# Defence_inline

**NEGOTIATION PLAN FOR AZ[NUMBER]**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Project Number** | **[Insert Here]** | | | |
| **Project Name** | **[Insert Here]** | | | |
| **Project Location** | **[Insert Here]** | | | |
| **Project Sponsor** | **[Insert Here]** | | | |
| **Pre-Tender Estimate** | **MCC – CWFP** | | **$[X.YYm]** | |
| **MCC – Reimbursable Planning** | | **$[X.YYm]** | |
| **MCC – MF** | | **$[X.YYm]** | |
| **MCC – CWFD** | | **$[X.YYm]** | |
| **MCC – Reimbursable Delivery** | | **$[X.YYm]** | |
| **Maximum Price** | **MCC – CWFP** | | **$[X.YYm]** | |
| **MCC – Reimbursable Planning** | | **$[X.YYm]** | |
| **MCC – MF** | | **$[X.YYm]** | |
| **MCC – CWFD** | | **$[X.YYm]** | |
| **MCC – Reimbursable Delivery** | | **$[X.YYm]** | |
| **Preferred Tenderer** | **MCC – CWFP** | | **$[X.YYm]** | |
| **MCC – Reimbursable Planning** | | **$[X.YYm]** | |
| **MCC – MF** | | **$[X.YYm]** | |
| **MCC – CWFD** | | **$[X.YYm]** | |
| **MCC – Reimbursable Delivery** | | **$[X.YYm]** | |
| **Endorsement** | **Name** |  | **Position** |  |
| **Sign** |  | **Date** | [DD MMM YY] |
| **Approval** | 1. It is recommended that [POSITION TITLE]:    1. [Approve /do not approve] this Negotiation Plan. | | | |
| **Name** |  | **Position** |  |
| **Sign** |  | **Date** | [DD MMM YY] |

**NEGOTIATION PLAN FOR** [INSERT SERVICES]

**FOR** [INSERT PROJECT]

**NOTE:** *This Negotiation Plan template is to be used for Preferred Tender values of greater than $1.5m for construction projects and for consultancy activities $.25m (both inclusive of GST). For Preferred Tender values less than $1.5m and $.25 respectively (inclusive of GST) the negotiation issues can be incorporated into the project TEBR.*

References:

1. Approved PDDP [DATE]
2. Approved Financial Submission [DATE]
3. Tender Evaluation Board Report [DATE]
4. Preferred Tenderer Letter [DATE]

### Purpose

1. This negotiation plan details:
   1. Objectives;
   2. Proposed negotiation team and responsibilities;
   3. Location and timings;
   4. Rules of participation and conduct;
   5. Conflict of Interest;
   6. Negotiation Items, including minimum and desired positions;
   7. Boundaries of negotiations;
   8. Confidentiality of negotiations;
   9. Reporting and capture of negotiation outcomes;
   10. Approval of outcomes.

### Background

1. SUMMARISE THE HISTORY OF THE PROCUREMENT PROCESS TO DATE.

### Objectives

1. BROADLY DETAIL THE PRIMARY OBJECTIVES TO UNDERTAKE THE PROPOSED NEGOTIATIONS. NOTE: Do not list each and every item at this stage but detail the major areas of focus for negotiation.

*For example*: the objective may be to negotiate improved commercial terms (detail categories, i.e. insurance, resources etc) with the Preferred Tenderer or to achieve Planning Phase Agreement for a Managing Contractor Contract (detail required plans to be completed/performance issues etc.)SUMMARISE THE HISTORY OF THE PROCUREMENT PROCESS TO DATE.

**NOTE:** *Negotiation is Defence’s opportunity to obtain the greatest value for money for the Commonwealth while it has leverage (i.e. other suitable tenderers remain in the wings.)*

*Preferred Tenderer status should not be represented as automatic contract award. The value of effective negotiations far outweighs any burden on management or time!*

*Negotiations allow the Commonwealth to address issues such as: key risk allocation, price, alternative proposals, resource allocations, subcontract lists, delivery strategies and key performance indicators.*

*Initially, negotiations should be undertaken on a less formal process, i.e. no legal representation. A facilitator for larger, more complex projects is recommended.*

### Proposed Negotiation Team

1. The proposed negotiation team is outlined below.

**Table 1: Negotiation Team**

| Responsibility | Title |
| --- | --- |
| Chair | D/PD \* |
| Secretary/Scribe | PM/CA/PO |
| Contracts Adviser (as required) | DPA/Legal Advisor |
| Member | PO |
| Member | PO |
| Observer | PSO |
| Independent cost planner / scheduler | X |
| Financial adviser (as required) |  |
| Etc |  |

### Location and Timings

1. The negotiations will take place in person at [INSERT LOCATION] in [INSERT CITY AND STATE]. Negotiations are expected to take [INSERT NUMBER] of [days/hours]. The negotiation team will meet for a negotiation briefing run by the Chair each day at [INSERT TIME] prior to Negotiations commencing. Negotiations will commence with the [INSERT PREFERRED TENDERER] promptly at [INSERT TIME].

