OVERvIEW (CORE)

1. EXECUTIVE SUMMARY (Core)
   1. Tenderers are to provide an executive summary of their tender.
   2. The executive summary is not to contain pricing information.
2. TENDERER’S PROFILE (Core)
   1. Tenderers are to provide the following information:
      1. the tenderer’s background, experience and resources relevant to its ability to meet the requirement (including design and development aspects, if applicable);
      2. details of any other matters relating to the commercial, technical or financial capacity of the tenderer which may materially affect the tenderer’s ability to perform the obligations under any resultant Contract. This should include:
         1. the proportionate value of any resultant Contract, if the tender was accepted, in relation to the tenderer’s total income and value of work; and
         2. how the tenderer would mitigate its risks, including risks arising from the management of and payment for Subcontracted work, and how it would redeploy resources and maintain sufficient cash flow in the event of a delay to a Milestone or a delay in a payment to the Contractor becoming due under any resultant Contract for any reason;
      3. details of any orders, contracts, joint ventures, collaborations with other firms or companies or any other commitments relevant to the tenderer’s ability to meet the requirement;
      4. identification of any trust or fiduciary capacity in which the tenderer proposes to perform any resultant Contract; and
      5. particulars of any civil or criminal litigation or proceeding, actual or threatened, involving either the tenderer or its directors, or any Related Bodies Corporate, or the existence of any breach or default of any agreement, order or award binding on the tenderer, or any Related Bodies Corporate, or any judgment or decision which is likely to adversely affect the tenderer’s performance of any resultant Contract.

**Financial Statements Presubmittal Program or Approved Contractor Viability Program**

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

If the tenderer is participating in FSPP but not ACVP, the tender evaluation team must request a financial viability assessment (FVA) for the tenderer from Financial Investigation Service (FIS).

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 FVA from 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 FSPP and 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: In order to reduce the cost of tendering, the Financial Statements Presubmittal Program (FSPP) permits CASG suppliers which regularly submit tenders to Defence to submit certain tenderer information and financial statements with appropriate accompanying notes once per year directly to Defence rather than as part of each tender. Key suppliers participating in the FSPP that meet the Approved Contractor Viability Program (ACVP) requirements may also be invited to participate in ACVP and may be granted ACVP status. ACVP status means that Defence will evaluate these suppliers as being financially viable for the purposes of tender evaluations.

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

<https://www1.defence.gov.au/business-industry/procurement/policies-guidelines-templates/program-guidelines>.

Tenderers NOT participating in the Financial Statements Presubmittal Program or Approved Contractor Viability Program:

* 1. Tenderers that are not currently participating in the Financial Statements Presubmittal Program (i.e. those that are not listed in the FSPP or ACVP registers as at the time of tender lodgement) are to provide the following information:
     1. the following details of the tenderer, as applicable:
        1. the full name of the tenderer;
        2. any trading or business name;
        3. if a company, the registered office, principal place of business and an outline of the company structure;
        4. the date and place of incorporation;
        5. individual shareholders holding 20 percent or more of any issued share capital;
        6. particulars of any foreign national or foreign bodies or organisations in a position to exercise or influence control over the tenderer;
        7. Related Bodies Corporate;
        8. 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 ABN (if any); and
        9. if an Australian company, its ACN/ARBN and ABN as applicable.
     2. copies of Annual Statement of Financial Position, Income Statement and Statement of Cash Flows, with the appropriate accompanying notes for the three previous financial years. If the tenderer is part of a group of companies, those documents or the equivalent information is to relate to the tenderer as a single entity, unless granted relief under the relevant Australian Securities and Investments Commission class order.

Tenderers participating in the Financial Statements Presubmittal Program or Approved Contractor Viability Program:

* 1. Tenderers that are participating in the Financial Statements Presubmittal Program (i.e. those that are listed in the FSPP or ACVP registers as at the time of tender lodgement) are to:
     1. state that they are participating in the Financial Statements Presubmittal Program and state whether they have Approved Contractor Viability Program (ACVP) status; and
     2. provide the following details of the tenderer:
        1. the full name of the tenderer;
        2. if an Australian company, its ACN/ARBN and ABN as applicable; and
        3. if a foreign firm or company, details of its registration, incorporation and place of business in Australia, the name of any Australian representative and its ABN (if any).

