PART 1 - ANNEXES TO THE CONDITIONS OF TENDER

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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. 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**).
   2. This deed poll is provided in connection with the Request for Tender **[INSERT RFT NUMBER]** (**RFT**) issued by the Commonwealth and the tender submitted by the Tenderer in response to the RFT (**Tender**). Terms defined in the RFT will have the same meaning when used in this deed poll.
   3. For the avoidance of doubt, the RFT process includes any ODIA process conducted by the Commonwealth and a reference to a Tender in this deed poll includes a reference to a Tender, or part of a Tender, submitted to the Commonwealth pursuant to any ODIA process.
   4. Each representation and warranty in this deed poll is given:
      1. as at the date of this deed poll; and
      2. on each date that the Tenderer resubmits any part of its tender under the RFT.
   5. 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 Deed.
2. ACKNOWLEDGEMENTS (CORE)
   1. The Tenderer acknowledges and agrees:
      1. to the Commonwealth’s rights as set out in the RFT and this deed poll, including the Commonwealth's rights to exclude the Tender;
      2. that the Tender has been prepared in accordance with the RFT and is accurate, complete and not misleading;
      3. that the Commonwealth can utilise all relevant information about the Tenderer’s performance on Commonwealth procurement activities;
      4. that the Tenderer has conducted and will conduct itself during the RFT process in a manner that is at least consistent with 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>
      5. that the Tenderer has relied entirely upon its own inquiries and inspection in preparing its Tender;
      6. 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;
      7. 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;
      8. 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; and
      9. 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 Deed in the AusTender website.
   2. The Tenderer acknowledges and agrees that the RFT is an invitation to treat and to the extent permitted by law and subject to clause 2.3:
      1. no binding contract (including a process contract) or other understanding on any basis whatsoever will exist between the Commonwealth and the Tenderer unless and until a Contract is signed by the Commonwealth and the Tenderer; and
      2. the Commonwealth has no liability to the Tenderer for any compensation on any basis whatsoever in connection with the Tenderer’s participation in the RFT.
   3. Clause 2.2 does not apply to this Deed, any confidentiality deed executed by the Tenderer, or any other deed or contractual arrangement entered into by the Tenderer as required by the Commonwealth from time to time.
3. ACCEPTANCE (CORE)
   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).
   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 Deed or Contract on an unconditional basis.
4. UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES (CORE)
   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:
      1. the preparation or lodgement of tenders;
      2. the evaluation and clarification of tenders; and
      3. the conduct and content of negotiations, including final Deed negotiations,

in respect of the RFT process.

* 1. The Tenderer represents and warrants:
     1. that the Tender has not been compiled:
        1. with the improper assistance of current or former Commonwealth Personnel or Defence Service Providers;
        2. with the utilisation of information improperly obtained from the Commonwealth; or
        3. in breach of an obligation of confidentiality to the Commonwealth;
     2. 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; and
     3. without limiting clause 4.2a 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:
        1. 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
        2. 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
     4. that the Tenderer is aware of the provisions of the 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.
  2. The Tenderer represents and warrants that the following is a complete list of any offences relating to bribery, misuse of public information, false accounting or corruption or attempted corruption of a public official or similar offences that would tend to undermine public trust of which the Tenderer or its Related Bodies Corporate have been convicted of during the last 7 years, or of which the Tenderer or its Related Bodies Corporate are currently charged:

**[INSERT DETAILS OF ALL SUCH OFFENCES OR IF NONE EXIST INSERT THE WORDS ‘NOT APPLICABLE’]**

* 1. The Tenderer represents and warrants that it has no actual, potential or perceived conflict of interest relating to the RFT process, except as set out below: **[INSERT DETAILS OR IF NONE EXIST INSERT THE WORDS ‘NOT APPLICABLE’]**
  2. If in relation to the RFT a conflict of interest exists, arises, or appears likely to arise, that the Tenderer has not previously disclosed in connection with the RFT process, 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.
  3. The Tenderer acknowledges and agrees that the Commonwealth may exclude the Tender from further consideration if in the opinion of the Commonwealth:
     1. the Tenderer fails to take any steps required by the Commonwealth to resolve or deal with a conflict of interest;
     2. the Tenderer fails to comply in any other respect with this clause 4; or
     3. any representation or warranty of the Tenderer under this clause 4 is incorrect or misleading in any material respect.
  4. The Tenderer represents and warrants that none of the Tenderer, its Related Bodies Corporate, or officers of either:
     1. have been found in the past 3 years to have committed a material breach; or
     2. 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 ACTIONSTAKEN (INCLUDING POLICIES IN PLACE) TO RESPOND TO EACH SUCH BREACH, OR IF NO BREACHES ARE LISTED ABOVE INSERT ‘NOT APPLICABLE’]**.

