****

**COMMONWEALTH OF AUSTRALIA**

**DEPARTMENT OF DEFENCE**

**CHIEF ENGINEER WORKS**

**COMBINED REQUEST FOR QUOTATION / MINOR WORKS CONTRACT**

**PROJECT NAME AND NUMBER: *[INSERT]***

|  |
| --- |
| ***[COMMONWEALTH GUIDANCE NOTES - PLEASE REMOVE THIS BOX PRIOR TO RFQ ISSUE]******TEMPLATE LAST AMENDED: MAY 2025***The template has been developed for Chief Engineer Works projects located in Australia and which present a low risk to the Commonwealth. This template is not to be used for contracts which are valued in excess of $4 million (inclusive of any GST) (above which additional policy / legislative requirements will apply, including in respect of the Shadow Economy Procurement Connected Policy). If the project is valued under $4 million, but the Works are high risk, the Commonwealth should alternatively use the Medium Works Contract. If the project is being undertaken overseas, consider use of the Pacific-Division templates.Those matters in ***[SQUARE BRACKETS, BOLD, ITALICS AND HIGHLIGHTED IN GREY]*** are to be completed by the Commonwealth before the Request for Quotation is issued. |

|  |
| --- |
| **Guidance Notes:**This document serves three purposes:* it is a request for quotation (**RFQ**);
* it is a quotation when completed by the contractor and lodged with the Commonwealth in accordance with the RFQ Conditions set out below (**Quotation**); and
* it is a contract when one copy (subject to any changes it may require prior to acceptance) is signed by the Commonwealth and returned to the successful Contractor.

This document comprises:* these Guidance Notes, the RFQ Conditions and Lodgement Checklist set out below, each of which will not form part of the contract (if any) between the Commonwealth and the Contractor;
* the Contract Details. You should complete those matters in **[SQUARE BRACKETS, BOLD AND HIGHLIGHTED IN YELLOW]**;
* the Contract Conditions;
* the signature page and date, where you sign and have your Quotation witnessed and where (if accepted, and subject to any changes it may require prior to acceptance) the Commonwealth signs to accept the Quotation and inserts the date of execution, which will be the date of the Contract;
* Attachment 1, which contains additional information to be completed and submitted as part of your Quotation;
* Attachment 2, where your proposed pricing is to be completed and submitted as part of your Quotation;
* Attachment 3, where your proposed table of variation rates and prices is to be completed and submitted as part of your Quotation;
* Attachment 4, which contains the Works Description; and
* ***[COMMONWEALTH TO INSERT ANY OTHER*** ***DOCUMENTS COMPRISING THE RFQ/CONTRACT]***.

You should read this document and all attachments thoroughly prior to submitting your Quotation. |

|  |
| --- |
| **RFQ Conditions:**By submitting a signed Quotation, you agree to the RFQ Conditions as set out below.1. **Lodgement Requirements**

 Your Quotation must be:* 1. completed in accordance with the Lodgement Checklist below;
	2. received by no later than ***[COMMONWEALTH TO INSERT TIME AND DATE, INCLUDING TIME ZONE]*** (**Closing Date and Time**); and
	3. lodged with the Commonwealth as follows:
		1. ***[COMMONWEALTH TO INSERT LODGEMENT REQUIREMENTS E.G. VIA AUSTENDER / EMAIL]***
		2. ***[COMMONWEALTH TO INSERT FORMAT REQUIREMENTS E.G. TEXT SEARCHABLE ELECTRONIC PDF COPY]***
1. **Evaluation of** **Quotations**

The Commonwealth is not bound to accept the lowest or any Quotation. Quotations are evaluated on the general criterion of best value for money to the Commonwealth. Subject to the other RFQ Conditions, the Commonwealth will, in considering your Quotation and assessing value for money, apply the following evaluation criteria:* 1. ***[COMMONWEALTH TO INSERT THE EVALUATION CRITERIA FOR THE REQUEST FOR QUOTATION AS DEFINED IN THE APPROVED EVALUATION PLAN. THIS MUST INCLUDE THE RELEVANT EVALUATION CRITERIA WEIGHTINGS AND/OR ANY RELEVANT IMPORTANCE RANKING THAT IS PLACED ON EACH EVALUATION CRITERIA. THIS IS A COMMONWEALTH PROCUREMENT RULE REQUIREMENT AND MUST BE COMPLETED. IN ADDITION, EVALUATION CRITERIA MUST ENSURE THAT APPLICABLE VALUE FOR MONEY REQUIREMENTS OF THE COMMONWEALTH PROCUREMENT RULES ARE ADDRESSED]***
1. **General Conditions Applicable to RFQ Process**
	1. You must direct all questions or concerns related to this document, the RFQ process and the Minor Works Contract to the Commonwealth via email to ***[INSERT EMAIL ADDRESS]***no later than the Closing Date and Time. The Commonwealth is not obliged to respond to such questions or concerns. The Commonwealth may (in its absolute discretion) provide information or answer questions from contractors in the form of an "information document" or an addendum issued in accordance with subparagraph d.
	2. The Commonwealth may (in its absolute discretion) vary, suspend, discontinue or terminate the RFQ process at any time and for any reason. There are no procedural or substantive limitations upon the manner in which the Commonwealth may conduct the RFQ process.
	3. You should note that it is a requirement of the Commonwealth Procurement Rules that the Commonwealth must not enter into a contract with a tenderer who has a judicial decision against it (not including a decision under appeal) relating to employee entitlements and who has not satisfied any resulting order (e.g. where the entitlement remains unpaid). A judicial decision is one made by any court, tribunal or other body with authority to make a decision or determination which is binding on you.

At the date the Contract is awarded, you must not have any judicial decision against you (not including a decision under appeal) relating to employee entitlements where the resulting order remains unsatisfied. At any time before the date the Contract is awarded, the Commonwealth may (in its absolute discretion) notify you that the Commonwealth requires you to provide to the Commonwealth by email by the time and date specified in the notice a declaration in a form approved by the Commonwealth: * + 1. confirming that you have not had any judicial decision against you (not including a decision under appeal) relating to employee entitlements where the resulting order remains unsatisfied; and
		2. providing details of any matter in respect of which you are a party which is before any court, tribunal or authority referred to under subparagraph c and which relates to any employee related entitlement (whether on appeal or otherwise).
	1. At any time prior to the Closing Date and Time, the Commonwealth may (in its absolute discretion):
		1. amend the RFQ in the form of addenda. No explanation or interpretation of the RFQ may be relied upon unless issued as an addendum; and
		2. provide you with a document expressly stated to be an "information document". Information documents will not form part of the Contract (if any) and you will not be entitled to and must not rely upon any information documents or the accuracy or adequacy of the information documents for the purposes of preparing your Quotation or entering into any contract with the Commonwealth.
	2. After the Closing Date and Time, the Commonwealth may (in its absolute discretion):
		1. decide not to evaluate (or continue to evaluate) a Quotation if you have not complied with these RFQ Conditions, or if the Commonwealth considers that the Quotation is incomplete, clearly not competitive against the evaluation criteria under paragraph 2 above or is otherwise unlikely to represent value for money;
		2. require you to provide further information, documents, evidence or clarification in relation to any aspect of the Quotation; and
		3. undertake negotiations with one or more preferred contractors who have submitted a Quotation, in accordance with such negotiation protocols as the Commonwealth may require, including the resubmission of an amended Quotation to reflect the outcome of any such negotiations. Such negotiations are not to be taken as a representation that the contract will be awarded to that contractor and does not bind the Commonwealth to do so.
	3. After the Closing Date and Time, the Commonwealth will notify you in writing if your Quotation was unsuccessful and, on written request by you, provide you with a debrief.
	4. A Quotation will not be deemed to be accepted unless and until both the successful Contractor and the Commonwealth have signed a Quotation on the page titled “Signature Page and Date”. No other document issued or made available and no other representation made or conduct engaged in, by or on behalf of the Commonwealth, will be deemed to be acceptance of a Quotation or to create any contractual or other legal relationship which is binding on the Commonwealth or otherwise oblige the Commonwealth to enter into a contract with a contractor.
 |

|  |
| --- |
| **Lodgement Checklist:**🞏 Have you carefully reviewed the Guidance Notes, RFQ Conditions, Contract Details and Contract Conditions?🞏 Have you completed all matters in **[SQUARE BRACKETS, BOLD AND HIGHLIGHTED IN YELLOW]**?🞏 Have you completed Attachment 1?🞏 Have you completed Attachment 2?🞏 Have you completed Attachment 3?🞏 Have you signed (but not dated) the Quotation on the page titled “Signature Page and Date”? |

