

## PART 1 – CONDITIONS OF TENDER

## TENDER DETAILS SCHEDULE

<b>RFT Number:</b>	[INSERT NO.]						
<b>RFT Name:</b>	[INSERT NAME OF SERVICES]						
<b>Division 2 of CPRs:</b>	<p><b>Note to drafters: Select ‘do’ or ‘do not’ from the clause below as appropriate to the RFT.</b></p> <p><b>An electronic version of the CPRs can be accessed at:</b></p> <ul style="list-style-type: none"> <li><a href="https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules">https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules</a></li> </ul> <p>The additional rules detailed in Division 2 of the Commonwealth Procurement Rules (CPRs) <b>[DO / DO NOT]</b> apply to this procurement.</p>						
<b>Contact Officer:</b> (clause 2.3)	<table border="1"> <tr> <td>Name:</td> <td>[INSERT DETAILS]</td> </tr> <tr> <td>Address:</td> <td>[INSERT ADDRESS]</td> </tr> <tr> <td>Email:</td> <td>[INSERT EMAIL ADDRESS]</td> </tr> </table>	Name:	[INSERT DETAILS]	Address:	[INSERT ADDRESS]	Email:	[INSERT EMAIL ADDRESS]
Name:	[INSERT DETAILS]						
Address:	[INSERT ADDRESS]						
Email:	[INSERT EMAIL ADDRESS]						
<b>Industry briefing:</b> (Optional) (clause 2.6)	<p>An industry briefing will be conducted at <b>[INSERT PLACE]</b> commencing at <b>[INSERT TIME]</b> on <b>[INSERT DATE]</b>.</p> <p>Representatives of prospective tenderers at the briefing will be limited to <b>[INSERT NUMBER]</b> personnel. Nominations to attend the briefing are to be forwarded in writing to the Contact Officer by <b>[INSERT TIME / DATE]</b>.</p> <p><b>Option: To be used when a classified industry briefing is required.</b></p> <p>Representatives of prospective tenderers are to hold a current personnel security clearance at a minimum of <b>[INSERT CLASSIFICATION LEVEL]</b> level. Prospective tenderers are to provide the following additional details for their representatives:</p> <ol style="list-style-type: none"> <li>nationality;</li> <li>date and place of birth; and</li> <li>current personnel security clearance and the Department which issued the clearance.</li> </ol>						
<b>Closing Time:</b> (clause 2.7.3)	<p><b>Note to drafters: Closing Time must be between 10 am - 4pm ACT local time and not fall on a national or local ACT public holiday. This is to ensure that the AusTender Help Desk function is available to tenderers during the Closing Time.</b></p> <p><b>[INSERT TIME]</b> local time in the Australian Capital Territory (ACT) on <b>[INSERT DATE]</b>.</p>						
<b>Format:</b> (clause 2.7.4)	[INSERT FORMAT].						
<b>Tender Validity Period:</b> (clause 2.8)	[INSERT PERIOD] after the Closing Time (as extended under clause 2.8, if applicable).						
<b>Minimum Content and Format Requirements:</b> (clause 3.2)	<p>Tenders (including all attachments, annexes and supporting documentation), are to be written in English.</p> <p>All measurements in tenders are to be expressed in Australian legal units of measurement unless otherwise specified.</p> <p>Tenders are to include a PDF copy of the Tenderer’s Deed of Undertaking in the form of Annex A duly signed by the tenderer.</p>						
<b>Conditions for Participation:</b>	<b>Note to drafters: Clauses 2.4 and 2.5 should be used when the procurement is subject to the additional rules detailed in the CPRs. Conditions for Participation</b>						

(Optional)  
(clause 3.3)

***must be limited to those that will ensure that a potential supplier has the legal, commercial, technical and financial abilities to fulfil the requirements of the RFT.***

Clause 2.4 Preparation and Transmission of Classified Tenders; and  
Clause 2.5 Defence Security Requirements.

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## 1 GENERAL CONDITIONS

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

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- 1.1.1 The Request for Tender (RFT) comprises:
- a. Part 1 – Conditions of Tender (COT) (including the Tender Details Schedule) and annexes; and
  - b. Part 2 - draft Conditions of Contract (COC) and attachments.
- 1.1.2 This RFT is an invitation to treat and, to the extent permitted by law, no binding contract (including a process contract) or other understanding (including any form of contractual, quasi-contractual or restitutionary rights, or rights based upon similar legal or equitable grounds) will exist between the Commonwealth and a tenderer unless and until any resultant Contract is signed by the Commonwealth and a successful tenderer.
- 1.1.3 Clause 1.1.2 does not apply to:
- a. the Tenderer's Deed of Undertaking executed by a tenderer;
  - b. a confidentiality deed executed by a tenderer; or
  - c. any other deed or contractual arrangement entered into by the tenderer, as required by the Commonwealth from time to time.
- 1.1.4 The Commonwealth will not be responsible for any costs or expenses incurred by any tenderer in preparation or lodgement of a tender or taking part in the RFT process.
- 1.1.5 In the RFT, unless the contrary intention appears, words, abbreviations and acronyms have the same meaning given to them in the Tender Details Schedule or the draft Contract.
- 1.1.6 If there is any inconsistency between any part of this RFT, a descending order of precedence is to be accorded to the:
- a. COT (including the Tender Details Schedule);
  - b. annexes to the COT; and
  - c. draft Contract in accordance with clause 1.5 of the draft COC,
- so that the provision in the higher ranked document, to the extent of the inconsistency, prevails.

### 1.2 Amendment of RFT (Core)

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***Note to tenderers: When an amendment to the RFT is issued by the Commonwealth it will be through AusTender. Refer to clause 2.7 for more information on AusTender.***

- 1.2.1 The Commonwealth may amend the RFT by giving tenderers timely written notice of an amendment. If the Commonwealth amends this RFT under this clause 1.2.1 after tenders have been submitted, it may seek amended tenders.
- 1.2.2 Tenderers will have no claim against the Commonwealth or any Commonwealth Personnel for any failure to inform a tenderer of an amendment to the RFT, or any failure to seek amended tenders, or any other matter arising in connection with an amendment to this RFT.