Note to drafters: Include clause 4.8 if the Shadow Economy PCP applies to the RFT.

* 1. The Tenderer represents and warrants that if it enters into a resultant Contract with the Commonwealth in relation to the RFT, it shall comply with clauses 12.3.5 to 12.3.8 of the draft Contract.

Note to drafters: Include clause 4.12 if the PT PCP clauses are included in clause 9.9 of the COD.

Note to tenderers: Tenderers are to include the following clause if the tenderer is a Reporting Entity and clauses 9.9.6 – 9.9.10 have been included in the COD.

* 1. The Tenderer undertakes that if, in anticipation of entering into a resultant Deed with the Commonwealth, it enters into a Reporting Entity Subcontract, the tenderer shall include in that subcontract:
     1. an obligation to comply with the Payment Times Procurement Connected Policy (PT PCP); and
     2. using its reasonable endeavours, a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract shall include:
        1. obligations equivalent to those in clause 4.12a; and
        2. obligations equivalent to this clause 4.12b (such that the obligations in this clause 4.12b are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).

1. Survival (CORE)
   1. This deed poll survives the termination or expiry of the RFT.
2. Governing Law (CORE)

Note to drafters: Prior to release of the RFT drafters are to insert the same jurisdiction as selected under clause 9.1 of the draft COD and the Details Schedule.

* 1. The laws of **[INSERT JURISDICTION]** shall apply to this deed poll. The courts of that State or Territory shall have non-exclusive jurisdiction to decide any matter arising out of this deed poll or in connection with the RFT.

1. TERMINATION AND AMENDMENT (CORE)
   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.
2. Contact Details (CORE)
   1. The Tenderer’s contact details for the purpose of the RFT and this deed poll are set out below.

|  |  |  |
| --- | --- | --- |
| 1. NAME (Block Letters): |  | 1. TELEPHONE NUMBER: |
|  |  |  |
|  |  | 1. EMAIL ADDRESS: |
|  |  |  |

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 Commercial Division 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)**

STATEMENT OF NON-COMPLIANCE (CORE)

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 A) and the draft COD and attachments, it is to state its non-compliances in a Statement of Non-Compliance in the format at Table 1. 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 or attachment.
   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 the 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

|  |  |  |
| --- | --- | --- |
|  | 1. Clause No. | 1. Comments |
| 1. Annexes (excluding Annex A) to the conditions of tender |  |  |
| 1. Draft conditions of deed |  |  |
| 1. Attachments to the draft conditions of deed |  |  |

INFORMATION TO BE PROVIDED BY TENDERER (CORE)

1. TENDERER’S Profile (CORE)
   1. Tenderers are to provide the following information:
      1. details of how they would complete the Commonwealth’s requirements as outlined in the draft Deed;
      2. the tenderer’s background, experience and resources relevant to its ability to meet the requirement;
      3. 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 Deed or Contract.
      4. 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. if an Australian company, its ACN/ARBN/ABN as applicable;
         6. 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 A.B.N (if any);
         7. if the company has any third party quality certification (i.e. International Standards Organisation compliance), details of that certification;
         8. 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://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/683F4F8B-B6AF-4A7D-8388-CA7B493A114C>.

Note to Tenderers: The Approved Contractor Viability Program (ACVP) prequalifies as financially viable a small number of key suppliers to Capability Acquisition and Sustainment 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>.
  + - 1. 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).
  1. Tenderers are to provide a written statement as to whether or not they, and their officers, employees, agents or any proposed subcontractors, have had any non-compliances with the Commonwealth Supplier Code of Conduct. The statement is to include a description of the circumstances of any such non-compliance.