**CONTRACT DETAILS**

|  |  |
| --- | --- |
| **Project** | ***[COMMONWEALTH TO INSERT]*** |
| **Commonwealth Details**  | Name  | Commonwealth of Australia represented by the Department of Defence |
| Address | ***[COMMONWEALTH TO INSERT]*** |
| Phone | ***[COMMONWEALTH TO INSERT]*** |
| Email  | ***[COMMONWEALTH TO INSERT]*** |
| Name of representative | ***[COMMONWEALTH TO INSERT]***  |
| The Commonwealth's representative will give directions and carry out all of the other functions of the Commonwealth under the Contract as the agent of the Commonwealth. The name and contact details of the Commonwealth's representative may be changed from time to time by written notice to the Contractor. |
| **Contractor Details** | Name  | **[INSERT]** |
| ABN / ACN | **[INSERT]** |
| Address | **[INSERT]** |
| Phone | **[INSERT]** |
| Email  | **[INSERT]** |
| Name of representative | **[INSERT]** |
| Builders Registration Licence No (if applicable) | **[INSERT]** |
| The Contractor's:(a) country of tax residency; and(b) ultimate parent entity's country of tax residency,noting that if the tendering entity or its ultimate parent entity has multiple tax residencies, the Contractor should disclose each country in which that entity is a tax resident. | **[INSERT]**  |
| The name and contact details of the Contractor's representative may be changed from time to time by written notice to the Commonwealth. |
| **Contract** (Clause 1) | The Contract in respect of the Works is formed by: 1. the Contract Conditions;
2. these Contract Details;
3. Attachment 2 - Contract Price;
4. Attachment 3 - Table of Variation Rates and Prices;
5. Attachment 4 - Works Description; and
6. ***[COMMONWEALTH TO INSERT ANY OTHER DOCUMENTS TO FORM PART OF THE CONTRACT. IF THERE ARE NO OTHER DOCUMENTS INSERT "None Stated"]***
 |
| **Contractor's Activities** | All things or tasks which the Contractor is or may be required to do to comply with its obligations under the Contract. |
| **Works Description** | As set out in Attachment 4. |
| **Works and Stages** | The works described below and everything else the Contractor is required to do or provide under the Contract:***[COMMONWEALTH TO INSERT DESCRIPTION OF WORKS AND, IF APPLICABLE INCLUDE THE STAGES OF THE WORKS BELOW]*** The Works comprise the following Stages:***[COMMONWEALTH TO INSERT, IF ANY]***Where there are Stages, a reference in the Contract Conditions to "the Works" is to, as the context requires, one or more Stages. |
| **Site**  | ***[COMMONWEALTH TO INSERT SITE - COMMONWEALTH TO CONSIDER CROSS REFERRING TO A SITE DIAGRAM IN THE WORKS DESCRIPTION]*** |
| **Date for Commencement** | ***[COMMONWEALTH TO INSERT DATE]*** |
| **Conditions Precedent to Site Access** | The Contractor: 1. has provided satisfactory evidence to the Commonwealth that it has effected the insurances required under clause 35; and
2. ***[COMMONWEALTH TO INSERT ANY OTHER REQUIREMENTS THAT MUST BE MET BY THE CONTRACTOR PRIOR TO SITE ACCESS BEING GRANTED]***
 |
| **Access Hours** (Clause 4) | ***[COMMONWEALTH TO INSERT ACCESS HOURS]***  |
| **Completion** | The Works or a Stage have reached Completion when:1. the Works are, or the Stage is, capable of use for their intended purpose;
2. the Works are, or the Stage is, completed in accordance with the requirements of the Contract except for minor defects which do not affect, and can be rectified without affecting, the use of the Works or the Stage;
3. the Contractor has carried out all tasks and performed and satisfied all other obligations to achieve commissioning and handover under and in accordance with the requirements of clause 16; and
4. any other requirements specified in the Works Description or elsewhere in the Contract as being a condition precedent to Completion have been met.

***[COMMONWEALTH TO ENSURE ANY ADDITIONAL CONDITIONS PRECEDENT TO COMPLETION ARE INCLUDED IN THE WORKS DESCRIPTION OR LISTED ABOVE E.G. SPECIFIC REQUIREMENTS IN RESPECT OF THE PROVISION OF ESTATE INFORMATION, SPECIFIC AS-BUILT DRAWINGS, OPERATIONS AND MAINTENANCE MANUALS AND MINIMUM WARRANTIES]*** |
| **Defects Liability Period**  | ***[COMMONWEALTH TO INSERT NUMBER OF WEEKS/MONTHS]*** following Completion of ***[COMMONWEALTH TO SELECT:*** the Works / each Stage***]*** |
| **Latent Condition** | Any ground condition at the Site (excluding a ground condition resulting from inclement weather wherever occurring), which differs materially from that which should have been anticipated by a prudent, competent and experienced contractor if it had done those things that the Contractor is deemed to have done under clause 3(g). |
| **Statutory Requirements** | Any: 1. law applicable to the Site or the Works, and any approval or requirement of a national, state or local authority, body or organisation having jurisdiction in connection with the Contract, the Site or the Works; and
2. policies, guidelines or other requirements of the Commonwealth (including in respect of work health and safety) notified in writing to the Contractor.
 |
| **Contract Price**  | As set out in Attachment 2. |
| **Date for Completion** | Where there are no Stages, for the Works is: ***[COMMONWEALTH TO INSERT DATE]******[OR]***Where there are Stages, for each Stage is:(a) ***[COMMONWEALTH TO INSERT EACH STAGE AND DATE]*** |
| **Table of Variation Rates and Prices** | As set out in Attachment 3. |
| **Causes of delay**(Clause 27) | 1. Any one of:
2. a breach of the Contract by the Commonwealth; or
3. any other act or omission of the Commonwealth or other personnel engaged by the Commonwealth (other than the Contractor),

but excluding any act or omission of a person specified in subparagraph (ii) in accordance with or otherwise permitted by the Contract.1. A Variation (as defined in clause 21(e)).
2. Inclement weather at the Site excluding the conditions resulting from inclement weather.
3. Industrial disputation which is not caused or contributed to by the Contractor or any subcontractor of the Contractor.
4. A change in a Statutory Requirement after the date of execution of the Contract by the Commonwealth.
5. A Commonwealth Risk.
6. A Latent Condition.
7. A bushfire, a flood, an earthquake or a cyclone which directly impacts the carrying out of the Works.
8. Any other event that may be expressly provided for in the Contract.
 |
| **Liquidated Damages**(Clause 28) | Where there are no Stages, for the Works is: $***[COMMONWEALTH TO INSERT]*** per day***[OR]***Where there are Stages, for each Stage is:1. ***[COMMONWEALTH TO INSERT EACH STAGE AND AMOUNT PER DAY]***
 |
| **Delay Costs**(Clause 29) | Where there are no Stages, the daily cap is:$**[CONTRACTOR TO INSERT]** per working day  |
| Where there are Stages, the daily cap is: |
| **Stage** | **Maximum delay costs** |
|  | $**[CONTRACTOR TO INSERT]** per working day |
|  | $**[CONTRACTOR TO INSERT]** per working day |
|  | $**[CONTRACTOR TO INSERT]** per working day |
|  | $**[CONTRACTOR TO INSERT]** per working day |
| **Times for submission of payment claims by the Contractor**(Clause 31) | ***[COMMONWEALTH TO INSERT E.G. MONTHLY ON THE LAST DAY OF THE MONTH]*** |
| **Security**(Clause 33) | Clause 33 ***[COMMONWEALTH TO SELECT: DOES / DOES NOT]*** apply.If clause 33 applies, ***[COMMONWEALTH TO SELECT: OPTION 1 / OPTION 2]*** applies.(Option 1 applies unless otherwise stated)***[COMMONWEALTH TO SELECT WHETHER THIS CLAUSE IS TO APPLY, AND IF SO, WHICH OPTION APPLIES IN ORDER TO RETAIN SECURITY FOR PERFORMANCE. PLEASE ENSURE THAT IF OPTION 1 IS APPLICABLE, THAT OPTION 2 IS DELETED AND IF OPTION 2 IS APPLICABLE, THAT OPTION 1 IS DELETED.*** ***NOTE YOU SHOULD OBTAIN SPECIFIC LEGAL ADVICE IF YOUR PROJECT IS IN QUEENSLAND IF YOU PROPOSE TO REQUIRE MORE THAN 5% OF THE CONTRACT PRICE AS SECURITY PRIOR TO COMPLETION AND/OR MORE THAN 2.5% OF THE CONTRACT PRICE PRIOR TO THE EXPIRY OF THE DEFECTS LIABILITY PERIOD. IN RESPECT OF RETENTION MONIES, THE MAXIMUM PROPORTION THAT MAY BE RETAINED FROM PAYMENTS TO THE CONTRACTOR IS 10% OF EACH PAYMENT, UNTIL 5% OF THE CONTRACT PRICE HAS BEEN RETAINED]***If Option 1 applies, for the Works is $***[COMMONWEALTH TO INSERT]*** or ***[COMMONWEALTH TO INSERT]***% of the Contract Price (in the form of two unconditional undertakings, each for 50% of this amount.If Option 2 applies, the Commonwealth may deduct ***[COMMONWEALTH TO INSERT]***% from each payment until ***[COMMONWEALTH TO INSERT]***% of the Contract Price is retained as retention monies. |
| **Commonwealth Risk** | Any one of:1. war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority;
2. ionising radiations or contaminations by radioactivity from any nuclear fuel or waste; or
3. loss or damage to the Works caused by faulty design carried out by persons other than the Contractor (or persons for whom the Contractor is responsible).
 |
| **Contractor insurance requirements**(Clause 35) | Public Liability Insurance: A policy of liability insurance covering the:1. Contractor and all subcontractors for their respective liabilities; and
2. Commonwealth for all legal liabilities arising out of or in connection with any act, error, omission, negligence or breach of contract by the Contractor (or any subcontractor),