### 1.3 Termination, Suspension or Deferral of RFT (Core)

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***Option A: For when the procurement is not subject to the additional rules detailed in the CPRs.***

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

**Option B: For when the procurement is subject to the additional rules detailed in the CPRs.**

- 1.3.2 Without limiting its rights under the RFT, at law or otherwise, the Commonwealth may suspend, defer or terminate this RFT process where the Commonwealth determines that:
- a. it is in the public interest to do so;
  - b. the Commonwealth is required by law to do so;
  - c. no tenderer represents value for money;
  - d. no tenderer meets the Conditions for Participation specified in the Tender Details Schedule, if any;
  - e. no tenderer meets the essential requirements, if any, at clause 3.4; or
  - f. no tenderer is fully capable of undertaking the Contract,
- and the Commonwealth will notify tenderers to this effect.

**1.4 Other Commonwealth Rights (Core)**

- 1.4.1 Without limiting its rights under the RFT, at law or otherwise, the Commonwealth may at any stage of the RFT process, exclude a tenderer from further participation in the RFT process:
- a. if an Insolvency Event occurs in relation to the tenderer or any of its Related Bodies Corporate;
  - b. if the tender is incomplete or clearly non-competitive; or
  - c. a representation or warranty given by tenderer in its tender is false or misleading.

**1.5 Australian Government Requirements (Core)**

**Note to drafters: Prior to RFT release, the Glossary should be updated to reflect the version of the following documents and policies current at the time of RFT release.**

**If there are other Commonwealth or Defence policies relevant to the procurement activity, that are not otherwise referenced in the RFT, they can be listed below.**

**Note to tenderers: Electronic copies of relevant Defence documents are available on the internet at:**

- <https://www.defence.gov.au/business-industry/procurement/contracting-templates/asdefcon-suite>.

**Any other documents required can be provided by the Contact Officer.**

- 1.5.1 The Commonwealth will not enter into a Contract with a tenderer which has a judicial decision against it (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired) relating to unpaid employee entitlements where the entitlements remain unpaid.
- 1.5.2 Tenderers should familiarise themselves with the following Commonwealth policies:
- a. DI ADMINPOL and in particular:
    - (i) Annex C, AG4 – Incident reporting and management and the Incident Reporting and Management Manual;
    - (ii) Annex C, AG5 – Conflicts of interest and declarations of interest and the Integrity Policy; and
    - (iii) Annex J, PPL 7 – Required behaviours in Defence and Chapter 3 of the Complaints and Alternative Resolutions Manual;
  - b. Financial Policy – Gifts and Benefits (Including Hospitality) – Receiving;
  - c. Financial Policy – Gifts and Benefits (Including Hospitality) – Spending;
  - d. Australian Defence Force alcohol policy as detailed in MILPERSMAN Part 4 Chapter 1;
  - e. Public Interest Disclosure policy detailed at:
 

<https://www.ombudsman.gov.au/complaints/public-interest-disclosure-whistleblowing>;  
and

- f. [DRAFTERS TO INSERT ANY OTHER RELEVANT COMMONWEALTH AND DEFENCE POLICIES THAT REGULATE DELIVERY OF THE SUPPLIES].

## 1.6 Workplace Gender Equality (Optional)

**Note to drafters:** The clause 1.6 must be used for procurements at or above the relevant procurement threshold and that do not meet the exemptions set out at Appendix A to the CPRs. If the procurement is specifically exempt from the additional rules detailed in the CPRs as a result of a Defence specific exemption, the procurement will still be subject to the Workplace Gender Equality Procurement Principles and this clause is to be used.

A list of Defence specific exemptions is found in the factsheet 'Exemptions from Division 2 of the Commonwealth Procurement Rules' which is available here:

- <http://ibss/PublishedWebsite/LatestFinal/%7B836F0CF2-84F0-43C2-8A34-6D34BD246B0D%7D/Item/EBDAF9B0-2B07-45D4-BC51-67963BAA2394>

**Note to tenderers:** The Workplace Gender Equality Procurement Principles prevent the Commonwealth from entering into contracts with suppliers who are non-compliant under the Workplace Gender Equality Act 2012 (Cth) (WGE Act). In performing any resultant Contract, the tenderer must comply with its obligations under the WGE Act. Information about the coverage of the Workplace Gender Equality Procurement Principles is available from the Department of Social Services at:

- <https://www.wgea.gov.au/what-we-do/compliance-reporting/wgea-procurement-principles>.

- 1.6.1 In accordance with the Workplace Gender Equality Procurement Principles, the Commonwealth will not enter into any resultant Contract with a tenderer who is non-compliant under the *Workplace Gender Equality Act (Cth) 2012*.

## 1.7 Procurement Complaints (Core)

- 1.7.1 In the event tenderers wish to lodge a formal complaint regarding this procurement, the complaint is to be directed in writing to: [procurement.complaints@defence.gov.au](mailto:procurement.complaints@defence.gov.au). On the request of the Commonwealth, tenderers are to cooperate with the Commonwealth in the resolution of any complaint regarding this procurement.

**Option: For an RFT covered by a public interest certificate.**

- 1.7.2 A public interest certificate under the *Government Procurement (Judicial Review) Act 2018* (Cth) covering this procurement is in force.

## 2 TENDER PREPARATION AND LODGEMENT

### 2.1 Tenderers to Inform Themselves (Core)

- 2.1.1 The Commonwealth makes no representations or warranties that the information in the 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:
- examining the RFT, any documents referenced in or attached to the RFT and any other information made available by the Commonwealth to tenderers in connection with the RFT process;
  - 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
  - satisfying themselves that their tender (including tendered prices) is accurate, complete and not misleading.
- 2.1.3 Tenderers are to prepare and lodge their tenders based on the acknowledgements and agreements at the Tenderer's Deed of Undertaking.

**Note to tenderers: Requests for advice on the control status of Australian goods and/or services should be forwarded to Defence Export Controls via email at [ExportControls@defence.gov.au](mailto:ExportControls@defence.gov.au).**

**Further information on Australian export controls may be found at:**

- <https://www.defence.gov.au/business-industry/export/controls>

2.1.4 Tenderers are solely responsible for informing themselves of the export control status of the tendered Services and for ensuring their compliance with Australian and foreign government controls related to the export of defence and dual-use goods, including if the export is from an Australian contractor to an overseas Subcontractor or Related Body Corporate for the purposes of providing the Services to the Commonwealth.

## **2.2 Tender Preparation (Core)**

2.2.1 Tenderers are to complete and provide the information requested in the annexes and are to do so in the manner requested in the annexes.

2.2.2 Supporting documentation may be provided to enhance the tender. Supporting documentation relevant to a particular annex is to be indicated in that annex.

## **2.3 Contact Officer and RFT Inquiries (Core)**

2.3.1 Tenderers are to direct any questions or concerns regarding this RFT in writing to the Contact Officer specified in the Tender Details Schedule.

