

PART 1 – CONDITIONS OF TENDER
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1 GENERAL CONDITIONS

1.1 General (Core)

- 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 RFT (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.
- 1.2.3 The existence of an offer definition contract, if any, does not affect or limit clauses 1.2.1 or 1.2.2 or create legally enforceable rights or obligations except as expressly stated in that contract.
- 1.2.4 Tenderers acknowledge that the Mandatory Procurement Procedures in the Commonwealth Procurement Guidelines 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:
- a. the conditions of tender;
 - b. the TDRL at Attachment A to the conditions of tender and the Annexes to the TDRL;
 - c. the draft 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 RFT (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.

1.5 Termination of RFT (Core)

- 1.5.1 The Commonwealth may, at its discretion, suspend, defer, terminate or abandon this RFT process at any time prior to the execution of a formal written contract. 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, the Commonwealth may, at its discretion and at any stage of the RFT process, do all or any of the following:
- a. require additional information from any tenderer;
 - b. change the structure and timing of the RFT;
 - c. 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;
 - d. 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;
 - e. terminate, suspend or defer any activity in the RFT process including clarification discussions, offer definition activities or negotiations being conducted at any time with any tenderer for any reason;
 - f. negotiate with one or more tenderers;
 - g. enter into any form of contractual arrangement with any tenderer without prior notice to any other tenderer;
 - h. permit any person to participate as a tenderer in the RFT process prior to the Tender Closing Time;
 - i. consider and accept or reject any tender that is nonconforming or consider alternative tenders;
 - j. request, attend or conduct any site inspections;
 - k. request, attend or observe any product, plant, equipment or other demonstration, trial or test;
 - l. accept a tender on such terms as the Commonwealth at its discretion accepts, without prior notice to any other tenderer.
- 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 the 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. 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:
- a. Australian Government policy and guidance on Australian Industry Capability as detailed in the Defence Procurement Policy Manual (DPPM);
 - b. Company ScoreCard policy as detailed in the *DMO Company ScoreCard Policy Statement*;
 - c. Defence and Industry policy as detailed in the *Defence and Industry Policy Statement*;
 - d. Contract Publication policy as detailed in the DPPM;
 - e. Defence Equity and Diversity policy as detailed in: the Defence Plain English Guide to the Managing and Reporting Unacceptable Behaviour; Departmental Personnel Instruction 1/2001 – Equity and Diversity in the Department of Defence; and Defence Instruction (General) Personnel 35-3 – Managing and Reporting of Unacceptable Behaviour;
 - f. Equal Opportunity for Women in the Workplace policy as detailed in the DPPM;
 - g. Hazardous Substances policy as detailed in the DPPM;
 - h. Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in the DPPM;
 - i. Ozone Depleting Substances policy as detailed in the DPPM; and
 - j. Defence stocktaking policy as detailed in DI(G) LOG 4-3-014.

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

An electronic version of the DPPM can be accessed at the Contracting section of the DMO web site at <http://www.defence.gov.au/dmo/>.

An electronic version of the Defence Equity and Diversity policy can be accessed at the Publications section of the Defence Personnel Executive web site at <http://intranet.defence.gov.au/pspg/sites/home/comweb.asp?page=29023>.

An electronic version of the Company ScoreCard policy can be accessed at the Policy section of the Industry Resources area of the DMO web site at <http://www.defence.gov.au/dmo/>. The AusTender web site may be found at <http://www.contracts.gov.au/>.

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

- 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 the resultant contract in the AusTender website. 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.
- 1.7.3 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.

1.8 Public Announcements (Optional)

- 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.

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 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 conditions 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. have obtained their own advice on the impact of the *Auditor-General Act 1997* on their participation in the RFT and any resultant contract.

2.2 Language of and Measurements in Tenders (Core)

- 2.2.1 Any tender, including all attachments and supporting documentation, must be written in English.
- 2.2.2 All measurements in tenders 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 and must do so in the manner requested in the Annexes to the TDRL.
- 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 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 RFT 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.
- 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)

Note to tenderers: For information on preparation and transmission of classified tenders and for access to the Defence Security Manual, 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 the Defence Security Manual (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 J of 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. 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 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.
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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 must 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. The tenderer must include [...INSERT RFT NUMBER...] on the packaging of the tender.

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.

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 in the form at Annex M to Attachment I of the draft conditions of contract 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 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 Information 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 (Core)

- 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)

- 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 Information 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)

- 4.10.1 The Commonwealth will not consider a tender for part of the Supplies.
- 4.10.2 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 as 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;
 - 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.
- 4.10.3 The Commonwealth will not consider a joint tender other than a tender submitted in accordance with clause 4.10.2.
- 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 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 detailed 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.