to third parties and to each other, for loss of, loss of use of or damage to property and death of or injury to any person, arising out of or in connection with the Works.This policy is not required to cover liabilities or losses under Construction Risks Insurance, Workers Compensation Insurance, Employers’ Liability Insurance or Professional Indemnity Insurance (as defined below) | ***[IF THE COMMONWEALTH WISHES TO SPECIFY THE AMOUNT OF INSURANCE THE CONTRACTOR IS REQUIRED TO HOLD, INSERT:*** ***$[COMMONWEALTH TO INSERT AMOUNT] each and every public liability occurrence.]******[IF THE COMMONWEALTH REQUIRES THE CONTRACTOR TO SPECIFY THE AMOUNT OF INSURANCE HELD BY THE CONTRACTOR, INSERT:*** **$[CONTRACTOR TO INSERT]** ***each and every public liability occurrence.]*** |
| Construction Risks Insurance: A policy of insurance covering the respective rights, interests and liabilities of the Commonwealth, the Contractor and all subcontractors arising out of or in connection with the works in progress and insuring at minimum all the things referred to in clause 34 for which the Contractor bears the risk of loss or damage  | **Amount of Cover:**an amount equal to the Contract Price. |
| Workers Compensation Insurance: A policy of insurance prescribed by statute in each State and Territory in which the Works are performed or the Contractor's employees perform work, are employed or normally reside to insure against or make provision for the liability of the Contractor to its employees for death or injuries arising out of or in connection with their employment | **Amount of cover:** the minimum amounts prescribed by statute in each State and Territory in which the Works are performed or the Contractor's employees perform work, are employed or normally reside. |
| Employers' Liability Insurance (whether as an extension to Workers Compensation Insurance or otherwise): If the Works are performed or the Contractor's employees perform work, are employed or normally reside in any jurisdiction outside Australia, a policy of insurance covering the liability of the Contractor to its employees at common law for death or injuries arising out of or in connection with their employment  | **Amount of cover:** the amount that a prudent, competent and experienced contractor undertaking the Works would purchase which must not be less than $**[CONTRACTOR TO INSERT]**. |
| ***[COMMONWEALTH TO INCLUDE THE FOLLOWING IF THE CONTRACTOR WILL DESIGN ANY PART OF THE WORKS:***Professional Indemnity Insurance: A policy of insurance to cover claims made against the insured for civil liability for breach of professional duty (whether owed in contract or otherwise) and unintentional breaches of third party intellectual property by the Contractor or its subcontractors in carrying out the Contractor's Activities under the Contract***]*** | ***[***Amount of Cover:**$[CONTRACTOR TO INSERT]** per claim and **$[CONTRACTOR TO INSERT]** in the aggregate.***]*** |
| ***[COMMONWEALTH TO INSERT OTHER INSURANCE POLICIES AS APPLICABLE]*** | ***[COMMONWEALTH TO INSERT OR INCLUDE PLACEHOLDER FOR THE CONTRACTOR TO INSERT]*** |
| **Maximum aggregate liability of the Contractor to the Commonwealth** (Clause 36) | $***[COMMONWEALTH TO INSERT]*** |
| **DISP membership levels**(Clause 42) | DISP Membership ***[COMMONWEALTH TO SELECT: IS/IS NOT]*** required.Where DISP Membership is required:***[COMMONWEALTH TO REFER TO CONTROL 16.1 OF THE DSPF FOR GUIDANCE AS TO WHEN DISP MEMBERSHIP SHOULD BE REQUIRED AND THE RELEVANT LEVELS FOR EACH DOMAIN]*** |
| **DISP Membership / Security Domain** | **Level**  |
| Governance | ***[COMMONWEALTH TO INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED) NOTING THAT, IN ACCORDANCE WITH CONTROL 16.1 OF THE DSPF, THIS MUST EQUAL THE HIGHEST LEVEL REQUIRED FOR THE OTHER THREE DOMAINS BELOW. INSERT "NOT APPLICABLE" IN THIS AND THE BELOW ROWS IF DISP MEMBERSHIP IS NOT REQUIRED]*** |
| Personnel Security | ***[COMMONWEALTH TO INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]*** |
| Physical Security | ***[COMMONWEALTH TO INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]*** |
| Information / Cyber Security | ***[COMMONWEALTH TO INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]*** |