2.3.2 Tenderers may submit questions or concerns to the Contact Officer up until five Working Days prior to the Closing Time specified in the Tender Details Schedule.

2.3.3 Any question or concern submitted by tenderers is submitted on the basis that the Commonwealth may circulate it and the Commonwealth's response to all other tenderers without disclosing the source of the question or concern, Confidential Information or revealing the substance of a proposed tender.

## **2.4 Preparation and Transmission of Classified Tenders (Core)**

**Note to drafters: Classified information should not be included as part of a RFT except in exceptional circumstances. Where the RFT is to include classified information, drafters should consult with their Project Security Officer.**

**Note to tenderers: For information on preparation and transmission of classified tenders and for access to the DSPF, tenderers should contact the Contact Officer.**

2.4.1 Classified information in tenders is to be avoided where possible. If this cannot be achieved, tenders containing classified information are to be prepared and transmitted as follows:

- for Australian tenders, in accordance with Principle 71 of the DSPF; and
- 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 is to use the diplomatic bag of its own government.

**Option: For a RFT involving classified information.**

2.4.2 Tenderers are to classify information in their tenders in accordance with the Security Classification and Categorisation Guide at Attachment E to the draft Contract.

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

## **2.5 Defence Security Requirements (Core)**

**Note to drafters: Where the procurement involves weapons or explosive ordnance, drafters must obtain DSA's approval for the security-related aspects of the request documentation prior to release.**

2.5.1 On request by the Commonwealth, the tenderer is to comply with the Commonwealth security clearance and accreditations process as detailed in Principles 23, 40, 72 and 73 of the DSPF,

including obtaining the level of security clearance and accreditations required by the Commonwealth.

## 2.6 Industry Briefing (Optional)

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- 2.6.1 An industry briefing will be conducted in accordance with the details provided in the Tender Details Schedule.
- 2.6.2 Industry briefings are conducted for the purpose of providing background information only. Tenderers should note the effect of clause 1.2.1. 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.

## 2.7 Lodgement of Tenders (Core)

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**Note to tenderers: The Closing Time will be displayed in the relevant AusTender webpage together with a countdown clock that displays in real time the amount of time left until Closing Time (for more information please see AusTender Terms of Use). For the purposes of determining whether a tender response has been lodged before the Closing Time, the countdown clock will be conclusive.**

- 2.7.1 AusTender is the Australian Government's procurement information system. Access to and use of AusTender is subject to terms and conditions. In participating in this RFT tenderers are to comply with those terms and conditions and any applicable instructions, process, procedures and recommendations as advised on AusTender at:  
<https://help.tenders.gov.au/>.
- 2.7.2 All queries and requests for AusTender technical or operational support are to be directed to:  
AusTender Help Desk  
Telephone: 1300 651 698  
International: +61 2 6215 1558  
Email: [tenders@finance.gov.au](mailto: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).
- 2.7.3 Tenders are to be lodged electronically via AusTender (<https://www.tenders.gov.au>) before the Closing Time specified in the Tender Details Schedule, in accordance with the tender lodgement procedures set out in this RFT and on AusTender.
- 2.7.4 Tenders are to be lodged in the Format specified in the Tender Details Schedule. All file names should:
- sufficiently identify the tenderer by including their name; and
  - reflect the parts of the response they represent, where the response comprises multiple files.
- 2.7.5 Tender files should not exceed a combined file size of 500 megabytes per upload.

## 2.8 Tender Validity Period (Core)

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- 2.8.1 The Commonwealth requires that tenders submitted in response to this RFT remain open for acceptance during the Tender Validity Period specified in the Tender Details Schedule.

**Note to drafters: if this extension period is inappropriate, specify another period of extension.**

- 2.8.2 If this procurement is suspended under the *Government Procurement (Judicial Review) Act 2018* (Cth), the Tender Validity Period is extended by the period of suspension, up to **[twice the period of the Tender Validity Period specified in the Tender Details Schedule]**.
- 2.8.3 Without limiting clause 2.8.2, the Commonwealth may request an extension of the Tender Validity Period.

## 2.9 Alterations, Erasures and Illegibility (Core)

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- 2.9.1 Any alterations or erasures made to a tender by a tenderer are to 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.



## 2.10 Unintentional Errors of Form (Optional)

**Note to drafters: This clause must be used when the procurement is subject to the additional rules detailed in the CPRs.**

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

## 2.11 Confidentiality (Core)

- 2.11.1 Tenderers are to treat the RFT and any information provided to tenderers by or on behalf of the Commonwealth in connection with the RFT process as confidential and not disclose or use that information except as strictly required for the purpose of developing a tender in accordance with the RFT.
- 2.11.2 In accordance with paragraph 7.23 of the CPRs, the Commonwealth will treat tenders as confidential before and after the award of any resultant Contract.
- 2.11.3 Despite clause 2.11.2 the Commonwealth may disclose information:
- a. if required by law or statutory or portfolio duties, or required for public accountability reasons, including following a request by parliament or a parliamentary committee;
  - b. for the purpose of defending any claim or proceeding in relation to this RFT process or any resultant Contract;
  - c. in the public domain otherwise than due to a breach of confidence; or
  - d. as contemplated under clause 2.13.

## 2.12 Probity Assurance (Core)

**Note to tenderers: Tenderers should note that the Tenderer's Deed of Undertaking sets out a number of acknowledgements and undertakings to be given by tenderers, including in relation to probity, conflict of interest and bribery.**

- 2.12.1 The Commonwealth may exclude a tender from further consideration if in the opinion of the Commonwealth, the tenderer fails to comply with clause 4 of the Tenderer's Deed of Undertaking. The Commonwealth may exclude a tender from further consideration if the tenderer, any of its Related Bodies Corporate or any officer of any of them has been convicted of bribery of Commonwealth, State, Territory or foreign government officials at any time during the last seven years.

## 2.13 Use of Tender Documents (Core)

- 2.13.1 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 and selection of any tender;
  - b. preparation and negotiation of any resultant Contract with respect to the RFT; and
  - c. verifying the currency, consistency and adequacy of information provided under any other RFT process conducted by the Commonwealth.
- 2.13.2 The Commonwealth may disclose all or part of the tender documents to a third party for the purposes of assisting the Commonwealth in the conduct of the RFT process, and for the purposes contained in clause 2.13.1. The Commonwealth may obtain appropriate confidentiality undertakings from the third party prior to disclosure.
- 2.13.3 Nothing in this clause 2.13 changes or affects the ownership of IP in the information contained in the tender documents.