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 clauses 12.2.1a to 12.2.1h of the draft conditions of contract in respect of a tenderer; 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 If 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; 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 spread between contracts in which the tenderer is or will be involved, 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;
- 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; and
- e. whether the tendered price incorporates additional costs for work addressing a specified Industry Requirement, and whether such costs are clearly described, justified on a life-cycle value for money basis and individually costed.

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 purchasing 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 not included in the list of evaluation criteria or items;
 - 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.

Note to drafters: Clause 5.4.3 relies on the existence of essential requirements in the draft SOW.

- 5.4.3 Tenders which are incomplete, non-compliant with the conditions of tender or essential requirements 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 5.5.

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

- 5.4.4 Without limiting clause 5.4.3, 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 the TDRL to the conditions of tender:
- a. [...TDR C-2 Limitation of Liability...];
 - b. [...TDR C-3 Insurance...];
 - c. [...TDR E-1 Past Performance...]; and
 - d. [...INSERT OTHER TDRs AS APPLICABLE...].
- 5.4.5 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.

5.5 Clarification (Core)

- 5.5.1 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.
- 5.5.2 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;
 - b. two or more tenderers to conduct offer definition activities on terms specified by the Commonwealth;
 - c. two or more tenderers to conduct negotiations and offer definition activities; or

- d. a single preferred tenderer to conduct offer definition activities or final contract negotiations.

5.5.3 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.

5.6 Offer Definition Activities (Optional)

Note to drafters: The information solicited from tenderers in the Annexes to Attachment A of the conditions of tender will depend on the tenderer selection strategy being employed by the project. The key strategy is to maximise the leverage provided by the competitive tendering process. It is assumed that the approach is to conduct evaluation and clarification of tenders and then, if there are more than two tenderers, to select at least two tenderers to conduct parallel negotiations, possibly preceded by offer definition activities. Selection of a preferred tenderer must not take place until all material technical, commercial, legal, financial and operational issues have been agreed and documented.

- 5.6.1 The Commonwealth may conduct offer definition activities with one or more tenderers to better define particular aspects of their tenders, and may use the outcomes of the offer definition activities in finalising the evaluation of tenders under this RFT process.
- 5.6.2 Tenderers may submit revised pricing to the Commonwealth as a result of the offer definition activities. The Commonwealth may decide not to consider any revised pricing if it considers that the tenderer has changed the underlying basis on which its pricing was calculated.
- 5.6.3 Except in relation to the offer definition activities, tenderers are not permitted to revise their Statement of Compliance during the RFT process.

Option A: For use if the offer definition activities are not defined within the scope of a separate offer definition contract.

- 5.6.4 The offer definition activities will include the improved definition of the following aspects of the tender:

Note to drafters: Drafters may include additional offer definition activities in the list below.

Tender Data Requirement Number	Offer Definition Activities
C-5	Intellectual Property
G-3	Draft Verification and Validation Plan
G-4	Draft Regulatory Plans
G-5	Draft Specialty Plans
G-6	Draft Software Management Plan
G-9	Systems and Software Process Capability
G-10	System Safety Program
H-1	Australian Industry Capability Plan
I-2	ILS Program Plans
5.6.5	Tenderers are responsible for the costs and expenses associated with their participation in the offer definition activities.

Option B: For use if offer definition activities are set out in a separate offer definition contract.

Note to drafters: If Option B is selected, drafters should include a draft offer definition contract at Schedule 1 to Annex J to the TDRL. For assistance in preparing the draft offer definition contract, drafters should contact General Counsel Division.

- 5.6.6 In preparing their tenders, tenderers are referred to the draft contract for the offer definition activities which is attached as Schedule 1 to Annex J to the TDRL and should indicate in their Statement of Compliance (Annex A to the TDRL) their compliance with the draft offer definition contract.
- 5.6.7 The process governing the offer definition activities, including the evaluation of the deliverables from the contract, will be undertaken in accordance with the process set out in the offer definition contract.
- 5.6.8 Except as set out in the offer definition contract, tenderers are responsible for the costs and expenses associated with participation in the offer definition activities.

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 improve or consolidate any of the technical, commercial, legal, financial and operational aspects of their tenders.

5.8 Deed of Offer (Core)

- 5.8.1 The Commonwealth may require a tenderer who has participated in offer definition activities or negotiations in respect of its tender to execute a deed of offer confirming and consolidating the tenderer's offer. The deed of offer must commit the tenderer to the terms comprising the deed of offer to assist the Commonwealth to prepare a contract.

5.9 Preferred Tenderer Status (Core)

- 5.9.1 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.