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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 the CPRs as a result of a Defence specific exemption (a list of Defence specific exemptions is found in the DPPM) 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 Deed with the Commonwealth. |

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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). In the context of a standing offer, the estimated value of the procurement is the collective total value of all potential orders under the standing offer.  Note to tenderers: The Shadow 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 Shadow Economy Procurement Connected Policy is available from the Department of Treasury at:   * <https://treasury.gov.au/policy-topics/economy/shadow-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 1.10.3 of the Conditions of Tender, obtain and hold any of the following STRs that are applicable to a relevant Subcontractor:   Table 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:  on behalf of the partnership; and  in respect of each partner in the partnership that will be directly involved in the delivery of any resultant Deed 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:  trustee; and  the trust; | | * + - 1. a joint venture participant; | a satisfactory and valid STR in respect of:  each participant in the joint venture; and  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:  the relevant member of the Consolidated Group; and  the head company in the Consolidated Group; | | * + - 1. a member of a GST Group; | a satisfactory and valid STR in respect of the:  the GST Group member; and  the GST Group representative. |  * 1. If a tenderer has requested any of the STRs required under clause 1.3 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 1.6 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 either be:   * 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. |

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| ***Option: These clauses must be included if a 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. Tenderers are to provide:      1. the tenderer’s country of tax residency; and      2. the tenderer’s ultimate parent entity’s country of tax residency.   2. In responding to clause 1.7, 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.   3. 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 1.7 and 1.8. |

1. Payment (CORE)

Draft conditions of deed reference: clause 6

* 1. Tenderers are to complete the Labour Rates table at Table 2 below.
  2. Prices for tendered Services are to be stated in Australian dollars, and the Commonwealth will make contractual payments on that basis. All prices tendered are to be in Base Date dollars.
  3. Tendered prices are to be inclusive of all costs of complying with the COT 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 proposed Deed and any resultant Contracts. These include licence fees, royalty payments, arranging customs clearance and services of representatives. Tenderers are to apply the Defence Cost Principles when preparing tendered prices.

Note to drafters: Select either Option A or B and the appropriate formula in Attachment E to the draft conditions of deed should, in turn, reflect the selected Option.

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| Option A: For when the Term of the Deed will not cover a period greater than a year and will be arranged on a firm price basis.   * 1. Prices for tendered Services are to be stated on the basis that any prices will not be subject to claims for adjustments reflecting exchange rates fluctuations or fluctuations in the cost of labour and materials. |

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| Option B: For when the Term of the Deed will be greater than a year and price adjustments reflecting fluctuations in labour and materials will be allowed but price adjustments reflecting exchange rate fluctuations will not be allowed.   * 1. Prices for tendered Services are to be stated on the basis that any prices will not be subject to claims for adjustments reflecting exchange rate fluctuations but will be subject to claims for adjustments reflecting fluctuations in the cost of labour and materials. |

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.

* 1. Tenderers are to submit their tendered prices inclusive of all overseas taxes, duties and charges and all Australian (Federal, State and local Government) taxes, duties and charges that are applicable at the Base Date, including GST and customs duty.

Table 2: Labour Rates

Note to drafters: Drafters may choose to include details of the required qualifications and experience for each labour category listed. Specific services and tasks will be identified by the issuing of Tasking Statements under the standing offer in the format at Attachment C to the conditions of deed.

Note to tenderers: Tenderers are to fill in columns (b) to (e) of the below table. As required in clause 2.1 of Annex C to the conditions of tender, prices tendered in columns (c) and (e) are to be GST inclusive.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Labour Rates | | | |
| Labour Category | Maximum Hourly Rate  (Excluding GST) | Maximum Hourly Rate  (Including GST) | Maximum Daily Rate  (Excluding GST) | Maximum Daily Rate  (Including GST) |
| (a) | (b) | (c) | (d) | (e) |
| 1. **[INSERT REQUIRED LABOUR CATEGORY ]** |  |  |  |  |

1. INSURANCE (CORE)

Draft conditions of deed reference: clause 7.4

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 conditions of deed 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 conditions of deed 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:

* 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 COD, including:
     1. name of the insurer;
     2. type of insurance;
     3. terms and coverage of the insurance including person(s) insured, conditions and exclusions;
     4. limits of indemnity per claim or occurrence and details of any aggregate limits or relevant sublimits which apply;
     5. 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 Deed;
     6. coinsurance, self-insured retention or deductible amounts; and
     7. period of insurance.