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| 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 Division 2 of 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 Workplace Gender Equality Agency at:  <https://www.wgea.gov.au/what-we-do/compliance-reporting/wgea-procurement-principles>.   * 1. If the tenderer is a Relevant Employer, the tenderer is to:      1. provide a current letter of compliance issued by the Workplace Gender Equality Agency (WGEA) as part of its tender; or      2. 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.   2. For the purposes of clause 2.4, Relevant Employer means an employer who has been a Relevant Employer under the Workplace Gender Equality Procurement Principles for a period of not less than 6 months. The Supplier will continue to be obligated as a Relevant Employer until the number of its employees falls below 80. |

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| Option: This clause must be used when a procurement is conducted by open tender, is subject to the CPRs and has an estimated value over $4 million (inc GST).  Note to tenderers: The Black Economy Procurement Connected Policy imposes obligations on the Commonwealth to obtain satisfactory and valid STRs from tenderers. Further information about the requirements arising under the Black Economy Procurement Connected Policy is available from the Department of Treasury at:  <https://treasury.gov.au/policy-topics/economy/black-economy/procurement-connected-policy>.   * 1. Tenderers are to:      1. provide as part of their tender any of the following STRs that are applicable to the tenderer; and      2. in accordance with clause 1.9.3 of the Conditions of Tender, obtain and hold any of the following STRs that are applicable to a relevant Subcontractor:   Table A-1: Tenderer / Subcontractor STR requirements   |  |  | | --- | --- | | If the tenderer / subcontractor (as the case may be) is: | STRs required: | | (a) | (b) | | * 1. a body corporate or natural person; | a satisfactory and valid STR in respect of that body corporate or person; | | * 1. a partner acting for and on behalf of a partnership; | a satisfactory and valid STR:   * + 1. on behalf of the partnership; and     2. in respect of each partner in the partnership that will be directly involved in the delivery of any resultant Contract or Subcontract (as applicable); | | * 1. a trustee acting in its capacity as trustee of a trust; | a satisfactory and valid STR in respect of the:   * + 1. trustee; and     2. the trust; | | * 1. a joint venture participant; | a satisfactory and valid STR in respect of:   * + 1. each participant in the joint venture; and     2. if the operator of the joint venture is not a participant in the joint venture, the joint venture operator; | | * 1. a member of a Consolidated Group; | a satisfactory and valid STR in respect of:   * + 1. the relevant member of the Consolidated Group; and     2. the head company in the Consolidated Group; | | * 1. a member of a GST Group; | a satisfactory and valid STR in respect of the:   * + 1. the GST Group member; and     2. the GST Group representative. |  * 1. If a tenderer has requested any of the STRs required under clause 2.6 but the STR has not been issued by the Australian Taxation Office prior to the Closing Time, the tenderer is to provide as part of their tender the STR receipt issued by the Australian Taxation Office confirming that the STR was requested prior to the Closing Time. |

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| 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. 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). |

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| Note to drafters: This clause 2.9 must only be used where the Commonwealth intends to use the Pan-European Public Procurement On-Line (PEPPOL) framework under any resultant Contract. If the Commonwealth and Contractor agree to use the PEPPOL framework, the maximum payment term will be 5 days. However, the Commonwealth Pay On-Time Policy does not apply if the nature of the goods or services being procured, or the structure of the procurement, would make it impractical for the policy to be applied. If this is the case, and the Commonwealth does not intend to use the PEPPOL framework, this clause should be removed prior to RFT release.  Note to tenderers: The Commonwealth Pay On-Time Policy imposes obligations on the Commonwealth to make payments within maximum payment terms, which will depend on the applicability of the Pan-European Public Procurement On-Line (PEPPOL) framework. The maximum payment term will be either:   * 5 days, where the Commonwealth and the Contractor both have the capability to deliver and receive electronic invoices (e-invoices) through the PEPPOL framework and have agreed to use e-invoicing; or * 20 days where the PEPPOL framework does not apply.   Further information on the Pay On-Time Policy is available at:  <https://www.finance.gov.au/publications/resource-management-guides/supplier-pay-time-or-pay-interest-policy-rmg-417>   * 1. Tenderers are to include the boxes below in their tender, and identify whether or not the Tenderer has the capability to use electronic invoicing through the Pan-European Public Procurement On-Line (PEPPOL) framework.   The tenderer **does** have the capability for the PEPPOL framework to apply.  The tenderer **does not** have the capability for the PEPPOL framework to apply. |