5.10 Debriefing of Tenderers (Core)

- 5.10.1 Tenderers may request an oral or written tender debriefing following the award of a contract in relation to this RFT. Tenderers requiring a debriefing should contact the Contact Officer specified in clause 2.5.
- 5.10.2 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)

6.1.1 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:

Note to drafters: Additional or alternative evaluation criteria may be included in the following list where appropriate. Drafters should only include key and subordinate criteria that will be used by the Commonwealth during tender evaluation. In the event of amendment to the list, drafters should also ensure that the evaluation items are accurately mapped against the subordinate and key criteria.

Key Criteria	Subordinate Criteria and Evaluation Items
<p>a. past performance of contractual obligations.</p> <p>Note to tenderers: If the Commonwealth takes an adverse view of tenderer past performance or proposes to exclude the tenderer from further consideration based on information collected under this criterion, the Commonwealth may request further information from the tenderer in accordance with clause 5.5.1.</p>	<p>1. past performance of contractual obligations as recorded on any Company ScoreCard held by Defence in relation to any contracts between the Commonwealth and the tenderer and the Commonwealth and any proposed Approved Subcontractor.</p> <p>Company ScoreCard Past Performance Annex E</p> <p>2. past performance of contractual obligations of the tenderer or any proposed Approved Subcontractor as advised by referees.</p> <p>Past Performance Annex E</p> <p>3. past performance of contractual obligations of the tenderer or any proposed Approved Subcontractor as obtained by the Commonwealth.</p> <p>Note to tenderers: If the tenderer proposes in its tender to utilise the skills or resources of a Related Body Corporate, or if the tenderer proposes to secure its performance through a Related Body Corporate including a parent company, the following subordinate criterion will be used.</p> <p>4. past performance of contractual obligations as obtained by the Commonwealth in relation to any contracts between the Related Body Corporate and the Commonwealth.</p>
<p>b. the extent to which the tendered solution is assessed as meeting the end user and operator needs stated in the OCD.</p> <p>Note to drafters: This criterion assumes that the COIs listed in the Subordinate Criteria are set out in the OCD. In the event that the COIs are not set out in the OCD but in other source documentation, this Key Criterion will need to be revised to refer to the source document location (included in the contract) for the listed COIs.</p>	<p>1. The extent to which the tendered solution satisfies [critical operational issue 1 ("COI 1")].</p> <p>Statement of Compliance Annex A (COI 1 section) Technical Description Annex F Operational Description Annex F Operational Description Annex F (COI 1 section)</p> <p>2. The extent to which the tendered solution satisfies [critical operational issue ("COI n")].</p> <p>Statement of Compliance Annex A (COI n)</p>

Key Criteria	Subordinate Criteria and Evaluation Items
	<p>section)</p> <p>Technical Description Annex F</p> <p>Operational Description Annex F (<i>COI n section</i>)</p> <p>Note to drafters: Example COIs are:</p> <p>Human factors effectiveness – most systems will have human-system interactions that are key to providing operational effectiveness;</p> <p>Transition from a legacy system – eg. will there be any temporary or permanent loss or restriction in capability arising from implementing the new system?; and</p> <p>Key performance issues such as the range of a radar system, the maximum speed of an aircraft or the reliability of a system.</p>
<p>c. the extent to which the tendered solution is assessed as meeting the function and performance requirements stated in the draft SOW including the specifications.</p>	<p>Statement of Compliance Annex A (<i>FPS section</i>)</p> <p>Technical Description Annex F</p> <p>Draft Growth Plan Annex F</p>
<p>d. the integrity and maturity of the tenderer's engineering processes, infrastructure and the extent to which the tendered engineering proposal is assessed as meeting the requirements of the draft SOW.</p>	<p>1. the level of compliance with the Systems Engineering process requirements of the draft SOW, and the assessed level of risk relating to the compliance.</p> <p>Statement of Compliance Annex A (<i>SE section of the SOW</i>)</p> <p>2. the adequacy of the tendered engineering management plans.</p> <p>Draft Systems Engineering Management Plan Annex G</p> <p>Draft Software Management Plan Annex G</p> <p>Draft Verification and Validation Plan Annex G</p> <p>Draft Regulatory Plans Annex G (<i>if required</i>)</p> <p>Draft Specialty Plans Annex G (<i>if required</i>)</p> <p>3. the adequacy of the tendered proposal for engineering design documentation.</p> <p>Draft Technical Documentation Tree Annex G</p> <p>4. the extent and relevancy of systems and software engineering experience.</p> <p>Systems and Software Engineering Experience Annex G</p> <p>5. the maturity of the proposed engineering processes.</p> <p>Systems and Software Process Capability Annex G</p>
<p>e. The extent to which the tenderer's project management proposal is assessed as meeting the requirements of the draft SOW.</p>	<p>1. the compliance with the project management requirements of the draft SOW and assessed level of risk relating to</p>