Tenderers with ACIP Status:

* 1. Tenderers with ACIP are to indicate in their Statement of Non-Compliance against Annex B to the extent to which their ACIP covers the types of insurances required by the draft.
  2. Tenderers with ACIP status that are selected as a preferred tenderer are not required to provide any details of those insurances required by the draft COD which a tenderer identifies as within the scope of its ACIP

All tenderers:

* 1. All tenderers are to identify in their tendered prices detailed in Annex C details of all costs associated with the insurance policies covered in the tenderer’s insurance response.

1. ADJUSTMENT FOR FLUCTUATIONS IN THE COST OF LABOUR AND MATERIALS (OPTIONAL)

Draft conditions of deed reference: clause 6.6

Note to drafters: This clause must be included if Option B is selected in clause 2 of Annex C. Drafters must ensure that Attachment E of the draft Deed contains Defence’s preferred indices.

Note to tenderers: Tenderers should note that agreements reached as a result of workplace enterprise bargaining are not considered to be awards for the purposes of the formula set out in Attachment E of the draft Deed. Tenderers should additionally note that the Commonwealth is not obliged to accept alternative proposals made by the tenderer.

* 1. Tenderers are to provide the following details in relation to the proposed adjustment formula contained at Attachment E of the draft Deed:
     1. acceptability or otherwise of the formula;
     2. if unacceptable, any proposed alteration(s) or alternative(s); and
     3. the tenderer’s preferred indices if different from those proposed by the Commonwealth in Attachment E of the draft Deed. In proposing preferred indices, tenderers should take into consideration the notes provided following the formula in Attachment E of the draft Deed.

1. SUBCONTRACTORS (CORE)

Draft conditions of deed reference: clause 9.9

* 1. Tenderers are to provide details of any Subcontractors that the tenderer proposes to use under the draft Deed if the value of the Services 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. as applicable of the company, the elements of work to be subcontracted, the technical significance of the work and the cost of the Subcontract.

1. GOVERNMENT FURNISHED MATERIAL (Optional)

Draft conditions of deed reference: clause 3.2

* 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.
  2. The decision as to whether or not GFM will be provided will be made at the sole discretion of the Commonwealth.

1. Contract Material Rights (CORE)

Draft conditions of deed reference: clause 5

* 1. Tenderers are to provide a draft Contract Material Rights (CMR) Schedule in the form of Attachment G to the draft COD by specifying any proposed restrictions that will apply to the Commonwealth's right to sublicence the specified Contract Material under clause 5.2 of the draft COD.

1. CONFIDENTIAL INFORMATION (CORE)

Draft conditions of deed reference: clause 9.4

* 1. Tenderers are to provide at Attachment F of the draft COD, a list of all draft Deed clauses and Contract outputs that they consider to be Confidential Information. For each clause, tenderers are to justify their identification of the information as Confidential Information, explaining how it meets all four criteria listed in Attachment F of the draft deed.

1. liability (OPTIONAL)

Draft conditions of deed reference: clause 7.3

Note to drafters: A Liability Risk Assessment (LRA) is to be undertaken by the Commonwealth in accordance Defence Liability Principles and the standard Defence methodology described in the LRA template, 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 amounts and insurance requirements in clauses 6.3.1 and 6.4 respectively of the draft COD.

Note to tenderers: Tenderers should familiarise themselves with the limitation of liability amounts and insurance requirements in clauses 6.3.1 and 6.4 respectively of the draft conditions of COD. The limitation of liability amounts and insurance requirements were determined by the Commonwealth based on a liability risk assessment (LRA) conducted in accordance with the Defence Liability Principles, and the standard Defence methodology described in the LRA template, both of which can be accessed at:

* <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/liability-risk-management>
  1. If a tenderer proposes to limit its liability on an alternative basis to that set out in clause 6.3 of the draft COD (eg. by proposing a liability limitation or exclusion additional to those set out in clause 6.3.2), the tenderer is to conduct its own liability risk assessment applying the Liability Principles and the standard Defence methodology described in the Liability Risk Assessment template and provide the following details:
     1. the terms of the tenderer’s proposed limitation of liability (if different to those set out in clause 6.3 of the draft COD), including its proposed monetary caps set out in clause 6.3.1 of the draft COD;
     2. an explanation of why the tenderer requires a limitation of its liability regime different to that proposed in clause 6.3 of the draft COD; and
     3. the impact (if any) of these changes on the insurance requirements of the draft COD.

