payment schedule;

Option: For when the RFT includes AIC Requirements

- j. the extent to which the tender response satisfies the Industry Requirements, AIC level and any other AIC objectives of the RFT;
- k. the extent to which the tendered solution for the Support System is assessed as meeting the requirements of the draft Contract (Acquisition);

Option: For when the RFT includes a draft Contract (Support).

- l. the extent to which the tendered solution for the Support System is assessed as meeting the requirements of the draft Contract (Support); and
- m. the tenderer's demonstrated technical capability (which includes ILS) and managerial capability to meet the requirements of the draft SOW.