Key Criteria	Subordinate Criteria and Evaluation Items
	<p>the compliance.</p> <p>Statement of Compliance Annex A (<i>General, PM and QA sections of the SOW</i>)</p> <p>Facility Clearance Requirement Annex E</p> <p>Government Furnished Material Annex E</p> <p>Hazardous Substances and Ozone Depleting Substances Annex E</p> <p>2. the adequacy of the tendered project management plans including the management of proposed Subcontractors.</p> <p>Draft Project Management Plan Annex E</p> <p>3. the credibility of the tendered Contract Work Breakdown Structure, schedule and staff skills profile.</p> <p>Draft Contract Work Breakdown Structure Annex E</p> <p>Draft Contract Master Schedule Annex E</p> <p>Staff Skills Profile (<i>in draft PMP</i>) Annex E</p> <p><i>Note to tenderers: Tenderers should be aware that in assessing the credibility of the tendered Draft Contract Master Schedule, the Commonwealth will consider all aspects relevant to the achievability and integrity of the schedule. This will include, but not be limited to, resource levels, contingency, corresponding costings and the length of the schedule. A compressed project timeline will not necessarily be viewed more favourably than a more extended one where the latter offers better overall achievability and integrity.</i></p> <p>4. the extent to which the Key Staff Positions nominated in the tender address the risk profile of the draft Contract and are able to be matched with skills available within the proposed project team (including Subcontractors) that will perform the work required under the draft Contract.</p> <p>Key Staff Positions Annex E</p> <p>5. the tenderer's willingness to participate in a Measurement Program.</p> <p>Measurement and Analysis Annex E</p> <p>6. the quality and credibility of the tenderer's risk assessment and the adequacy of the tenderer's strategy for management of the risks to both the tenderer and the Commonwealth.</p> <p>Risk Assessment and Strategy Annex E</p> <p>7. the adequacy of the tenderer's proposed Earned Value Management System.</p>

Key Criteria	Subordinate Criteria and Evaluation Items
	<p>Earned Value Management System Annex E</p> <p>8. the adequacy of the tendered quality statement and the suitability of the Quality accreditation of the tenderer and Approved Subcontractors.</p> <p>Quality Statement Annex E</p> <p>9. the demonstrable capability of the tenderer to undertake the work detailed in the SOW in accordance with the draft Contract.</p> <p>Company Profile/Tenderer's Ability to Supply Annex A</p> <p>Business Resource Planning Annex C</p>
f. the extent to which the tenderer is compliant with the draft Ethics Letter.	<p>1. the tenderer's willingness to provide an Ethics Letter in the form proposed by the Commonwealth and the assessed level of risk relating to any proposed amendments.</p> <p>Ethics Letter Annex C</p>
g. 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.	<p>1. the compliance with production, delivery, acceptance and ownership provisions, and the assessed level of risk relating to the compliance.</p> <p>Statement of Compliance Annex A</p> <p>Importation of Supplies and Export Approvals Annex C</p> <p>Government Furnished Material Annex E</p> <p>Securities Annex D</p> <p>2. the compliance with warranty and indemnity provisions, insurance and other risk management provisions including any proposed capping of liability, and the assessed level of risk relating to the compliance.</p> <p>Statement of Compliance Annex A</p> <p>Warranty and Latent Defects Annex C</p> <p>Liability Annex C</p> <p>Insurance Annex C</p> <p>Risk Assessment and Strategy Annex E</p> <p>3. the compliance with contract interpretation, Defence Security, dispute and termination, and other contract provisions, and the assessed level of risk relating to the compliance.</p> <p>Statement of Compliance Annex A</p>
h. the nature of and extent to which the tender proposes IP rights to the Commonwealth, and the assessed level of risk relating to the negotiation of IP provisions acceptable to the Commonwealth.	<p>Statement of Compliance Annex A</p> <p>Intellectual Property Annex C</p> <p>Schedule of Subcontractors Annex A</p> <p>Project Management Plan Annex E</p>