1. ECONOMIC BENEFIT TO THE AUSTRALIAN ECONOMY (OPTIONAL)

Note to drafters: This clause must be used when the procurement is valued at more than $1 million (including GST), and there is no requirement for tenderers to address AIC in tender responses in accordance with Annex D. Where tenderers address AIC in their responses, the AIC response is used to assess economic benefit to the Australian economy.

***Note to tenderers: For an explanation of economic benefit considerations in tenders, refer to the Department of Finance:***

* <https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>
  1. Tenderers are to provide details of the economic benefits that any resultant Contracts would achieve for the Australian economy.

1. PROBLEMATIC SUBSTANCES (CORE)

Draft conditions of deed reference: clause 10.3

Note to tenderers: Commonwealth policy on Problematic Substances is detailed the 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 Commonwealth, State or Territory legislation.

* 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 Deed or Contract.

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, which can be found here:

* http://drnet.defence.gov.au/casg/commercial/CommercialPolicyFramework/Pages/ASDEFCON-EEA-Template.aspx

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? |  |
| 1. If you are a partner in a partnership, do you tender for the Deed in your own personal capacity rather than on behalf of the partnership? |  |
| 1. Is the value of the labour component of this tender more than 50% of the total value of this tender? |  |
| 1. Do you already have employer-sponsored superannuation of any type for this tender? |  |
| 1. 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. |  |
| 1. 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 Deed is awarded in response to this tender? |  |
| 1. Please state that person’s address. |  |
| 1. 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. 2. 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. |  |
| 1. 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. |  |

I declare that the answers provided to the above questions are true and accurate.

Signature................................................. Name............................................... Date....................

AUSTRALIAN INDUSTRY CAPABILITY (CORE)

Draft conditions of deed reference: clause 4

1. Australian Industry Capability schedule

Note to drafters: This annex should be included if an AIC program will apply to any resultant Contract. Refer to COD clause 4 for more details on including an AIC program.

If an AIC program is not required, the heading should be retained and ‘(Not Used)’ added at the end of the heading. Delete all clauses below the heading.

Note to tenderers: The Australian Industry Capability (AIC) Schedule forms part of any resultant Deed and describes the Contractor’s commitments to the participation of Australian Industry, including local businesses operating in the areas where work is undertaken, participation by Small to Medium Enterprises (SMEs), and businesses that employ veterans.

For information relating to AIC and other Defence industry programs, tenderers should refer to:

* <https://www.defence.gov.au/business-industry/industry-capability-programs>.

Tenderers should familiarise themselves with the 2016 Defence Industry Policy Statement, 2018 Defence Industrial Capability Plan, 2019 Defence Policy for Industry Participation, 2018 Defence Export Strategy and AIC guidance available at:

* <https://www.defence.gov.au/about/strategic-planning/defence-white-paper>;
* <https://www.defence.gov.au/business-industry/industry-capability-programs/defence-industrial-capability-plan>;
* <https://www.defence.gov.au/business-industry/industry-programs/defence-policy-industry-participation>; and
* <https://www.defence.gov.au/business-industry/export/strategy>.

For an explanation of economic benefit considerations in tenders, refer to the Department of Finance:

* <https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>.
  1. Tenderers are to:
     1. provide a draft AIC Schedule in accordance with Table E-1 below.
     2. describe their approach to maximising participation of competitive Australian Industry, including local businesses, in their supply chain for the provision of the Services. This is to include evidence that the tenderer has market tested Australian Industry, including local businesses in connection with the Services;

Note to tenderers: Defence encourages contractors to maximise the use of ‘local’ businesses in their supply chains, particularly when contracts require work to be performed in Australia. For example, if work is to be performed at or near a Defence base (particularly in regional or remote Australia), Defence expects that, for any resultant Deed, processes for selecting companies to participate in the supply chain will include mechanisms to engage competitive local businesses that are based or primarily operate in the area where the Defence base is located.