1. SCHEDULE OF Proposed SUBCONTRACTORS (Core)

Draft COC reference: clause 11.9

* 1. Tenderers are to provide the details in the format at Table A-2 of all proposed Subcontractors that trigger any of the criteria listed in clause 11.9.3 of the draft COC, including details of any exception for a proposed Subcontractor.
  2. In addition, for each of the proposed Subcontractors that trigger any of the criteria listed in clause 11.9.3 of the draft COC, tenderers are to provide the details set out in clauses 2.1 and 2.2 or 2.3 of this annex.
  3. If a proposed Subcontractor, under the Subcontract, creates or brings IP in significant TD or Software, for example, TD or Software necessary to the ongoing operation, maintenance or disposal of the Product Being Supported (including after the expiry or termination of any resultant Contract), tenderers are to indicate in Table A-2 that an IP Deed will be required from the Subcontractor in accordance with clause 11.9 of the draft COC.

Note to drafters: This clause 3.4 must be used when a procurement is subject to the Black Economy Procurement Connected Policy.

* 1. If a proposed direct Subcontractor will provide goods or services with an estimated value of over $4 million (inc GST) under the Subcontract, the tenderer is to obtain and hold a satisfactory and valid STR from that direct Subcontractor. Tenderers are to identify any such proposed direct Subcontractors in column (i) of Table A-2.

Table A-2: Schedule of Proposed Subcontractors

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Proposed Subcontractor and ABN/ACN  (if applicable) | Work to be Subcontracted  (including technical significance) | CWBS reference  (if applicable) | AIA references  (if applicable) | Equipment / Services | Location of work to be performed  (incl. postcode) | Approved Subcontractor Deed required  (Yes/No)  (see clause 11.9 of draft COC) | Subcontract Value ($A)  (per annum) | STR required  (Yes/No) | Reporting Entity Subcontract or PT PCP Subcontract?  (identify which) | Comments |
| (a) | (b) | (c) | (d) | (e) | (f) | (g) | (h) | (i) | (j) | (k) |
|  | 1. [ANZ Subcontractors] | | | | | | | | | |
|  |  |  |  |  |  |  |  |  |  |  |
|  | 1. [Overseas Subcontractors] | | | | | | | | | |
|  |  |  |  |  |  |  |  |  |  |  |

1. STATEMENT OF NON-COMPLIANCE (Core)
   1. If a tenderer does not fully comply with any clause of the annexes to the COT (excluding Annex B), the draft COC and attachments, the draft SOW and annexes, the draft Data Item Descriptions and the draft Detailed Service Descriptions, it is to state its non-compliances in a Statement of Non-Compliance in the format at Table A-3. Tenderers are to include details of:
      1. the extent, justification and impact of non-compliance;
      2. details of any proposed drafting amendments; and
      3. the location in the tender where further non-compliance details and comments (if any) can be found.
   2. Responses are to be in the order in which the clauses appear and refer to the relevant clause number, annex, attachment, DID or DSD.
   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 A-3 may constitute false, misleading or deceptive conduct for the purposes of the Australian Consumer Law (Schedule 2 of the Competition and Consumer Act 2010) or Division 137 of the Criminal Code Act 1995.

Table A-3: Statement of Non-Compliance Format

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Clause No. | Non-Compliance | Comments | Location in Tender |
| 1. Annexes (excluding Annex B) to the COT |  |  |  |  |
| 1. Draft COC |  |  |  |  |
| 1. Attachments to the draft COC |  |  |  |  |
| 1. Draft SOW |  |  |  |  |
| 1. Annexes to the Draft SOW |  |  |  |  |
| 1. Draft Data Item Descriptions |  |  |  |  |
| 1. Draft Detailed Service Descriptions |  |  |  |  |