## 2.14 Part and Joint Tenders (Core)

- 2.14.1 The Commonwealth will not consider a joint tender for the Services.
- 2.14.2 The Commonwealth will not consider a part tender for the Services.

## 2.15 Alternative Proposals (Core)

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- 2.15.1 The Commonwealth may consider an alternative proposal submitted by a tenderer that does not comply with the requirements of the RFT. The alternative proposal is to be submitted in accordance with this clause 2.15.
- 2.15.2 The Commonwealth will not consider an alternative proposal unless the alternative proposal:
- a. is submitted together with a tender that addresses the requirements of the RFT;
  - b. clearly identified as an alternative proposal submitted under this clause 2.15;
  - c. complies with all essential requirements identified in the RFT;
  - d. fully described by the tenderer, including:
    - (i) the advantages, disadvantages, limitations and capability of the alternative proposal; and
    - (ii) the extent to which the adoption of the alternative proposal would impact upon the tender that addresses the requirements of the RFT including any financial impact, impact on the provision of the Services and any other consequences of the alternative proposal; and
  - e. contains sufficient and verifiable supporting information and data to enable a comparison of the alternative proposal against other tenders.
- 2.15.3 For the avoidance of doubt, alternative proposals are not required to constitute a complete tender that addresses all of the requirements of this RFT.

## 3 EVALUATION OF TENDERS

### 3.1 Evaluation Criteria and Process (Core)

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

- 3.1.1 Tenders will be evaluated on the basis of best value for money consistent with Commonwealth procurement policies, and the terms of the RFT.
- 3.1.2 The criteria to be applied for the purposes of evaluation are as follows, not in any order of importance:
- a. past performance of contractual obligations of the tenderer;
  - b. the tenderer's degree of overall compliance with the RFT;
  - c. the extent to which the tender meets the requirements stated in the draft SOW, including any specifications;
  - d. 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;
  - e. the extent to which the proposed rights to the Contract Material would enable the Commonwealth to obtain the full benefit of the requested Services;
  - f. the proposed corporate structure and the financial and corporate viability and capability of the tenderer and Subcontractors to fulfil Contract obligations; and
  - g. the tendered prices and pricing structure, including proposed payment schedule.
- 3.1.3 The Commonwealth may at any time during the RFT process:
- a. obtain additional information (whether that information is obtained through the RFT process or by any other means) relevant to a tenderer's tender;
  - b. use material tendered in response to one evaluation criterion in the evaluation of other criteria; and
  - c. seek clarification or additional information from, and enter into discussions with, any or all of the tenderers in relation to their tender.
- 3.1.4 In assessing tenders, the Commonwealth may take into account any supporting documentation provided under clause 2.2.2.

### 3.2 Minimum Content and Format Requirements (Core)

**Note to drafters: When the procurement is subject to the additional rules detailed in the CPRs, 'will' is to be selected from the following clause. When the procurement is NOT subject to the additional rules detailed in the CPRs, 'may' is to be selected.**

- 3.2.1 [Subject to clause 2.10], the Commonwealth [MAY/WILL] exclude a tender from further consideration if the Commonwealth considers that the tender is non-compliant with any of the Minimum Content and Format Requirements specified in the Tender Details Schedule.

### 3.3 Conditions for Participation (Optional)

**Note to drafters: This clause should be used when the procurement is subject to the additional rules detailed in the CPRs.**

- 3.3.1 The Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tenderer is non-compliant with any of the Conditions for Participation specified in the Tender Details Schedule.

### 3.4 Essential Requirements (Optional)

**Note to drafters: This clause is to be used if the draft SOW contains essential requirements. When the procurement is subject to the additional rules detailed in the CPRs, 'will' is to be selected from the following clause. When the procurement is NOT subject to the additional rules detailed in the CPRs, 'may' is to be selected.**

- 3.4.1 The Commonwealth [MAY/WILL] exclude a tender from further consideration if the Commonwealth considers that the tender does not comply with a requirement identified as essential in the draft SOW.

### 3.5 Negotiation (Core)

- 3.5.1 The Commonwealth may engage one or more tenderers in negotiations, which may involve tenderers being asked to:
- a. clarify, improve or consolidate any of the technical, commercial, legal, financial and operational aspects of their tenders; or
  - b. enter into an agreement with the Commonwealth relating to the terms of the detailed engagement with that tenderer.

### 3.6 Preferred Tenderer Status (Core)

- 3.6.1 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; and
  - b. is not a representation that any 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.

### 3.7 Cost Investigation of Tenders (Core)

**Note to tenderers: The Commonwealth may refer to the CASG Cost Principles in considering whether the costs that the Contractor seeks to recover under the Contract are reasonable. The CASG Cost Principles can be accessed via the 'Contracting in CASG' webpage on the 'Doing Business with Defence' internet site at:**

- <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/cost-principles>.

- 3.7.1 For the purposes of evaluating a tender, Commonwealth Personnel may conduct a cost investigation of the tendered price. On request by the Commonwealth, the tenderer is to facilitate any such cost investigation.

### 3.8 Debriefing of Tenderers (Core)

- 3.8.1 Tenderers will be notified whether they have been successful or unsuccessful and may request an oral or written tender debriefing. Tenderers requiring a debriefing should contact the Contact Officer specified in the Tender Details Schedule.

3.8.2 Tenderers will be debriefed against the evaluation criteria contained in clause 3.1.

**ANNEXES TO THE CONDITIONS OF TENDER**

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## ANNEX A

## TENDERER'S DEED OF UNDERTAKING (CORE)

**Note to tenderers: Tenderers must provide a deed in the following format.**

This deed poll is made on the **(INSERT DATE)**

BY:

**(INSERT NAME, ACN/ABN and ARBN if APPLICABLE)** (Tenderer)

**1. DECLARATIONS (CORE)**

- 1.1 The Tenderer declares that this deed poll is for the benefit of the Commonwealth of Australia as represented by the Department of Defence ABN 68 706 814 312 (**Commonwealth**).
- 1.2 This deed poll is provided in connection with the Request for Tender **[INSERT RFT NUMBER]** (**RFT**) issued by the Commonwealth and the tender (**Tender**) submitted by the Tenderer in response to the RFT. Terms defined in the RFT will have the same meaning when used in this deed poll.
- 1.3 The Tenderer submits its Tender to provide the Services solicited by the RFT at the prices tendered and, subject to the statement of non-compliance included as part of its Tender, in accordance with the draft Contract.