CONTRACT CONDITIONS

1. **Contract:** Once both the Commonwealth and the Contractor have signed the page titled "Signature Page and Date",a contract exists between the Commonwealth and the Contractor comprising the documents set out in the Contract Details. Unless the context otherwise indicates, a capitalised term used in these Contract Conditions has the meaning given by the corresponding item set out in the Contract Details and a reference to a clause in the Contract Details is a reference to a clause in these Contract Conditions.
2. **Commencement:** The Contractor must, without limiting the operation of clause 3(a), immediately commence to perform the Contractor's Activities in accordance with the Contract.
3. **Site**:
	* 1. The Commonwealth must give the Contractor sufficient access to the Site to allow it to commence work on the Site on the later of:
			1. the Date for Commencement; and
			2. satisfaction by the Contractor of the Conditions Precedent to Site Access,
			3. and thereafter, subject to any other provision of the Contract affecting access, the Commonwealth must continue to allow the Contractor sufficient access to the Site to enable it to carry out the Works.
		2. The Commonwealth's failure to provide access under paragraph (a) will not be a breach of the Contract. Where the Contractor is delayed in performing the Works by the Commonwealth's failure to provide access under this clause 3, the Contractor will be entitled to claim an extension of time and delay costs under clauses 27 and 29 respectively if the requirements in those clauses have been satisfied.
		3. The Contractor only has access to the Site to the extent necessary to execute and complete the Works (and subject to the directions of the Commonwealth) and must carefully co-ordinate its activities with those of the Commonwealth and others engaged at or in the vicinity of the Site by the Commonwealth. The Contractor must give the Commonwealth reasonable access to the Site for the purposes of supervision, testing and examination of the Works.
		4. The Contractor must, and must ensure all personnel engaged in connection with the Works (including subcontractor personnel), comply with the requirements for Site access applicable to the Site (including in respect of Defence's Security Alert System and any changes to Site access requirements) set out in the Contract or notified in writing by the Commonwealth.
		5. The Commonwealth may (in its absolute discretion) direct the Contractor to remove any of its employees or subcontractors from the Site. The Contractor must immediately comply with such direction and ensure that person is not again involved in connection with the Works.
		6. The Commonwealth does not warrant, guarantee or make any representation about the relevance, completeness, accuracy or adequacy of any information, documents or data made available to the Contractor, or that the Commonwealth may make available to the Contractor on or after the date of execution of the Contract, as to the existing conditions on, in, under or in the vicinity of the Site. Such information, documents or data do not form part of the Contract.
		7. The Contractor warrants that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor in:
			1. assessing the risks which it is assuming under the Contract; and
			2. ensuring that the Contract Price contains sufficient allowances to protect it against any of these risks eventuating.
4. **Access Hours:** Unless otherwise agreed in writing by the Contractor and the Commonwealth, the access hours applicable to the Contractor's Activities to be carried out on Site are those specified in the Contract Details.
5. **Key Personnel:** The Contractor must employ those people specified in Attachment 1. The Contractor must not replace them without the Commonwealth's written approval unless any of them die, become seriously ill or resign from the employment of the Contractor in which case they will be replaced with persons of at least equivalent experience, ability and expertise.
6. **Design:**
	* 1. If the Works Description requires the Contractor to undertake design as part of the Works, the Contractor must develop the design (comprising drawings, specifications, calculations and any engineering certificates required) and submit the design to the Commonwealth for permission to use the design.
		2. The Commonwealth will reject or give permission to use the design within 14 days of receipt if it is in accordance with the Contract, and the Contractor is to construct the Works in accordance with that permitted design. Where the design is rejected, the Contractor must resubmit the design until the Commonwealth gives permission to the Contractor to use the design. The Contractor must not commence any construction to which the design relates until the Commonwealth grants permission to use the design. Any review of, or permission to use, the design by the Commonwealth does not relieve the Contractor of its responsibility to design in accordance with the Contract and the Contractor acknowledges that the Commonwealth is relying on the Contractor's skill and judgement in undertaking design.
		3. If any changes to the Contractor's design are required after the Commonwealth has given its permission to use such design, the Contractor must resubmit the design to the Commonwealth and paragraph (b) will reapply.
		4. The Contractor warrants that:
			1. the design it prepares will comply with the Contract and be fit for the purposes set out in, or reasonably inferred from, the Works Description; and
			2. upon Completion, the Works or the Stage will, to the extent that they have been designed by the Contractor, be fit for the purposes set out in, or reasonably inferred from, the Works Description.
7. **Intellectual Property:**
	* 1. The Contractor grants to the Commonwealth a perpetual, royalty-free, irrevocable, non-exclusive, worldwide licence to exercise all rights of any owner of intellectual property rights in all material produced or provided by the Contractor in connection with the Contractor's Activities and the Contract, including to use, reproduce, modify and adapt any such material, including use in any way for any other Commonwealth project.
		2. The Contractor indemnifies the Commonwealth in respect of all claims against, and costs, losses, damages or liabilities suffered or incurred by, the Commonwealth arising out of or in connection with any actual or alleged infringement of any intellectual property right, Moral Rights or other protected right.
8. **Moral Rights:**
	* 1. The Contractor must:
			1. to the extent permitted by law and for the benefit of the Commonwealth, ensure that each of the Contractor and subcontractor personnel engaged by the Contractor in the production or creation of material produced or provided by the Contractor under the Contract or the Works gives genuine consent in writing to the use of such material or the Works (as applicable) for the Specified Acts, notwithstanding that such use would otherwise be an infringement of their Moral Rights; and
			2. provide copies of such consents to the Commonwealth on request at such times as the Commonwealth may require.
		2. In this Contract:
			1. **Moral Rights** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, as defined in the *Copyright Act 1968* (Cth); and
			2. **Specified Acts** means:
				1. falsely attributing the authorship of any material produced or provided by the Contractor under the Contract or the Works, or any content in such material or the Works (including literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
				2. materially altering the style, format, colours, content or layout of any material produced or provided by the Contractor under the Contract or the Works and dealing in any way with the altered material or Works;
				3. reproducing, communicating, adapting, publishing or exhibiting any material produced or provided by the Contractor under the Contract or the Works; and
				4. adding any additional content or information to material produced or provided by the Contractor under the Contract or the Works.
9. **Construction:** The Contractor must:
	* 1. construct the Works in accordance with:
			1. the Works Description;
			2. if the Contract requires the Contractor to design any part of the Works, the design prepared by the Contractor which the Commonwealth has given permission to use under clause 6(b);
			3. any direction of the Commonwealth given or purported to be given under the Contract; and
			4. the other requirements of the Contract; and
		2. use workmanship and materials which are fit for purpose and of the standard prescribed by the Contract (or, if not prescribed, of a high standard consistent with best industry practice).
10. **Subcontracting:** The Contractor must not subcontract any part of the Contractor's Activities without the Commonwealth's prior written approval. If approval to subcontract is given, the Contractor remains fully responsible for the Contractor's Activities notwithstanding that it has subcontracted the performance of any part of the Contractor's Activities. For the purposes of this clause 10, the subcontractors (if any) listed in Attachment 1 are taken to be approved by the Commonwealth.
11. **Contractor's Methodology:** Without limiting its other Contract obligations, and to the extent not inconsistent with the Contract,the Contractor must comply with its methodology, as set out in Attachment 1.
12. **Meetings and Reports:** The Contractor must provide such reports, and attend and participate in such meetings, as specified in the Contract and otherwise as reasonably required by the Commonwealth.
13. **Access to Premises and Project Documents:** The Contractor must, during the term of the Contract and for a period of 7 years following the end of the last Defects Liability Period:
	* 1. maintain copies of all material produced or provided by the Contractor under the Contract;
		2. promptly provide the Commonwealth with any copies of such material on request; and
		3. provide access to its premises and make such material available for inspection by the Commonwealth or anyone else acting on behalf of the Commonwealth.
14. **Ambiguities:** If a party finds any discrepancy, error or ambiguity in or between the documents comprising the Contract, it must promptly give the other party notice in writing, and the Commonwealth will instruct the Contractor as to the course it must adopt.
15. **Latent Conditions:** If the Contractor considers it has encountered or found a Latent Condition, it must immediately give the Commonwealth notice in writing. If the Commonwealth agrees that a Latent Condition has been encountered or found, the Commonwealth must instruct the Contractor as to the course it must adopt and the Contractor will be entitled to claim:
	* 1. an extension of time and delay costs under clauses 27 and 29 respectively if the requirements in those clauses have been satisfied; and
		2. the extra costs (unrelated to delay) reasonably incurred by the Contractor after the giving of the notice which arise directly from the Latent Condition and the Commonwealth's instruction.
16. **Commissioning and Handover:** The Contractor must take all steps necessary to facilitate the timely, efficient, comprehensive and smooth commissioning and handover of the Works, including to provide all documents and other assistance as may be required by the Commonwealth to occupy, use, operate and maintain the Works.
17. **Statutory Requirements:** The Contractor must carry out the Contractor's Activities and its obligations under the Contract in accordance with all Statutory Requirements and, to the extent not inconsistent with the Contract, all relevant Australian Standards. The Contractor must obtain all approvals necessary to carry out the Works.
18. **The Environment:** The Contractor must:
	* 1. ensure that in carrying out the Works it does not cause or contribute to any environmental incident, including any actual or threatened adverse impact on, or damage to, the environment or any contamination;
		2. notify the Commonwealth in the event of any environmental incident arising out of or in connection with the Contractor's Activities or the Works; and
		3. clean up and restore the environment to overcome any environmental incident arising out of or in connection with the Works.
19. **Work Health and Safety Management:**
	1. The Contractor must:
		1. ensure that in carrying out the Works, it complies with:
			1. all Statutory Requirements and other requirements of the Contract regarding work health and safety, including the applicable WHS Legislation;
			2. where the applicable WHS Legislation does not prescribe a duty referred to in the Contract as one the Contractor must comply with, the duty contained in the Commonwealth WHS Legislation; and
			3. the duty under the WHS Legislation to:
				1. consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
				2. notify the relevant regulator immediately upon becoming aware that a notifiable incident (within the meaning of the WHS Legislation) has occurred arising out of its business or undertaking; and
				3. ensure, so far as reasonably practicable, that the site where a notifiable incident has occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs, unless:

it is to assist an injured person or remove a deceased person;

it is to make the area safe or to minimise the risk of a further notifiable incident; or

the relevant regulator/inspector has given permission to disturb the site;

