CONFIDENTIAL INFORMATION AND REPORTING (core)

Note to drafters: Drafters must review their draft Contract to determine if it contains commercial information that meets the Confidentiality Test. Drafters should then review the examples provided below, prior to release of the RFT, and complete the tables as appropriate.

Commercial information claimed to be confidential by potential tenderers must be assessed against the Confidentiality Test and only information that meets this test can be included in this attachment. Only the information in this attachment can be considered for reporting confidentiality provisions on AusTender for Senate Order 192.

Note to tenderers: This attachment will consist of the successful tenderer’s response to this attachment and any negotiated adjustments.

The Commonwealth’s policy on the identification of Confidential Information, including the ‘Confidentiality Test’, is contained on the Department of Finance (DoF) website at:

<https://www.finance.gov.au/government/procurement/buying-australian-government/confidentiality-throughout-procurement-cycle>,

The following four criteria comprise the ‘Confidentiality Test’, and must all be met for a Contractor’s commercial information to be Confidential Information:

a. Criterion 1: The information to be protected must be specifically identified;

b. Criterion 2: The information must be commercially sensitive;

c. Criterion 3: Disclosure would cause unreasonable detriment to the owner of the information or another party; and

d. Criterion 4: The information was provided with an express or implied understanding that it would remain confidential.

The period of confidentiality must be specified for each item (e.g. for the period of the Contract, a period specified in the Contract). It should not be for an unlimited period.

Pricing provisions in Attachment B must only be listed in this attachment if they meet the Confidentiality Test.

Confidential Information

| Item | Clause Title | | Reason for classification | Party for whom the information is confidential | Period of confidentiality |
| --- | --- | --- | --- | --- | --- |
| (a) | (b) | | (c) | (d) | (e) |
| 1. Conditions of Contract, for example | | | | | |
| 1. Clause 10.10 2. (eg if an amended liability regime). | 1. Liability Caps | | 1. Contains details about insurance and liability regimes that meet the DoF Confidentiality Test | 1. Commonwealth / Contractor. |  |
| 1. Any tailored clauses or any confidential clauses inserted in the contract additional to the template clauses. | Insert any clauses which are not standard template clauses and meet the DoF Confidentiality Test. | | 1. Insert relevant reason. | 1. Insert name of party. |  |
| 1. **Conditions of Contract Attachments**, for example | | | | | |
| 1. Attachment A- Annex A | 1. Description of Requirement 2. (Identify Specific clause/s). | 1. Contains information about how the Capability/Supplies are to be provided that may compromise the supplier’s commercial interests elsewhere, including competing in future tender processes. | | 1. Commonwealth / Contractor |  |
| 1. Attachment B: | 1. Price and Payments (Identify Specific clause, table or section). | 1. Contains details about commercially sensitive pricing information that is not in the public domain, including information about hourly rates, internal costing, profit margins, or pricing structures. | | 1. Contractor. |  |
| 1. Attachment F | 1. Intellectual Property Plan 2. Note that clauses describing how Intellectual Property rights are to be dealt with would generally not be considered confidential. | 1. Contains details about Intellectual Property regimes including trade secrets and other Intellectual Property matters where they relate to a potential supplier’s competitive position. | | 1. Insert name of party. |  |