**2. ACKNOWLEDGEMENTS (CORE)**

- 2.1 The Tenderer acknowledges and agrees:
  - a. to the Commonwealth's rights as set out in the RFT and this deed poll, including the Commonwealth's rights to exclude the Tender;
  - b. that the Tender has been prepared in accordance with the RFT and is accurate, complete and not misleading;
  - c. that the Commonwealth can utilise all relevant information about the Tenderer's performance on Commonwealth procurement activities;
  - d. that the Tenderer has conducted and will conduct itself during the RFT process in a manner that is at least consistent with:
    - (i) the Commonwealth's obligations to act in accordance with the applicable Commonwealth procurement framework, for example to ensure certainty of costs and value for money; and
    - (ii) the requirements set out in the 'Promoting Confidence in Defence Procurement Processes' section of the Defence publication *Defence and the Private Sector - Working With Integrity* which is available at <https://www.defence.gov.au/business-industry/industry-governance/industry-regulations/defence-and-private-sector-working-integrity>;
  - e. that the Commonwealth can rely on the Tender in accurately assessing compliance with the RFT, risks and risk management options, and value for money in accordance with the RFT;
  - f. that representations made in the Tender, when incorporated in any resultant Contract, will be fully complied with by the Tenderer;
  - g. that the Tenderer has relied entirely upon its own inquiries and inspection in preparing its Tender;
  - h. that the Tenderer has not relied on any representation, letter, document or arrangement, whether oral or in writing, or other conduct of the Commonwealth, as adding to or amending the RFT, except for any addendum issued by the Commonwealth that expressly add to or amend the RFT;

**ANNEX A**

- i. that in any resultant Contract the Tenderer will not use ACM in providing the Services and no ACM will be taken onto Commonwealth Premises in connection with providing the Services;
- j. that the Tenderer does not have any judicial decisions against it (including overseas jurisdictions but excluding decisions under appeal or instances where the period for appeal or payment/settlement has not expired) relating to unpaid employee entitlements where the entitlements remain unpaid;
- k. that Defence may provide any information collected or provided during the course of the RFT process (including regarding breaches of workplace relations law, work health and safety law or worker's compensation law) to other Commonwealth agencies or regulatory bodies;
- l. that Defence, as a Commonwealth agency, 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 website; and
- m. that the Tenderer is aware of the impact of the *Auditor-General Act 1997* (Cth) on its participation in the RFT and on any resultant Contract and any Subcontract under a resultant Contract.

2.2 The Tenderer acknowledges and agrees that:

- a. the RFT and any communication or dealings of any kind in relation to the RFT (other than this deed poll) between the Commonwealth and the Tenderer, or between the Commonwealth and any other person with an interest in the RFT, do not constitute a contract between the Commonwealth and the Tenderer;
- b. no binding contract (including a process contract) or other understanding (including, without limitation, any form of contractual, quasi-contractual or restitutionary rights, or rights based upon similar legal or equitable grounds) will exist between the Commonwealth and the Tenderer unless and until a Contract is signed by the Commonwealth and the Tenderer; and
- c. the Commonwealth has no liability to pay the Tenderer, or any other person, and is not liable to the Tenderer for any compensation on the basis of any 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.

**3. ACCEPTANCE (CORE)**

- 3.1 The Tender submitted by the Tenderer in response to the RFT shall remain open for the Tender Validity Period specified in the Tender Details Schedule (as extended under clause 2.8 of the Conditions of Tender, if applicable).
- 3.2 The Tenderer acknowledges and agrees that the Tender is an unconditional offer and, to the extent reasonably possible, the Tenderer will obtain any necessary Authorisations to enable it to enter into any resultant Contract on an unconditional basis.

**4. UNDERTAKINGS AND WARRANTIES (CORE)**

- 4.1 The Tenderer represents and warrants that there has not been and will not be any collusive tendering, anti-competitive conduct, or any other similar conduct by it or its Related Bodies Corporate, or any officer, employee, agent or advisor of any of them, in relation to:
  - a. the preparation or lodgement of tenders;
  - b. the evaluation and clarification of tenders; and
  - c. the conduct and content of negotiations, including final Contract negotiations, in respect of the RFT process.

## ANNEX A

- 4.2 For the purposes of clause 4.1, 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 confidential to the Commonwealth or any other tenderer or any other person or entity.
- 4.3 The Tenderer represents and warrants:
- a. that the Tender has not been compiled:
    - (i) with the improper assistance of current or former Commonwealth Personnel or Defence Service Providers;
    - (ii) with the utilisation of information improperly obtained from the Commonwealth; or
    - (iii) in breach of an obligation of confidentiality to the Commonwealth;
  - b. that it and any Related Bodies Corporate, and their officers, employees, agents and advisers have and will, during the RFT process, comply with any applicable laws (including foreign anti-corruption legislation) or Commonwealth policies regarding the offering of unlawful inducements in connection with their Tender;
  - c. without limiting clause 4.3a that it and any Related Bodies Corporate have not and will not, without prior written approval from the Commonwealth, permit any current or former Commonwealth Personnel, or Defence Service Provider to contribute to, or participate in, any process or activity relating to the preparation of the Tender or the RFT process, if:
    - (i) the person was involved at any time in the planning of the procurement to which this RFT relates, the preparation of this RFT, or the management of the RFT process; or
    - (ii) the person was at any time during the 12 months immediately preceding the date of issue of the RFT involved in a Defence procurement process or activity relevant or related to the RFT; and
  - d. that the Tenderer is aware of the provisions of the *Australian Consumer Law* (Schedule 2 to the *Competition and Consumer Act 2010* (Cth)), and Division 137 of the *Criminal Code Act 1995* (Cth) and that its Tender does not contain any false, misleading or deceptive misrepresentations, claims or statements.
- 4.4 Except to the extent identified in clause 4.6, the Tenderer represents and warrants that it and any Related Bodies Corporate, and their officers have not been convicted of bribery of Commonwealth, state, territory or foreign government officials during the last seven years.
- 4.5 Except to the extent identified in clause 4.6, the Tenderer represents and warrants that it and its Related Bodies Corporate officers, employees, agents and advisers have no actual, potential or perceived conflict of interest between the interests of the Commonwealth and the Tenderer's interests in relation to the RFT process. The Tenderer agrees to take such steps as the Commonwealth may require to resolve or otherwise deal with a conflict notified under clause 4.6.
- 4.6 The following conviction for bribery, or actual, potential or perceived conflict of interest currently exist:
- [INSERT ANY CONVICTION FOR BRIBERY OF COMMONWEALTH, STATE, TERRITORY OR FOREIGN GOVERNMENT OFFICIALS DURING THE LAST 7 YEARS; INSERT ANY ACTUAL, POTENTIAL OR PERCEIVED CONFLICT OF INTEREST; OR IF NONE EXIST INSERT THE WORDS 'NOT APPLICABLE'] .**
- 4.7 If in relation to the RFT a conflict of interest exists, arises, or appears likely to arise, that the Tenderer has not previously disclosed, the Tenderer must notify the Commonwealth promptly in writing. The Tenderer agrees to take such steps as the Commonwealth may require to resolve or otherwise deal with a conflict notified under this clause or which otherwise comes to the attention of the Commonwealth during the RFT process.
- 4.8 The Tenderer acknowledges and agrees that the Commonwealth may exclude the Tender from further consideration if in the opinion of the Commonwealth:



ANNEX A

- a. the Tenderer fails to take any steps required by the Commonwealth to resolve or deal with a conflict of interest;
- b. the Tenderer fails to comply in any other respect with this clause 4; or
- c. any representation or warranty of the Tenderer under this clause 4 is incorrect or misleading in any material respect.

4.9 In addition to clause 4.8, the Tenderer acknowledges and agrees that the Commonwealth may exclude the Tender from further consideration if the Tenderer, any of its Related Bodies Corporate, or any officer of any of them has been convicted of bribery of Commonwealth, State, Territory or foreign government officials during the last seven years.

4.10 The Tenderer represents and warrants that none of the Tenderer, its Related Bodies Corporate, or officers of either:

- a. have been found in the past 3 years to have committed a material breach; or
- b. are currently in material breach,

of any law, regulation or code that would be relevant to any resultant Contract, including those in relation to employment or workplace relations (including regulations relating to ethical employment practices), WHS or the environment, other than the following:

**[INSERT DETAILS OF PREVIOUS OR CURRENT BREACHES, OR IF NONE EXIST INSERT THE WORDS 'NOT APPLICABLE']**

and the following actions have been taken to remedy any such material breach:

**[INSERT DETAILS OF ACTION TAKEN (INCLUDING POLICIES IN PLACE) TO RESPOND TO EACH SUCH BREACH, OR IF NO BREACHES ARE LISTED ABOVE INSERT 'NOT APPLICABLE']**

**5. SURVIVAL (CORE)**

5.1 This deed poll survives the termination or expiry of the RFT.

**6. APPLICABLE LAW (CORE)**

***Note to drafters: Prior to release of the RFT drafters are to insert the same jurisdiction as selected under clause 10.1 of the draft COC and the Details Schedule.***

6.1 The Tenderer agrees that the laws of **[INSERT JURISDICTION]** apply to this deed poll and the Tenderer submits to the non-exclusive jurisdiction of the courts of that State or Territory and of any court that may hear appeals from any of those courts, for any proceedings in connection with the RFT.

**7. TERMINATION AND AMENDMENT (CORE)**

7.1 This deed poll shall not be unilaterally terminated or amended unless such termination or amendment is reduced to writing and agreed in writing by the Commonwealth.

**8. CONTACT DETAILS (CORE)**

8.1 The Tenderer's contact details for the purpose of the RFT and this deed poll are set out below.

NAME (Block Letters):

TELEPHONE NUMBER:

.....

EMAIL ADDRESS:

.....

## ANNEX A

**Executed as a Deed Poll**

***Note for Deed Signature: Guidance on executing agreements, including some statutory requirements to ensure the execution is effective, are detailed in the 'Executing Agreements Fact Sheet', found on the Procurement and Contracting intranet page at:***

- ***<http://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/EBDAF9B0-2B07-45D4-BC51-67963BAA2394>***

***This guidance is developed for Commonwealth Personnel and should be used to assess the Tenderer's execution of the Deed. The Tenderer should seek its own independent legal advice on its execution of the Deed.***

**(INSERT APPROPRIATE TENDERER'S EXECUTION CLAUSE)**

## ANNEX B

## STATEMENT OF NON-COMPLIANCE (CORE)

**1. STATEMENT OF NON-COMPLIANCE (CORE)**

- 1.1 If a tenderer does not fully comply with any clause of the annexes to the COT (excluding Annex A) and the draft COC and attachments, it is to state its non-compliances in a Statement of Non-Compliance Format at Table 1. Tenderers are to include details of:
- a. the extent, justification and impact of non-compliance;
  - b. details of any proposed drafting amendments; and
  - c. the location in the tender where further non-compliance details and comments (if any) can be found.
- 1.2 Responses are to be in the order in which the clauses appear and refer to the relevant clause number, annex or attachment.
- 1.3 A tenderer will be deemed to be fully compliant with any clause not listed in the Statement of Non-Compliance.

**Note to tenderers: Failure to indicate all non-compliances in Table 1 may constitute false, misleading or deceptive conduct for the purposes of Australian Consumer Law (Schedule 2 to the Competition and Consumer Act 2010 (Cth)) or Division 137 of the Criminal Code Act 1995 (Cth).**

Table 1: Statement of Non-Compliance Format

	Clause Number	Comments
Annexes (excluding Annex A) to the Conditions of Tender		
Draft Conditions of Contract		
Attachments to the draft Conditions of Contract		

## ANNEX C

## INFORMATION TO BE PROVIDED BY TENDERERS (CORE)

## 1. TENDERER'S PROFILE (CORE)

1.1 Tenderers are to provide the following information:

- a. detail of how they would complete the Commonwealth's requirements as outlined in the Statement of Work at Attachment A to the draft Contract;
- b. the tenderer's background, experience and resources relevant to its ability to meet the requirement;
- c. details of the personnel the tenderer proposes to use i.e. names of the individuals, intended extent of involvement in the assignment, and the individuals' qualifications and experience;
- d. information on other assignments or any other matter which the tenderer considers to be relevant to its competence; and
- e. the following details of the tenderer, as applicable:
  - (i) the full name of the tenderer;
  - (ii) any trading or business name;
  - (iii) if a company or corporation, the registered office, principal place of business and an outline of the company structure;
  - (iv) the date and place of incorporation;
  - (v) for a foreign firm or company, details of its registration, incorporation and place of business in Australia, the name of any Australian representative and its ACN/ARBN and its ABN as applicable;
  - (vi) if an Australian company, its ACN/ARBN and its ABN as applicable;
  - (vii) if the company has any third party quality certification (i.e. International Standards Organisation compliance), details of that certification;
  - (viii) if the tenderer is a Small Business; and