* + 1. without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, notify the Commonwealth in respect of:
			1. notifiable incidents within the meaning of the WHS Legislation, immediately upon becoming aware of the notifiable incident; and
			2. all other work health and safety matters arising out of or in connection with the Works, including any other incident or accident (not required to be reported in accordance with subparagraph (i)) in a monthly report to the Commonwealth;
		2. for the purposes of paragraphs (a)(iii)B and (b)(i) above, in respect of any notifiable incident, provide the Commonwealth:
			1. immediately with a copy of the notice it must submit to the relevant regulator;
			2. promptly with a copy of:
				1. all witness statements and the investigation report; and
				2. any written communications issued by the relevant regulator; and
			3. within 10 days of the date of notification to the relevant regulator, with a summary of the related investigations, actions to be taken and any impact on the Contract that may result from the notifiable incident;
		3. carry out the Works safely and in a manner that does not put the health and safety of persons at risk and in a manner that protects property;
		4. comply with any direction issued by the Commonwealth or a representative of the Commonwealth to change its manner of working or to cease working if the Commonwealth or a representative of the Commonwealth reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities;
		5. institute systems to obtain regular written assurances from its subcontractors about their ongoing compliance with the WHS Legislation in a format specified by the Commonwealth;
		6. provide written assurances about the Contractor's ongoing compliance with the WHS Legislation and the written assurances obtained in accordance with paragraph (f) to the Commonwealth upon request;
		7. within 10 days of:
			1. receipt, provide to the Commonwealth copies of all written communications issued by or given to the relevant regulator or a health and safety representative of the Contractor or subcontractor arising out of or in connection with the Works; or
			2. a request by the Commonwealth, provide all information held by the Contractor or a subcontractor to the Commonwealth to enable the Commonwealth to comply with its obligations under the WHS Legislation;
		8. not use asbestos (or asbestos containing material) in carrying out the Works or install or incorporate asbestos (or asbestos containing material) into the Works;
		9. immediately notify the Commonwealth giving full particulars, so far as they are known to it, upon becoming aware of any intention on the part of a regulatory authority to cancel, revoke, suspend or amend an authorisation relating to work health and safety; and
		10. ensure all subcontracts include provisions equivalent to the obligations in this clause 19.
1. In this clause 19, **WHS Legislation** means the *Work Health and Safety Act* *2011* (Cth) and *Work Health and Safety Regulations* *2011* (Cth), and any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act* *2011* (Cth).
2. **Appointment and Engagement as Principal Contractor**: In accordance with Regulation 293 of the *Work Health and Safety Regulation 2011* (Cth) and Regulation 333 of the *Occupational Health and Safety Regulations 2017* (Vic), if the Contractor carries out relevant construction work, the Commonwealth engages and appoints (as relevant) the Contractor as the principal contractor for the construction project and the Contract and authorises the Contractor to have management or control of the workplace for the purpose of discharging the duties imposed on a principal contractor for the construction project and the Contract. The Contractor accepts the engagement and appointment (as relevant) as principal contractor and will fulfil the obligations of principal contractor for the construction project and the Contract, unless relieved of that engagement or appointment (as relevant) by notice in writing given by the Commonwealth.
3. **Variations:**
	* 1. At any time prior to Completion of the Works, the Commonwealth may issue a document titled "Variation Price Request" to the Contractor which will set out details of a proposed Variation which the Commonwealth is considering.
		2. Within 14 days of the receipt of a Variation Price Request (or such longer period as may be agreed by the Commonwealth) the Contractor must provide the Commonwealth with a written notice in which the Contractor sets out the:
			1. adjustment (if any) to the Contract Price to carry out the proposed Variation; and
			2. effect (if any) which the proposed Variation will have on the then current program, including each Date for Completion.
		3. Whether or not the Commonwealth has issued a Variation Price Request under paragraph (a), the Commonwealth may, by written notice to the Contractor titled as a "Variation Notice", direct the Contractor to carry out a Variation. Such direction will state one of the following:
			1. the proposed adjustment to the Contract Price set out in the Contractor's notice under paragraph (b) is agreed and the Contract Price will be adjusted accordingly; or
			2. any adjustment to the Contract Price will be determined under paragraph (d).
		4. The Contract Price will be increased or decreased for all Variations which have been the subject of a direction by the Commonwealth:
			1. as agreed under paragraph (c)(i);
			2. if subparagraph (i) does not apply, in accordance with the rates and prices included in the Table of Variation Rates and Prices, if and insofar as the Commonwealth determines that those rates and prices are applicable to or it is reasonable to use them for valuing the Variation; or
			3. to the extent subparagraphs (i) and (ii) do not apply, by a reasonable amount:
				1. to be agreed between the parties; or
				2. failing agreement, determined by the Commonwealth.
		5. In the Contract, a **Variation** means any change to the Works including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Works.
		6. No Variation will invalidate the Contract irrespective of the nature, extent or value of the work the subject of the Variation.
4. **Testing:** The Contractor must allow the Commonwealth to test, and must carry out at its cost any test required by the Commonwealth in respect of, any aspect of the Works.
5. **Cleaning Up:** The Contractor must:
	* 1. keep the Site, the Works and the environment clean and tidy; and
		2. as a condition precedent to Completion, remove all rubbish, materials and plant, equipment and temporary work from the part of the Site relevant to the Works.
6. **Defective Works:** If, before Completion, or within the relevant Defects Liability Period after Completion of the Works or a Stage, the Commonwealth discovers any aspect of the Works or the Stage which is not in conformance with the Contract or is otherwise defective, the Commonwealth may direct the Contractor to rectify that defect and specify the time in which this must occur (in which case the Contractor must carry out such rectification at its cost) or that the Commonwealth will accept the defect (in which case the amount determined by the Commonwealth as representing the cost of correcting the defect will be a debt due and payable on demand by the Contractor to the Commonwealth).
7. **Programming:** The Contractor must:
	* 1. within 14 days after the Date for Commencement, prepare a program for the carrying out of the Works which must be consistent with the program lodged by the Contractor in its Quotation (as may be updated prior to the date of execution of the Contract with the approval of the Commonwealth and set out in Attachment 1) and must thereafter update that program at monthly intervals until Completion of the Works; and
		2. give the Commonwealth copies of all programs.
8. **Time and Completion:** The Contractor must regularly and diligently progress the Works and achieve Completion of the Works or each Stage by the relevant Date for Completion. The Commonwealth may unilaterally extend the Date for Completion in its absolute discretion at any time and from time to time by written notice to the Contractor, however the Commonwealth does not owe a duty to the Contractor to exercise such discretion and has no obligation to do so.
9. **Delay:** If the Contractor becomes aware of any delay to the carrying out of the Works or a Stage it must, as soon as practicable and no later than 7 days after becoming aware, inform the Commonwealth in writing of the circumstances and expected duration of the delay. Subject to compliance with this notice requirement, if the Contractor has been delayed in completing the Works or a Stage by the relevant Date for Completion by a cause described in the Contract Details, the Date for Completion of the Works or Stage will be extended by a reasonable period as determined by the Commonwealth, provided that in determining a reasonable period, the Commonwealth must not include any period of delay to the extent that the Contractor:
	* 1. caused or contributed to the delay; or
		2. failed to take all proper and reasonable steps necessary and within its control to both preclude the cause of the delay and to avoid or minimise the extent and consequences of the delay.
10. **Liquidated Damages:** If the Contractor does not reach Completion of the Works or a Stage by the relevant Date for Completion, it must pay the Commonwealth liquidated damages at the rate set out in the Contract Details for every day after the Date for Completion of the Works or Stage until it reaches Completion.
11. **Delay Costs:** The Contractor will be entitled to be paid the extra costs reasonably incurred by the Contractor up to the maximum daily amount specified in the Contract Details for each day by which the Date for Completion of the Works or a Stage is extended in accordance with clause 27 as a direct result of such delay (including any overheads, but excluding profit or loss of profit) as determined by the Commonwealth, provided that the Contractor has, within 14 days of the Commonwealth notifying the Contractor of any extension to a Date for Completion under clause 27, provided to the Commonwealth a further written claim providing a detailed breakdown of the delay costs claimed in respect of the relevant extension of time.
12. **Suspension:** The Commonwealth may at any time direct the Contractor to suspend (or recommence) the whole or part of the Contractor's Activities. Where the suspension arises as a result of a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract, then the Contractor will be entitled to claim an extension of time and delay costs under clauses 27 and 29 respectively if the requirements in those clauses have been satisfied.
13. **Payment:**
	* 1. The Contractor must give the Commonwealth written claims for payment (in accordance with clause 56) on account of the Contract Price (as adjusted, if at all, under the Contract) at the times set out in the Contract Details. Such payment claims must be in the form required by the Commonwealth and include:
			1. sufficient details and supporting documentation (including any information the Commonwealth may request be included from time to time) to enable the Commonwealth to determine the amounts payable; and
			2. a statement and supporting evidence which shows that, except to the extent disclosed (such disclosure to specify all relevant amounts, workers and subcontractors), as at the date of the payment claim, all workers employed, and all subcontractors engaged, by the Contractor in connection with the Contract or the Works have been paid all moneys due and payable to them.
		2. Within 10 business days of receiving the Contractor's payment claim, the Commonwealth may issue a payment statement stating the amounts (if any) due and payable to the Contractor, including any deduction on account of amounts retained in accordance with clause 33.
		3. Subject to clause 37(c), the Commonwealth will pay these amounts to the Contractor within 10 business days of the issue of a payment statement (or within 5 business days if the relevant part of the Works are in Queensland, New South Wales or the Australian Capital Territory).
		4. For the purposes of this clause 31, "business day" has the meaning given to that term in the applicable legislation of that State or Territory where the Works are being carried out addressing security of payment in the building and construction industry.
14. **Right of Set-Off:** The Commonwealth may deduct from moneys otherwise due to the Contractor any debt or other moneys due from the Contractor to the Commonwealth (including liquidated damages payable under clause 28).
15. **Security:** Ifthe Contract Details state this clause 33 applies, the Contractor must provide Security in the form of either Option 1 or Option 2 (as specified in the Contract Details) as follows:

*Option 1 - Unconditional Undertaking*

* + 1. prior to the Date for Commencement, the Contractor must provide security to the Commonwealth in the form of an unconditional undertaking on terms and given by a financial institution approved by the Commonwealth in the amounts specified in the Contract Details;

*Option 2 - Retention Monies*

* + 1. during the carrying out of the Works and prior to Completion, the Commonwealth may deduct the percentage stated in the Contract Details from every payment to the Contractor until it has accrued the total percentage of the Contract Price specified as retention monies. At the end of the last Defects Liability Period, the Commonwealth must pay the Contractor any retention monies then held (less any amounts the Contractor is liable to pay the Commonwealth); and