Key Criteria	Subordinate Criteria and Evaluation Items
<p>i. the proposed corporate structure and the financial and corporate viability of the tenderer and proposed Approved Subcontractors to fulfil contract obligations.</p>	<p>Proposed Technical Data List (TDL) Annex I</p> <p>1. the assessed level of risk associated with the proposed corporate relationship between the tenderer and its Subcontractors (including whether Subcontractors are part of the same corporate structure).</p> <p>Statement of Compliance Annex A Company Profile Annex A Agency Arrangements Annex D Schedule of Subcontractors Annex A Securities Annex D</p> <p>2. the financial and corporate viability of the tenderer and proposed Approved Subcontractors.</p> <p>Company Profile/Tenderer's Ability to Supply Annex A Business Resource Planning Annex C Financial Reports (<i>from credit agencies</i>)</p>
<p>j. the tendered prices and pricing structure, including the proposed payment schedule.</p>	<p>1. the compliance with the Commonwealth proposed payment schedule.</p> <p>Schedule of Payments Annex D.</p> <p>2. the compliance with price and payment provisions, including the degree of exposure to adjustments for fluctuation in exchange rates and inflation, and the assessed level of risk relating to the compliance.</p> <p>Statement of Compliance Annex A Price and Delivery Schedule Annex D Items for which Specific Prices are Required Annex D Exchange Rate Adjustments Annex D Adjustment for Fluctuations in the Cost of Labour and Materials Annex D Further Quantities and Optional Extras Annex D</p> <p>3. the assessed value to Defence of the proposed Milestones and whether payments are assessed as reflecting the risk profile of the project.</p> <p>Schedule of Payments Annex D Cost Reimbursement Annex D</p> <p>4. the life-cycle cost risks and cost drivers associated with acquiring, operating and supporting the tendered solution, including consideration of any life-cycle cost benefits of achieving AIC requirements.</p>

Key Criteria	Subordinate Criteria and Evaluation Items
	<p>Project-specific LCC Model Annex D</p> <p>Draft AIC Plan Annex H</p> <p>Note to tenderers: Tenderers should be aware that the evaluation of the tendered price will not only include an assessment of the tendered acquisition costs, but also life cycle cost factors such as support costs, operational costs and Not to Exceed (NTE) spares costs.</p>
<p>k. the extent to which the tender satisfies the AIC requirements.</p>	<p>1. the compliance with the AIC requirements and the assessed level of risk relating to the compliance.</p> <p>Statement of Compliance Annex A</p> <p>2. the extent to which the tendered draft AIC Plan will achieve the Industry Requirements.</p> <p>Draft AIC Plan Annex H</p> <p>3. the nature and extent of ANZ and SME involvement and future commercial opportunities domestically and internationally, including any involvement in global supply chains.</p> <p>Draft AIC Plan Annex H</p> <p>Company Profile/Tenderer's Ability to Supply Annex A</p> <p>Schedule of Subcontractors Annex A</p> <p>Price Schedule Annex D</p> <p>4. the quality of the tendered AIC management proposal for validating and reporting AIC achievement.</p> <p>Draft AIC Plan Annex H</p>
<p>l. the extent to which the tendered solution for the Support System is assessed as meeting the requirements of the draft Contract (and draft Contract (Support)).</p> <p>Note to drafters: The reference to '(and draft Contract (Support))' should only be included if the RFT includes a draft Contract (Support).</p>	<p>Proposed Support System solution Annex I</p> <p>Proposed Recommended Spares Provisioning List (RSPL) Annex I</p> <p>Proposed Support and Test Equipment Provisioning List (S&TEPL) Annex I</p> <p>Proposed Training Equipment and Materials List (TEML) Annex I</p> <p>Proposed Technical Data List (TDL) Annex I</p>
<p>m. the integrity and maturity of the tenderer's Integrated Logistics Support (ILS) infrastructure and the extent to which the tendered ILS proposal is assessed as meeting the requirements of the draft SOW.</p>	<p>1. the level of compliance with the ILS requirements in the draft SOW, and the assessed level of risk relating to the compliance.</p> <p>Statement of Compliance Annex A</p> <p>Traceability Matrix in the Integrated Support Plan (ISP) Annex I</p> <p>2. the assessed risk to the project objectives associated with the tendered</p>

Key Criteria	Subordinate Criteria and Evaluation Items
	<p>proposal to conduct and manage the ILS program and associated sub-programs (eg. Logistics Support Analysis (LSA) and Training).</p> <p>Draft ISP (<i>and other Draft ILS Plans where applicable</i>) Annex I</p> <p>Draft V&V Plan (<i>for verification and validation of the Support System</i>) Annex I</p> <p>3. the tenderer's demonstrated capability to conduct an ILS program of similar type, scope and technical complexity to that required for the project.</p> <p>Statement of Relevant Experience Annex I</p> <p>Description of the extant ILS procedures, as documents in the ISP (<i>and other Draft ILS Plans where applicable</i>) Annex I</p>