

**PART 1 – CONDITIONS OF TENDER  
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## 1 GENERAL CONDITIONS

### 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, the defence industry and the successful tenderer; and
  - d. [...INSERT PROJECT SPECIFIC OBJECTIVES IF ANY...].

### 1.2 Interpretation of Request for Tender (Core)

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- 1.2.1 This Request for Tender (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.
- 1.2.2 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.

**Note to drafters: For information on whether a procurement is subject to the Mandatory Procurement Procedures, see chapter 1.2 of the DPPM.**

**Option A: For when the procurement is 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 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)

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- 1.3.1 If there is any inconsistency between any parts of this RFT, a descending order of precedence must be accorded to:
- a. the conditions of tender;
  - b. the Annexes to the conditions of tender;
  - c. the draft conditions of contract in accordance with clause 1.5 of the draft conditions of contract; and
  - d. 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 provision 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 clause 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 by the Commonwealth and provided (or the proper information made available) 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, the rights under clause 1.4.
- 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.

#### **1.5 Termination, Suspension or Deferral of Request for Tender Process (Core)**

***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 5.4;
  - d. no tenderer meets the Essential Requirements, if any, at clause 5.5; or
  - e. no tenderer is fully capable of undertaking the conditions of contract,
- and the Commonwealth must notify tenderers to this effect.

#### **1.6 Australian Government Requirements (Core)**

***Note to drafters: Prior to RFT release and prior to the execution of any resultant Contract, the Glossary at Attachment H 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. Version numbers should not be included in this clause as they are set out in the Glossary at Attachment H to the draft conditions of contract.***

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

- 1.6.1 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 Policy 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;
- i. Hazardous Substances policy as detailed in the DPPM; and
- j. Ozone Depleting Substances policy as detailed in the 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: 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 internet site may be found at <http://www.tenders.gov.au>. Any other documents required can be provided by the Contact Officer.**

- 1.6.2 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 provisions (and related matters) may be disclosed to Parliament and its Committees.
- 1.6.3 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.
- 1.6.4 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.
- 1.6.5 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.**

- 1.6.6 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.**

- 1.6.7 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.

## 1.7 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>**

- 1.7.1 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.
- 1.7.2 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.
- 1.7.3 If the Commonwealth amends this RFT prior to the Tender Closing Time specified in clause 3.1, 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.
- 1.7.4 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.

- 1.7.5 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.
- 1.7.6 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 2.5.

## **1.8 Public Announcements (Optional)**

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- 1.8.1 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 Supplies, 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 TENDER PREPARATION**

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

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- 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 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.
- 2.1.3 Tenderers prepare and lodge a tender based on the tenderers' acknowledgment and agreement that they:
- a. 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. have relied entirely upon their own inquiries and inspection in respect of the subject of their tender;
  - c. 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. 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)**

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- 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 by the Commonwealth.

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

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

### **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;
  - c. the Commonwealth decides not to proceed with the RFT process in whole or in part;
  - 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)**

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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.

2.5.3 Tenderers may submit questions to the Contact Officer up until five Working Days prior to the Tender Closing Time.

2.5.4 Any question submitted by tenderers is submitted on the basis that the Commonwealth may circulate the 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)**

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**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.**

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 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 must use the diplomatic bag of its own government.

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

2.6.2 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.

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)**

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2.7.1 On request by the Commonwealth, the tenderer must 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.

## **2.8 Industry Briefing (Optional)**

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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 personnel 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 personnel 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 2.1.3a. 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)**

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- 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 of the Tender Box Location on [...INSERT DATE...] (the 'Tender Closing Time') at:  
[...INSERT TENDER BOX ADDRESS...] (the 'Tender Box Location').
- 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. The tenderer must include [...INSERT RFT NUMBER...] on the packaging of the tender.

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

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- 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)**

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- 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 will 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 will take precedence.

#### **3.4 Alterations, Erasures or Illegibility (Core)**

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- 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)**

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- 4.1.1 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.

### **4.2 Collusive Tendering (Core)**

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- 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 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.

### **4.3 Unlawful Inducements (Core)**

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- 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)**

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

- 4.5.1 Without limiting the operation of clause 4.4, a tenderer must 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;
  - 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.

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

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- 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 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)**

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- 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 any resultant 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 any resultant Contract on an unconditional basis.

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

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- 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 resultant 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)**

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- 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)**

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***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 The Commonwealth will not consider a joint tender for the Supplies.

4.10.4 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 (if any) 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.