*Release of Security*

* + 1. subject to the Commonwealth's rights under the Contract or at law, the Commonwealth must:
			1. within 14 days of Completion of the Works, release 50% from the Security then held under clause 33; and
			2. release the balance of the Security then held under clause 33 following the latest of:
				1. the expiration of the last Defects Liability Period; or
				2. the Contractor having complied with all its obligations under the Contract.
1. **Risk:** Except to the extent that it arises from a Commonwealth Risk,the Contractor:
	* 1. bears the risk of any loss of or damage to the Works or a Stage until Completion of the Works or the Stage;
		2. after Completion of the Works or a Stage, bears the risk of any loss or damage to the Works or the Stage arising from any act or omission of the Contractor prior to the end of the relevant Defects Liability Period; and
		3. indemnifies the Commonwealth against any loss or damage to the property of the Commonwealth (including the Works and existing property in, about or adjacent to the Works) and against any liability, loss, claim or proceedings for personal injury or death or loss of or damage to property arising out of any act or omission of the Contractor, provided that such indemnity will be reduced to the extent that an act or omission of the Commonwealth (or persons for whom the Commonwealth is responsible) contributed to the loss or damage.
2. **Insurance**: As a Condition Precedent to Site Access, the Contractor must have in place, and thereafter maintain, the insurances required under the Contract Details, with insurers and on terms (including as to the amount insured) satisfactory to the Commonwealth.
3. **Limitation on Liability:**
	* 1. Subject to paragraph (b), to the extent permitted by law, the maximum aggregate liability of the Contractor to the Commonwealth arising out of or in connection with the Contract (whether arising in contract, in equity, tort (including negligence), by way of indemnity, under statute or otherwise at law) is limited to the amount specified in the Contract Details.
		2. Paragraph (a) does not apply to a liability of the Contractor:
			1. for any deliberate breach or repudiation of the Contract;
			2. under the indemnities in clauses 7(b) and 34(c);
			3. for fraud;
			4. to the extent that:
				1. payments are received by the Contractor; or
				2. the Contractor is entitled to be indemnified (other than in circumstances where the relevant insurer is insolvent),

under any insurance policy or policies required to be effected and maintained under the Contract in relation to that liability or payments would have been received by the Contractor or the Contractor would have been entitled to be indemnified under such insurance policy or policies but for:

* + - * 1. the failure of the Contractor to effect and maintain the required insurance policy or insurance policies;
				2. any failure of an insurance policy to respond due to the misconduct of the Contractor (including a misrepresentation to the insurer or failure to make proper disclosure or to comply with the requirements of the policy);
				3. the failure by the Contractor to diligently pursue any claim for indemnity under any insurance policy or insurance policies; or
				4. the reliance by the insurer of the required insurance on this clause 36 to deny liability on the basis that the party has no liability to the Commonwealth; and
			1. for fines or penalties incurred by the Commonwealth arising from the Contractor’s Activities.
1. **GST and Taxes**:
	* 1. Subject to paragraph (b), where any supply occurs under or in connection with the Contract or the Works for which GST is not otherwise provided, the party making the supply (**Supplier**) may increase the amount payable for the supply by the amount of any applicable GST.
		2. Where an amount is payable to the Supplier under or in connection with the Contract or the Works which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply is to be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under paragraph (a).
		3. As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier is to provide a tax invoice to the recipient in respect of that supply.
		4. If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
			1. is more than the GST on the supply, then the Supplier must refund the excess to the recipient; or
			2. is less than the GST on the supply, then the recipient must pay the deficiency to the Supplier.
		5. As between the Commonwealth and the Contractor, the Contractor bears the risk of, and must pay, all Taxes (except to the extent of the GST under this clause 37) incurred or imposed in connection with the Works, the Contract or the Site.
		6. In this clause 37:
			1. **GST** means the tax payable on Taxable Supplies under the GST Legislation;
			2. **GST Legislation** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;
			3. **Tax** or **Taxes** means any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature, imposed or levied by any authority, together with any interest, penalty, charge, fee or other amount imposed or made on, or in respect of, any of the foregoing; and
			4. terms defined in the GST Legislation have the meaning given to them in the GST Legislation.
2. **Industrial Relations:** The Contractor assumes sole responsibility for and must manage all industrial relations and employment matters (including management of its employees) in connection with the Contract and the carrying out of the Works.
3. **Personal Information:**
	* 1. The Contractor agrees that if it obtains Personal Information in the course of performing the Works, it will only use or disclose that Personal Information for the purposes of the Contract subject to any applicable exceptions in the Privacy Act. The Contractor must comply with its obligations under the Privacy Act and must not do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of the Australian Privacy Principles.
		2. The Contractor must promptly notify the Commonwealth in writing if it becomes aware of a breach or possible breach of any of the obligations in this clause 39 or becomes aware that a disclosure of Personal Information may be required by law.
		3. The Contractor must ensure that its officers, employees, agents and subcontractors comply with this clause 39.
		4. In this clause 39:
			1. **Australian Privacy Principles** has the same meaning as in the *Privacy Act 1988* (Cth);
			2. **Personal Information** has the same meaning as in the *Privacy Act 1988* (Cth); and
			3. **Privacy Act** means the *Privacy Act 1988* (Cth).
4. **Confidential Information:**
	* 1. The Contractor must not, and must ensure that any subcontractors or subconsultants engaged by the Contractor do not, disclose any Commonwealth Confidential Information to any third party without the prior written consent of the Commonwealth. The Contractor will not be in breach of this clause 40 in circumstances where it or its subcontractors or subconsultants are required by law to disclose any Commonwealth Confidential Information.
		2. In this clause 40, **Commonwealth Confidential Information** means any information provided by the Commonwealth to the Contractor or which comes into the possession of the Contractor in connection with the Works which the Commonwealth has identified as confidential or the Contractor ought reasonably to know is confidential.
5. **Sensitive and Classified Information:**
	* 1. This clause 41 applies where the Contractor is provided with Sensitive and Classified Information in connection with the Contract.
		2. The Contractor must not disclose any Sensitive and Classified Information unless the disclosure:
			1. is strictly in accordance with the requirements of the Commonwealth; and
			2. has first been approved in writing by the Commonwealth.
		3. In giving any approval to the Contractor under paragraph (b), the Commonwealth may impose such conditions as the Commonwealth thinks fit, including conditions requiring any recipient of Sensitive and Classified Information to obtain and maintain a specified minimum level of security clearance (or equivalent) and to enter into a deed in a form acceptable to the Commonwealth.
		4. The Contractor must comply with all security policies and procedures notified by the Commonwealth from time to time, including to handle and store any Sensitive and Classified Information in its possession or control strictly in accordance with such policies and procedures.
		5. In this clause 41, **Sensitive and** **Classified Information** includes any document or other information (whether in written, oral or electronic form) issued or communicated to the Contractor by or on behalf of the Commonwealth:
			1. marked as "sensitive information", "for official use only" or "OFFICIAL: Sensitive" or identified at the time of issue or communication as "Sensitive Information";
			2. marked with a national security classification or identified at the time of issue or communication as "Classified Information" or an equivalent (including restricted, protected or secret information); or
			3. that the Contractor knows or ought to know is subject to, or ought to be treated as sensitive or classified information.
6. **Defence Industry Security Program:** Without limiting clause 41, the Contractor must at its cost obtain, and thereafter maintain for the term of the Contract, Defence Industry Security Program (more particularly described at http://www.defence.gov.au/dsvs/industry) membership at the level specified in the Contract Details in accordance with Control 16.1 of the Defence Security Principles Framework dated 19 July 2024, as amended from time to time.
7. **Fraud and Corruption Control:**
	* 1. Without limiting the Contractor's other obligations, the Contractor must proactively:
			1. take all necessary measures to prevent, detect and investigate any known or suspected fraud or corruption in connection with the Contract or the Contractor's Activities (including all measures directed by the Commonwealth);
			2. take all necessary corrective action to mitigate any loss or damage to the Commonwealth resulting from fraud or corruption to the extent that the fraud or corruption was caused or contributed to by the Contractor or any of its officers, employees, consultants, subcontractors or agents and put the Commonwealth in the position it would have been in if the fraud or corruption had not occurred (including all corrective action directed by the Commonwealth); and
			3. take all reasonable steps to ensure that any of its officers, employees, subcontractors or agents that report any known or suspected fraud or corruption which is occurring or has occurred in connection with the Contract or the Contractor's Activities are protected from reprisals.
		2. If the Contractor knows or suspects that any fraud or corruption is occurring or has occurred it must:
			1. immediately provide a detailed written notice to the Commonwealth including details of the known or suspected fraud or corruption and the proactive measures and corrective action the Contractor will take under paragraph (a); and
			2. thereafter provide all assistance reasonably required in respect of any investigation undertaken by the Commonwealth, or any person authorised by the Commonwealth in respect of the known or suspected fraud or corruption.
8. **Modern Slavery:** The Contractor must comply, and must use all reasonable endeavours to ensure that its officers, employees, subcontractors and agents at all times comply, with all Statutory Requirements related to modern slavery and must not engage in any conduct that would constitute modern slavery.
9. **Workplace Gender Equality:** The Contractor must comply with its obligations (if any) under the *Workplace Gender Equality Act* *2012* (Cth) and must not enter into a subcontract made in connection with this Contract with a subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).
10. **Indigenous Procurement Policy****:** The Contractor must use its reasonable endeavours to increase its purchasing from businesses with 50% or more Indigenous ownership and employment of Indigenous Australians in accordance with the Commonwealth's Indigenous Procurement Policy available at www.niaa.gov.au/resource-centre/indigenous-affairs/commonwealth-indigenous-procurement-policy, as amended from time to time.
11. **Child Safety:** Where the Contractor employs or engages any person (whether as an officer, employee, agent, subcontractor, or volunteer) in connection with this Contract or the Works who may be required to interact with children, in connection with such employment or engagement, the Contractor must comply with all relevant Statutory Requirements in relation to such employment or engagement, including mandatory reporting and working with children checks however described. The Contractor must ensure all subcontracts include provisions equivalent to the obligations of the Contractor in this clause 47.
12. **Significant Events:**