In responding to clause 1.1c, the tenderer is to set out ‘local business’ criteria against which local Australian Industry will be assessed. These criteria might include a distance from the Defence base or work location, or an identifiable area or region within which a company must have its principal place of business, or at least a major presence, to qualify as a ‘local business’. These distances, areas or regions could differ depending on the location or nature of the work, but the proposed definition will be assessed by the Commonwealth in accordance with the Defence Policy for Industry Participation. A definition of ‘local business’ that is agreed with the Commonwealth will be included in the Glossary of the resultant Deed.

* + 1. describe how the tenderer proposes to define ‘local business’, and how the tenderer will determine whether a service provider or supplier meets this definition; and

Note to tenderers: An Indigenous Enterprise is an organisation that is 50 per cent or more Indigenous owned that is operating as a business. Supply Nation is a membership body that validates and promotes Indigenous Enterprises.

|  |
| --- |
| Option: For use when the Deed does not include Indigenous Procurement Policy clauses that require the development and implementation of a separate Indigenous Procurement Policy Plan.   * + 1. describe their approach to supporting the Australian Government’s Indigenous Procurement Policy (<https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>), in considering and involving recognised Indigenous Enterprises (as defined in the Indigenous Procurement Policy) within the tenderer’s supply chain and the employment of Indigenous Australians as part of delivering any resultant Contract. |

|  |
| --- |
| Option: For use when the Deed includes Indigenous Procurement Policy clauses that require the development and implementation of a separate Indigenous Procurement Policy Plan.   * + 1. summarise the tenderer’s approach to supporting the Australian Government’s Indigenous Procurement Policy (<https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>), cross-referencing to its proposed Indigenous Procurement Policy Plan. |

Note to tenderers: For an explanation of economic benefit considerations in tenders, refer to the Department of Finance:

* <https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>.
  + 1. provide details of the economic benefits that any resultant Contract would achieve for the Australian economy.

TABLE E-1: Australian Industry Capability Schedule

Note to tenderers: When preparing this Schedule, include all items of Services. If necessary, break the scope of work into separate line items to better describe each activity being performed by Australian Industry. All prices are to be expressed in Base Date dollars and be GST exclusive and duty free. All nominated Australian companies listed in Table 1 are to be registered with an Australian Business Number (ABN), except for those companies that are resident in New Zealand, which are to be registered with a New Zealand Business Number (NZBN).

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Item Number | AIC Activity Description | Company Name and ACN/ABN/NZBN | AIC Value (AUD) | Location (including postcode) | SME (Y/N) | Local Business (Y/N and Brief Justification) | Veterans  (Y/N) |
| (a) | (b) | (c) | (d) | (e) | (f) | (g) | (h) |
| AIC-01 |  |  |  |  |  |  |  |
| AIC-02 |  |  |  |  |  |  |  |
| AIC-03 |  |  |  |  |  |  |  |
|  |  | TOTAL |  |  |  |  |  |

Notes on Table E-1:

1. Item Number: Identification number for each entry.
2. AIC Activity Description: A description of the Services to be performed by Australian Industry. A separate line in the AIC Schedule is required for each work package and company.
3. Company Name and ACN/ABN/NZBN: Australian or New Zealand company undertaking the activity (‘various’ is not an acceptable response). If more than one company, detail the value of the work to each company on a separate line. Include the ACN (or ARBN) and ABN, or NZBN (or NZCN), as applicable.
4. AIC Value: Value of work performed by Australian Industry. It is the (GST exclusive) dollar value of work committed in the Contract that will be performed by Australian Industry.
5. Location: Set out the location (including the postcode) where the majority of the AIC Activities will be performed.
6. SME: Set out whether the entity is a Small to Medium Enterprise.
7. Local Business: Set out whether the entity is a local business and brief justification as to why the entity qualifies as a ‘local business’ with reference to the Tenderer’s criteria set out in response to clause 1.1c above.
8. Veterans: Has the organisation signed the Veterans Employment Commitment (yes/no)? (refer: [veteransemployment.gov.au](https://www.veteransemployment.gov.au/)).