### Rules of Participation and Conduct

1. Upon approval of this negotiation plan, the Preferred Tenderer is to be advised of the approved dates and timings of the negotiations in writing. Once the timings for negotiations have been accepted by the Preferred Tenderer, an agenda for each session/day detailing the topics for negotiation must be provided to them to allow for sufficient preparation time.
2. The Chair is responsible for ensuring that the objectives of the negotiations are met and the rules for negotiation, as detailed in this plan, are followed.
3. It is the responsibility of the nominated Secretary/Scribe to capture all negotiated outcomes in minute format and provide to all members of both teams (Defence and the Preferred Tenderer) for concurrence.
4. All team members are to be present at all negotiating sessions, unless they have been given an ‘as required’ status.
5. It is the Chair’s responsibility to determine which advisers are required to attend each negotiating session and notify those advisers of the session’s details.
6. Between negotiating sessions, members of the negotiating team are to consult sufficiently with their advisers to ensure that matters of concern are addressed quickly to allow them to discharge their responsibility in respect of the project.
7. The Chair will obtain prior to negotiations, appropriate delegate authority to allow the Commonwealth to commit to appropriate negotiated outcomes as they occur.
8. Negotiation team members and advisers are authorised to provide advice on behalf of the head of their functional area. It is the Chair’s responsibility to ensure that the nominated adviser has been granted this authority.
9. An agenda covering each session/day will be promulgated to all parties prior to commencement of the session. This agenda should also be communicated to the Preferred Tenderer. Sufficient time should be allowed for preparation by all parties.
10. During negotiation sessions, the Chair must ensure that comments are confined to the particular agenda item/matter being addressed. Comments on other matters should be communicated privately to the Chair and added to the agenda, as appropriate.
11. The negotiating team and advisers must exercise the utmost discretion in accepting hospitality from the Preferred Tenderer or its representative. The negotiation team should guard against accepting hospitality which may later become the subject of criticism.

|  |
| --- |
| **NOTE:** *The location for negotiations will be determined by Defence and should not be at the Preferred Tenderer premises’.* |

### Conflict of Interest

1. Negotiation team members/advisers must notify the Chair of any possible conflict of interest. Specialist advice on handling the potential conflict of interest will be sought from the Probity Adviser, where one is engaged, or DPA.

### Negotiation Items

1. The items to be negotiated are detailed below. Each item has been appropriately grouped under the following categories:
   1. Contractual
   2. Technical
   3. Price/Fee
   4. Resources
   5. Plans
   6. Schedule
   7. etc.

| Risk Element | Negotiation Point | Minimum and Desirable Outcome |
| --- | --- | --- |
|  |  | [minimum & desirable position, must have tangible values for the Delegate approval. “At the Chairs discretion is not acceptable”] |
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### Boundaries of Negotiations

1. The negotiation team, including the Chair, does not have the authority to:
   1. Deviate from Commonwealth policies; and
   2. Override any of the standard Contract clauses.

### Confidentiality of Negotiations

1. The negotiations and associated papers are to be treated as [INSERT APPROPRIATE CLASSIFICATION/HANDLING INSTRUCTION].

|  |
| --- |
| **NOTE:** *At a minimum, negotiations and associated papers should be treated as Commercial-in-Confidence. If negotiations are classified, it is the responsibility of the Chair to ensure that each member of the negotiation team holds the appropriate level of security clearance.* |

### Reporting and Capture of Negotiation Outcomes

1. At the conclusion of negotiations, the Chair will prepare, either:
   1. A Financial Submission recommending Contract Award; or
   2. A negotiation report with a recommendation to either accept the revised negotiated return, approach the second preferred tenderer or reconsider the contracting strategy and re-tender the opportunity.
2. The submission/report will detail the negotiated outcomes and any significant differences with the minimum and maximum preferred positions highlighted above. Only where value for money and the minimum preferred positions have been achieved will the Chair recommend Contract Award. Where a minimum preferred position has been replaced with an appropriate ‘trade-off’, the value for money justification for this proposal must be adequately represented in the submission/report.

### Appproval of Outcomes

1. Where a financial submission recommending contract award has been approved, a Contract can be executed by the relevant delegate in accordance with the Capital Facilities and Infrastructure Branch Business Rule on Financial Delegations.
2. Alternatively, where contract award is not recommended due to negotiation outcomes being unsatisfactory, a negotiation report may be developed recommending and seeking executive review and approval of an appropriate way forward.

[INSERT NAME]

[TITLE]

[DATE]

# Annexes

1. Draft Negotiation Agenda
2. Supporting Negotiation information [DELETE IF NOT REQUIRED]

**DRAFT NEGOTIATION AGENDA**

|  |  |
| --- | --- |
| Date/Time | Agenda Item |
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