*Notification of Significant Event*

* + 1. The Contractor must issue a notice to the Commonwealth as soon as reasonably practicable after becoming aware of a Significant Event.
		2. The notice issued under paragraph (a) must provide, to the extent the information is known by or reasonably available to the Contractor at the time of giving the notice:
			1. a summary of the Significant Event, including the date or dates on which it occurred and the date on which the Contractor became aware of it; and
			2. information as to whether any of the Contractor's personnel engaged in connection with the Contract, or any officers or employees of any subcontractors, were involved.
		3. Where reasonably requested by the Commonwealth, the Contractor must, within 3 business days of the request (or longer period agreed in writing by the Commonwealth), provide the Commonwealth with any additional information regarding a Significant Event, to the extent that information is known by or reasonably available to the Contractor.

*Significant Event Plan*

* + 1. If requested by the Commonwealth, the Contractor must prepare a draft Significant Event plan and submit that draft plan to the Commonwealth within 10 business days of the request (or longer period agreed in writing by the Commonwealth).
		2. A draft Significant Event plan prepared by the Contractor under paragraph (d) must include the following information:
			1. how the Contractor will address the Significant Event in the context of the Contractor's Activities to minimise the impact of the Significant Event on the carrying out of the Contractor's Activities or compliance by the Contractor with its obligations under the Contract;
			2. how the Contractor will seek to ensure that any events of a similar nature to the Significant Event do not occur again; and
			3. any other information reasonably requested by the Commonwealth.
		3. The Commonwealth will review the draft Significant Event plan and either approve it, or provide the Contractor with the details of any changes that are required. The Contractor must make any changes reasonably requested by the Commonwealth and resubmit the draft plan to the Commonwealth within 5 business days of the Commonwealth’s request (or longer period agreed in writing by the Commonwealth). This paragraph (f) will apply to any resubmitted draft Significant Event plan.
		4. Without limiting its other obligations under the Contract, the Contractor must:
			1. comply with each Significant Event plan as approved by the Commonwealth; and
			2. provide such reports and other information about the Contractor's progress in implementing a Significant Event plan as may be reasonably requested by the Commonwealth.

*Commonwealth Rights Upon Occurrence of Significant Event*

* + 1. A failure by the Contractor to comply with its obligations under this clause 48 will be a material breach of the Contract and the Commonwealth may terminate under clause 50(b) of the Contract.
		2. The Commonwealth’s rights under this clause 48 are in addition to and do not otherwise limit any other rights the Commonwealth may have under the Contract or at law or in equity. The performance by the Contractor of its obligations under this clause 48 will be at no additional cost to the Commonwealth.
		3. The Commonwealth may, in addition to any of its other rights or remedies under the Contract, take into account the occurrence of a Significant Event at any time, including when:
			1. deciding whether to consent to the subcontracting of any Contractor's Activities (including under clause 10);
			2. conducting performance reviews, providing a direction to remove a person from the carrying out of the Contractor's Activities, or exercising any rights of the Commonwealth in relation to access, audit, or the treatment of documentation under or in connection with the Contract; and
			3. deciding whether to exercise any rights in relation to termination or a reduction of the scope of the Contractor's Activities under or in connection with the Contract.

*Contractor's Compliance*

* + 1. Nothing in this clause 48 requires the Contractor to act in any manner or disclose any information which would:
			1. breach an obligation of confidentiality that existed prior to the date the Significant Event occurred, that is owed to an unrelated third party;
			2. cause the Contractor to breach any law or regulation or contractual obligation regarding privacy or security (in Australia or outside of Australia);
			3. have the effect of waiving legal professional privilege (or any equivalent privilege in Australia or outside of Australia) in relation to the information; or
			4. breach the rules of a stock exchange or any similar body on which the Contractor, or any related body corporate of the Contractor, is listed, which require the information to be first disclosed to the stock exchange or body. In this case, the Contractor must disclose the information promptly after disclosure is made to the stock exchange or body.
		2. Notwithstanding any restriction that may apply in respect of specific information, such as described in paragraph (k), the Contractor must use reasonable endeavours to make any disclosures and take reasonable steps to ensure that the overarching intent of this clause 48 is achieved.

*Interpretation*

* + 1. For the purposes of this clause 48, **Significant Event** means:
			1. any adverse findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Contractor or its subcontractors (or any officers, employees or agents of any of them) that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
			2. any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Contractor or its subcontractors (or any officers, employees or agents of any of them) that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth’s reputation.
1. **Compliance with the Commonwealth Supplier Code of Conduct:**
	* 1. The Contractor must comply with, and ensure that its officers, employees, agents and subcontractors comply with, the Code in connection with the performance of the Contract.
		2. The Contractor must:
			1. periodically monitor and assess its, and its officers’, employees’, and agents’ compliance with the Code; and
			2. on request from the Commonwealth, promptly provide information regarding:
				1. the policies, frameworks, or systems it has established to monitor and assess compliance with the Code; and
				2. the Contractor's compliance with paragraph (a).
		3. The Contractor must immediately notify the Commonwealth in writing upon becoming aware of any breach of paragraph (a). The notice must include a summary of the breach, the date that the breach occurred and details of the personnel involved.
		4. Where the Commonwealth identifies a possible breach of paragraph (a), it may notify the Contractor in writing, and the Contractor must, within three days of receiving the notice, either:
			1. where the Contractor considers a breach has not occurred - advise the Commonwealth that there has not been a breach and provide information supporting that determination; or
			2. where the Contractor considers that a breach has occurred - notify the Commonwealth under paragraph (c) and otherwise comply with its obligations under this clause 49.
		5. Notwithstanding paragraph (d), the Commonwealth may notify the Contractor in writing that it considers that the Contractor has breached paragraph (a), in which case the Contractor must notify the Commonwealth in writing under paragraph (c) and otherwise comply with its obligations under this clause 49.
		6. A failure by the Contractor to comply with its obligations under any part of this clause will be a breach of the Contract.
		7. Nothing in this clause or the Code limits, reduces or derogates from the Contractor's other obligations under the Contract. The Commonwealth's rights under this clause are in addition to and do not otherwise limit any other rights the Commonwealth may have under the Contract. The performance by the Contractor of its obligations under this clause will be at no additional cost to the Commonwealth.
		8. The Contractor acknowledges and agrees that the Commonwealth may take the Contractor's compliance with the Code into account in any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.
		9. For the purposes of this clause 49, **Code** means the Commonwealth Supplier Code of Conduct dated 1 July 2024, available at https://www.finance.gov.au/government/procurement/commonwealth-supplier-code-conduct/commonwealth-supplier-code-conduct, as amended from time to time.
2. **Default:**
	* 1. If the Contractor fails to comply with any of its obligations under the Contract, then the Commonwealth may notify the Contractor in writing and require the Contractor to remedy the failure or breach within 7 days (or such longer period as the Commonwealth may specify) of receiving the notice.
		2. If the Contractor:
			1. does not remedy a failure or breach within the time required under paragraph (a);
			2. is unable to pay its debts as and when they fall due, is wound up, declared insolvent or a controller, restructuring practitioner, administrator, receiver, receiver and manager, provisional liquidator or liquidator (each as defined in section 9 of the *Corporations Act 2001* (Cth)) or equivalent is appointed to the Contractor; or
			3. fails to comply with its obligations under clause 48,

the Commonwealth may by written notice to the Contractor immediately terminate the Contract and the Contractor will not have any right to further payment under the Contract and the Commonwealth will be entitled to recover from the Contractor any costs, losses or damages suffered or incurred by it as a result of, arising out of or in connection with such termination.

1. **Termination for Convenience:** The Commonwealth may at any time, for its sole convenience and for any reason, terminate the Contract by notifying the Contractor in writing with effect from the date specified in the notice. If the Commonwealth issues such a notice:
	* 1. the Contractor will be entitled to payment for design or related activities and the Works carried out or completed in accordance with the Contract before the date of the termination and the cost of goods or materials reasonably ordered by the Contractor which the Contractor is legally bound to pay (provided that title in the goods and materials will vest in the Commonwealth upon payment);
		2. the amount payable under paragraph (a) will be a limitation on the Commonwealth's liability to the Contractor arising out of the termination of the Contract under this clause 51; and
		3. the Commonwealth may thereafter (at its absolute discretion) complete the uncompleted part of the Works either itself or by engaging another contractor.
2. **Disputes:**
	* 1. Any dispute or difference arising out of or in connection with the Contract or its subject matter or the conduct of either party prior to the Contract (including any question relating to the existence, validity or termination of the Contract) (**Dispute**), must be resolved in accordance with this clause 52.
		2. If a Dispute arises then a party must, if it wants to pursue the Dispute, give notice in writing to the other party specifying:
			1. the Dispute;
			2. particulars of the Dispute; and
			3. the position which the party believes is correct,

(**Dispute Notice**).