**Note to drafters:** *If a tenderer states in its tender that it is participating in the Approved Contractor Viability Program (ACVP), the Defence tender evaluation team should refer to the ACVP register to confirm the statement.*

**A tenderer which has ACVP status is prequalified as being financially viable for the purposes of tender evaluation. If a tender submitted by a tenderer with ACVP status has a tendered price below the threshold of \$50 million (ex GST) for acquisition contracts and \$10 million (ex GST) per annum for support or services contracts, the tender evaluation team will not need to request an enhanced financial viability assessment (FVA) from Financial Investigation Service (FIS) or consider financial viability any further. If a tender submitted by a tenderer with ACVP status has a tendered price at or above the threshold, the tender evaluation team should evaluate the tenderer as financially viable and will also need to request an enhanced FVA so that FIS can fully advise the project of any financial viability risks for higher value contracts.**

**Further information on the ACVP, including eligibility criteria and the registers of participating suppliers is available at:**

- <http://drnet.defence.gov.au/casg/commercial/SpecialistCommercialServices/Pages/FIS-Viability-Assessments.aspx>.

**Note to Tenderers:** *The Approved Contractor Viability Program (ACVP) prequalifies as financially viable a small number of key suppliers to Capability Acquisition and Sustainment*

## ANNEX C

**Group. Further information on the Approved Contractor Viability Program (ACVP), including eligibility criteria and the register of participating suppliers is available at:**

- <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/program-guidelines>.

- (ix) whether the company is a participant in the Approved Contractor Viability Program (ACVP) (i.e. those that are listed in the ACVP register as at the time of tender lodgement).

**Option: For when a procurement is at or above the relevant procurement threshold, and does not meet the exemptions set out at Appendix A to the CPRs. If the procurement is specifically exempt from the additional rules detailed in the CPRs as a result of a Defence specific exemption, the procurement will still be subject to the Workplace Gender Equality Procurement Principles and this clause is to be used.**

**Note to tenderers: In performing any resultant Contract, the tenderer is to comply with its obligations under the Workplace Gender Equality Act 2012 (Cth). Information about the coverage of the Workplace Gender Equality Procurement Principles is available from the Department of Social Services at:**

- <https://www.wgea.gov.au/what-we-do/compliance-reporting/wgea-procurement-principles>.

- 1.2 If the tenderer is a Relevant Employer, the tenderer is to:
- provide a current letter of compliance issued by the Workplace Gender Equality Agency (WGEA) as part of its tender; or
  - advise that it is a Relevant Employer as part of its tender and provide a current letter of compliance issued by WGEA prior to executing any resultant Contract with the Commonwealth.

**Option: These clauses must be included if the procurement is valued at over \$200,000 (GST Inclusive).**

**Note to tenderers: In accordance with the Buy Australian Plan and to support transparency in Australian Government procurement, tenderers for Australian Government contracts worth over \$200,000 (GST Inclusive) are required to disclose their country of tax residency. For further information, see the Department of the Treasury, Department of Finance and the Australian Tax Office:**

- <https://treasury.gov.au/policy-topics/taxation/country-tax-residency-disclosures>;
- <https://www.finance.gov.au/business/buyaustralianplan>; and
- <https://www.ato.gov.au/businesses-and-organisations/international-tax-for-business/working-out-your-residency>.

**This information will not be used to exclude a potential tenderer from further participation in the RFT process. Queries relating to the collection and use of data identifying an entity's country of tax residency can be directed to the Department of the Treasury at [MNETaxTransparency@treasury.gov.au](mailto:MNETaxTransparency@treasury.gov.au).**

- 1.3 Tenderers are to provide:
- the tenderer's country of tax residency; and
  - the tenderer's ultimate parent entity's country of tax residency.
- 1.4 In responding to clause 1.3, if the tenderer or the tenderer's ultimate parent entity has multiple tax residencies, each of the countries of which they are a tax resident shall be disclosed.
- 1.5 Tie-breaker rules (where an entity is considered a resident of one treaty country only for the purposes of that treaty) are not relevant in determining how to respond to clauses 1.3 and 1.4.

## ANNEX C

**Option: This clause must be used when a procurement has an estimated value above \$4 million (inc GST) and is not subject to a Defence exemption under paragraph 2.6 of the CPRs.**

**Note to tenderers: The Payment Times Procurement Connected Policy imposes obligations on large businesses with an annual income of over \$100 million who enter into a contract with the Commonwealth to pay invoices under their subcontracts (up to \$1 million (inc GST)) within 20 days. Further information about the Payment Times Procurement Connected Policy is available from the Department of Treasury at:**

- <https://treasury.gov.au/small-business/payment-times-procurement-connected-policy>.

1.6 Tenderers are to include the boxes below in their tender, and identify whether or not the Tenderer is a 'Reporting Entity' for the purposes of the Payment Times Procurement Connected Policy (PT PCP) by ticking the appropriate box.

- The tenderer **is** a Reporting Entity.
- The tenderer **is not** a Reporting Entity.

**Note: A Reporting Entity means a 'Reporting Entity' within the meaning of the Payment Times Reporting Act 2020 (Cth) (PTR Act).**

## 2. PAYMENT (CORE)

*Draft conditions of contract reference: clause 5.1*

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

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

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

- 2.4 Tenderers are to submit tender prices inclusive of all overseas taxes, duties and charges and all Australian (Federal, State and Local Government) taxes, duties and charges including GST and customs duty.

## ANNEX C

**Option: This clause should only be included in single supplier limited tender RFTs.**

- 2.5 To facilitate any cost investigation conducted by the Commonwealth for the purposes of establishing, in respect of a single supplier limited tender, that the tendered price is fair and reasonable and constitutes value for money, tenderers are to provide a cost break-down showing all elements included in the tendered price.