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

## 5 COMPETITIVE SELECTION PROCESS

**Notes to tenderers: Tenderers should note that this tender anticipates that the Commonwealth requirement should, so far as possible, be met by responses offering COTS or MOTS products, or production-ready NDIs, where there will be no development or only minimal, non-critical development. Tender responses offering Supplies including higher levels of development may be considered of relatively higher risk than those with no or minimal levels of development.**

### 5.1 Cost Investigation of Tenders (Core)

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- 5.1.1 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.
- 5.1.2 The cost investigation under clause 5.1.1 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.
- 5.1.3 On request by the Commonwealth, the tenderer must facilitate any cost investigation conducted under clause 5.1.1.
- 5.1.4 The Commonwealth may, without limitation, in any cost investigation conducted under clause 5.1.1, evaluate how tendered prices reflect actual costs to the tenderer of any resultant 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 any resultant Contract and to provide a rate of return to the contractor;
  - d. whether the tenderer or Related Body Corporate or a special purpose vehicle in which the tenderer is or has been involved, in any resultant 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; and
  - e. whether the tendered price incorporates additional costs for work addressing a specified Local Industry Activity, and whether such costs are clearly described, justified on a life-cycle value for money basis and individually costed.
- 5.1.5 The tenderer must, for the purpose of this clause 5.1 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 5.1.4; and
  - b. provide detailed information in response to any requests from the Commonwealth in connection with the matters referred to in clause 5.1.4, including information which will allow a breakdown of the tenderer's prices and costs.

## 5.2 Tender Evaluation (Core)

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- 5.2.1 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.
- 5.2.2 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.
- 5.2.3 If additional criteria are intended to be applied for the purposes of evaluation, the Commonwealth will notify tenderers in accordance with clause 1.4 who will be given an opportunity to respond.
- 5.2.4 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 5.6.
- 5.2.5 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.

## 5.3 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.**

- 5.3.1 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; or
  - b. the tenderer has not provided a signed Declaration by Tenderer in the form required at Annex A to the conditions of tender.

## 5.4 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.**

- 5.4.1 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 2.6 and 2.7.

## 5.5 Essential Requirements (Optional)

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

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

- 5.5.1 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.***

- 5.5.2 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.

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**5.6 Clarification (Core)**

- 5.6.1 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.
- 5.6.2 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.
- 5.6.3 The Commonwealth is not under any obligation to take into account additional information provided by a tenderer in response to a request.
- 5.6.4 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 single preferred tenderer with which to conduct Contract negotiations.
- 5.6.5 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.

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**5.7 Negotiation (Core)**

- 5.7.1 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.

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**5.8 Preferred Tenderer Status (Core)**

- 5.8.1 The Commonwealth may select a tenderer as a 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.

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**5.9 Debriefing of Tenderers (Core)**

- 5.9.1 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.
- 5.9.2 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 subject to the Mandatory Procurement Procedures in the CPGs.**

6.1.1 Subject to clauses 5.2 to 5.5, 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.**

6.1.2 Subject to clause 5.2, the criteria to be applied for the purposes of evaluation will include the following, not in any order of importance:

- a. past performance of contractual obligations of the tenderer, any proposed Subcontractors and any Related Bodies Corporate;
- b. the tenderer's degree of overall compliance with the RFT;
- c. the extent to which the tender meets the technical, functional, operational and performance requirements stated in the draft SOW, including any specifications;

**Option: For when a sample of the tendered Supplies may be requested**

- d. The degree to which any sample tendered in accordance with clause 6.1.3 meets the requirements stated in the draft SOW;
- e. 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 any resultant Contract acceptable to the Commonwealth;
- f. 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;
- g. the proposed corporate structure and the financial and corporate viability of the tenderer to fulfil Contract obligations;
- h. the tendered prices and pricing structure, including proposed payment schedule;
- i. the extent to which the tender response satisfies the AIC requirements contained within this RFT; and
- j. the tenderer's demonstrated technical and managerial capability to meet the requirements of the draft SOW.

**Notes to drafters: The SOW does not provide a process for the Commonwealth review of development of Supplies in progress. Additionally, if the Supplies involve minor, non-critical development, the Contract only provides for demonstrating that the Supplies meet the requirements of the Contract during Final Test and Inspection. If drafters consider that tender responses are likely to include greater levels of development, which would warrant Commonwealth involvement in the development process, such as through requirements validation, design reviews, and detailed product Verification, then use of ASDEFCON (Complex Materiel) Volume 1 is not appropriate, and drafters should use ASDEFCON (Complex Materiel) Volume 2.**

**Option: For when a sample of the tendered Supplies may be requested.**

6.1.3 The Commonwealth may request tenderers to provide a sample of the tendered Supplies. Failure to provide a sample of the tendered Supplies may result in the Commonwealth not further considering the tender.