* + 1. If a Dispute Notice is given, then:
			1. the parties must procure that their authorised representatives meet and undertake genuine and good faith negotiations within 10 business days after the date on which the Dispute Notice is given (or any longer period agreed by the parties in writing), with a view to resolving the Dispute; and
			2. any agreement reached between the representatives must be reduced to writing and signed by or on behalf of each party and will be final and binding on the parties.
		2. If a Dispute Notice has not been resolved within 20 business days of service of the Dispute Notice, either party may commence litigation.
1. **Commonwealth May Act:** The Commonwealth may, either itself or by a third party, perform a Contract obligation which the Contractor was obliged to perform but which it failed to perform. The costs, expenses, losses, damages and liabilities suffered or incurred by the Commonwealth in so carrying out such a Contract obligation will be a debt due from the Contractor to the Commonwealth.
2. **Governing Law:** The Contract is subject to and is to be construed in accordance with the laws of the Australian Capital Territory, and the parties submit to the exclusive jurisdiction of the courts of the Australian Capital Territory and courts with jurisdiction to hear appeals from those courts.
3. **Miscellaneous:**
	* 1. The Contractor must not assign any of its rights under the Contract without the prior written consent of the Commonwealth.
		2. Where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the Contract.
		3. In the Contract, unless the context otherwise indicates:
			1. references to a person include an individual, firm, corporation or unincorporated body;
			2. references to any legislation or to any section or provision of any legislation include any statutory modification, substitution or re-enactment of, and any ordinances, by-laws, regulations and other statutory instruments issued under, that legislation, section or provision;
			3. references to the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
			4. a reference to "$" is to Australian currency; and
			5. references to any party to the Contract include its successors or permitted assigns.
4. **Notices:** Noticesgiven under or arising in connection with the Contract must be in writing and delivered to the relevant person and email address specified in the Contract Details or last notified in writing to the party giving the notice.
5. **Additional conditions:**
	* 1. ***[COMMONWEALTH TO INSERT ANY OTHER PROJECT-SPECIFIC CONDITIONS TO FORM PART OF THE CONTRACT CONDITIONS (FOR EXAMPLE IF THERE ARE PROVISIONAL SUM WORKS OR UNFIXED GOODS OR MATERIALS), OTHERWISE DELETE THIS SECTION]***

**SIGNATURE PAGE AND DATE**

In signing this document, the Contractor submits its Quotation for the carrying out of the Works in accordance with the RFQ Conditions (including any addenda issued in accordance with the RFQ Conditions) and acknowledges, subject to any changes the Commonwealth may require prior to acceptance, such Quotation may be accepted by the Commonwealth executing where indicated below and returning a copy to the Contractor.

The Contractor acknowledges the following addenda: **[CONTRACTOR TO INSERT]**

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of the **Contractor** by its authorised signatory in the presence of: |  |  |  |
|  |  |  |  |
| Signature of Witness |  |  | Signature of Authorised Signatory |
|  |  |  |  |
| Name of Witness in full |  |  | Name of Authorised Signatory in full |

***[NOTE TO COMMONWEALTH: THIS PAGE SHOULD ONLY BE SIGNED BY THE COMMONWEALTH ONCE ALL NEGOTIATIONS WITH THE SUCCESSFUL CONTRACTOR HAVE COMPLETED AND ALL DETAILS OF THE CONTRACT ARE AGREED AND DOCUMENTED IN WRITING BY WAY OF AMENDMENT TO THIS QUOTATION. DEPENDING ON THE EXTENT OF AMENDMENT, THE PREPARATION OF THE FINAL VERSION OF THE CONTRACT MAY BE BEST ACHIEVED BY REQUIRING THE SUCCESSFUL CONTRACTOR TO SUBMIT AN UPDATED QUOTATION WHICH REFLECTS THE OUTCOME OF NEGOTIATIONS AND ALL ADDENDA.]***

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of the**Commonwealth** in the presence of: |  |  |  |
|  |  |  |  |
| Signature of Witness |  |  | Signature of Authorised Officer |
|  |  |  |  |
| Name of Witness in full |  |  | Name of Authorised Officer in full |

**DATE OF EXECUTION BY COMMONWEALTH**:

ATTACHMENT 1 - CONTRACTOR'S RESOURCES AND METHODOLOGY

|  |  |
| --- | --- |
| **Item** | **Response** |
| **Proposed Key Personnel and Subcontractors:**  You are requested to provide details of the key personnel and subcontractors that will undertake the Works. | **Key Personnel:****[INSERT EACH PERSON'S NAME, POSITION, RELEVANT QUALIFICATIONS AND PROPOSED ROLE IN THE WORKS]****Subcontractors:****[INSERT EACH SUBCONTRACTOR'S COMPANY NAME, ABN, LICENCE/REGISTRATION DETAILS (IF APPLICABLE) AND PROPOSED ROLE IN THE WORKS]** |
| **Methodology:** You are requested to provide:* + 1. a brief narrative setting out your understanding of the nature and scope of the Works including addressing:
			1. if required by the Contract, the design of the Works by the Contractor;
			2. the logistics and resourcing support requirements of the project, as well as identifying potential logistics issues and solutions to these problems;
			3. procedures for Site access, ensuring security measures are in place, vehicle and traffic management, noise management and Site office requirements;
			4. your proposed approach to working hours and staff accommodation; and
			5. in the context of the Works, your relevant experience and performance history;
		2. details of how you will achieve the time, budget and workmanship requirements of the Works;
		3. your current approach to sustainability, environmental management and work health and safety including addressing your approach to:
			1. waste management (and waste water runoff) and debris control at the Site;
			2. managing any dangerous or prohibited substances, material or goods at the Site (including spills); and
			3. heritage and artefacts discovered at the Site;
		4. your approach to commissioning and handover;
		5. your understanding of, and approach to, minimising the risks of modern slavery and fraud in connection with the Works;
		6. your approach to maximising the whole-of-life costs of the Works; and
		7. details of the benefits expected to be generated to the Australian economy through your performance of the Contractor's Activities and the Works.

***[INSERT ANY OTHER PROJECT-SPECIFIC REQUIREMENTS IN RESPECT OF WHICH THE COMMONWEALTH REQUIRES A RESPONSE FROM THE CONTRACTOR IN ITS QUOTATION]*** | **[INSERT]** |
| **Program:** You are requested to provide a detailed program showing your order of work, periods for carrying out all design, documentation (if applicable) and construction activities, including off-site activities and key dates.  | **[INSERT]** |

ATTACHMENT 2 - CONTRACT PRICE

* + 1. The lump sum Contract Price is:
			1. **[CONTRACTOR TO INSERT AMOUNT]**,

as adjusted in accordance with the Contract.

* + 1. The Contractor and the Commonwealth acknowledge and agree that the breakdown of the lump sum Contract Price set out below:
			1. is solely for the purpose of assisting in administration of the Contract; and
			2. will not limit or affect the scope of the Contractor's Activities, the Works or the Contract.

|  |  |  |
| --- | --- | --- |
| **Item** | **Description** | **Price (exclusive of GST)** |
|  | **[CONTRACTOR TO INSERT, E.G. INSURANCES, MATERIALS, LABOUR]** | **[INSERT]** |
|  | **[INSERT ALL ITEMS BELOW (WITH ADDITIONAL ROWS AS REQUIRED)]** | **[INSERT]** |
|  | **[INSERT]** | **[INSERT]** |

ATTACHMENT 3 - TABLE OF VARIATION RATES AND PRICES

|  |  |  |
| --- | --- | --- |
| **ROLE/POSITION/ITEM** | **UNIT** | **RATE/PRICE** |
| **CONTRACTOR'S REPRESENTATIVE** | HOUR | **$[INSERT]** (GST exclusive). |
| ***[COMMONWEALTH TO INSERT OTHER ROLES]*** | HOUR | **$[INSERT]** (GST exclusive). |
| ***[COMMONWEALTH TO INSERT WORK, ITEMS, MATERIALS, GOODS]*** | ***[COMMONWEALTH TO INSERT UNIT]*** | **$[INSERT]** (GST exclusive). |
| **[CONTRACTOR TO INSERT ADDITIONAL ITEMS]** | **[INSERT]** | **$[INSERT]** (GST exclusive). |

ATTACHMENT 4 - WORKS DESCRIPTION

***[COMMONWEALTH TO INSERT]***