### 3. INSURANCE (CORE)

*Draft conditions of contract reference: clause 7*

**Note to tenderers: The ACIP Initiative permits tenderers with ACIP status to rely on the ACIP pre-qualification process as evidence of the tender's compliance with the draft COC insurance requirements that will be covered by a tenderer's ACIP. Information on the ACIP Initiative and the list of companies with current ACIP status is at:**

- <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/acip-initiative>

**For tenderers without ACIP status, evidence of the tender's compliance with the draft COC insurance requirements should not be returned with the tender. This evidence will be sought only from the preferred tenderer(s) prior to negotiations.**

**Tenderers should note that on the basis of the details and pricing information provided by a tenderer, the Commonwealth may require that the tenderer's current insurance policies (or for tenderer's with ACIP status, those policies falling outside the tenderer's ACIP) be maintained or extended and any proposed insurance policies be obtained. The Commonwealth may also require that additional insurance policies be obtained following negotiations with a preferred tenderer.**

#### **Tenderers without ACIP Status:**

- 3.1 Prior to negotiations, tenderers without ACIP status that are selected as a preferred tenderer are to provide all relevant details of current or proposed insurance policies required by the draft Contract, including:
- name of the insurer;
  - type of insurance;
  - terms and coverage of the insurance including person(s) insured, conditions and exclusions;
  - limits of indemnity per claim or occurrence and details of any aggregate limits or relevant sublimits which apply;
  - for a current policy, whether or not any past or current claims made under the policy have materially affected, or are likely to materially affect, the tenderer's ability to meet its obligations under any resultant Contract;
  - coinsurance, self-insured retention or deductible amounts; and
  - period of insurance.

#### **Tenderers with ACIP Status:**

- 3.2 Tenderers with ACIP status are not required to provide the information under paragraph 3.1, to the extent that the insurance policies they intend to rely upon in respect of the draft Contract are within the scope of their ACIP status. However, tenderers with ACIP status who intend to rely on any insurance policy which falls outside the scope of their ACIP status, are to comply with the requirements of paragraph 3.1 in respect of such insurance.
- 3.3 Tenderers with ACIP status are to indicate in their Statement of Non-Compliance against Annex C-3 that they have ACIP status and they are to identify any insurance policy which falls outside the scope of their ACIP status that they intend to rely upon in respect of the draft Contract.

#### **All tenderers:**

## ANNEX C

- 3.4 All tenderers are to identify in their tendered prices detailed in Annex C-2 details of all costs associated with the insurance policies covered in the tenderer's insurance response.

#### 4. SUBCONTRACTORS (CORE)

*Draft conditions of contract reference: clause 9.8*

- 4.1 Tenderers are to provide details of any Subcontractors that the tenderer proposes to use under the Contract where the value of the work to be subcontracted exceeds [...**DRAFTER TO INSERT PRIOR TO RELEASE OF RFT...**]. Such detail is to include (for each proposed Subcontractor) the name and A.C.N./A.R.B.N. and A.B.N. of the company, the elements of work to be subcontracted, the technical significance of the work and the cost of the Subcontract.

#### 5. GOVERNMENT FURNISHED MATERIAL (OPTIONAL)

*Draft conditions of contract reference: clause 3.4*

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

#### 6. CONTRACT MATERIAL RIGHTS (CORE)

*Draft conditions of contract reference: clause 4*

- 6.1 Tenderers are to provide a draft CMR Schedule in the form of Attachment C to the draft COC by specifying any proposed restrictions that will apply to the Commonwealth's right to sublicense the specified Contract Material under clause 4.2 of the draft COC.

#### 7. CONFIDENTIAL INFORMATION (CORE)

*Draft conditions of contract reference: clause 9.3*

- 7.1 Tenderers are to provide at Attachment D to the draft conditions of contract, a list of all draft Contract clauses and Contract outputs that they consider to be Confidential Information. For each clause or output, tenderers are to justify their identification of the information as Confidential Information, explaining how it meets all four criteria listed in Attachment D of the draft conditions of contract.

#### 8. LIABILITY (OPTIONAL)

*Draft conditions of contract reference: clause 8.4*

**Note to drafters: A Liability Risk Assessment (LRA) is to be undertaken by the Commonwealth in accordance with the Defence Liability Principles and the standard Defence methodology described in the Liability Risk Assessment template, both of which can be accessed at:**

- <http://drnet.defence.gov.au/casg/commercial/UndertakingProcurementinDefence/Pages/Liability-Risk-Management.aspx>.

**The LRA provides the basis for determining the limitation of liability amount and insurance requirements in clauses 8.4 and 7 respectively of the draft COC.**

**Note to tenderers: Tenderers should familiarise themselves with the limitation of liability amount and insurance requirements in clauses 8.4 and 7 respectively of the draft COC. The liability caps and insurance requirements were determined by the Commonwealth based on a liability risk assessment conducted in accordance with the Defence Liability Principles, and the standard**



## ANNEX C

**Defence methodology described in the Liability Risk Assessment template, both of which can be accessed at:**

- <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/liability-risk-management>

- 8.1 Tenderers are to specify the basis for Contractor liability that they propose will apply to any resultant Contract.
- 8.2 If a tenderer proposes to limit its liability on an alternative basis to that set out in clauses 8.3 – 8.5 of the draft COC (eg. by proposing a liability limitation or exclusion additional to those set out in clauses 8.3 and 8.4), the tenderer is to conduct its own liability risk assessment applying the Defence Liability Principles and the standard Defence methodology described in the Liability Risk Assessment template, and provide the following details:
- a. the terms of the tenderer's proposed limitation of liability (if different to those set out in clause 8.4 of the draft COC), including their proposed monetary cap for clause 8.4.1 of the draft COC;
  - b. an explanation of why the tenderer requires a limitation of its liability regime different to that proposed in clauses 8.3 – 8.5 of the draft COC; and
  - c. the impact (if any) of these changes on the insurance requirements of the draft COC.

## 9. PROBLEMATIC SUBSTANCES (CORE)

*Draft conditions of contract reference: clause 10.5*

**Note to tenderers: Commonwealth policy on Problematic Substances is detailed in Defence WHS Manual. Inclusion of any Problematic Substances in the Services will require the approval of the Commonwealth Representative. Such approval will not be granted if the inclusion of the substance infringes any Australian Commonwealth, State or Territory legislation.**

- 9.1 Tenderers are to indicate whether they propose to include any Problematic Substances in the Services. If so, tenderers are to indicate what these Problematic Substances are, the purposes for which they will be used and how they will be managed in accordance with any resultant Contract.

## ANNEX D

## EMPLOYER SPONSORED SUPERANNUATION (CORE)

**Note to drafters: Further advice on how to determine the Commonwealth's liability with respect to Superannuation may be found in the Expert Engagement Agreement Handbook.**

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

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

Table 1: Questions to determine Eligibility

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

## ANNEX D

<p>b. Do you have an account with the Australian Government Employees Superannuation Trust (AGEST)? If the answer is yes please provide details. AGEST is the default fund for a person who does not make an election about where their Superannuation Guarantee contribution is to be placed.</p>	
<p>9. What is the name and business address of the preferred Regulated Superannuation fund into which the benefit is to be paid? Does the fund accept electronic transfer of contributions? The payment of contributions may not be acceptable to Defence unless they can be processed electronically.</p>	