

**COMMONWEALTH OF AUSTRALIA**

**DEPARTMENT OF DEFENCE**

MINOR WORKS CONTRACT (INTERNATIONAL)

TENDER DOCUMENTS

TENDER NUMBER: *[INSERT TENDER NUMBER]*

**PROJECT NAME: *[INSERT PROJECT NAME]***

*[LAST AMENDED 29 SEPTEMBER 2020 - PLEASE REMOVE PRIOR TO TENDER ISSUE OR EXECUTION]*

**Please note:**

* matters in ***[SQUARE BRACKETS AND ITALICS]*** are to be completed by the Principal before documents are issued to Tenderers; and
* matters in **[SQUARE BRACKETS AND BOLD]** are to be completed by Tenderers before lodging their Tender.

# ABOUT THIS DOCUMENT

This document is designed to simplify and assist management and administration of contracting for Minor Works.

**It is not to be used for contracts which are valued in excess of $5 million (after which additional policy / legislative requirements will apply).**

**It is only to be used for Works located outside Australia. The Minor Works Contract (Australia) must be used for Works located within Australia.**

This document serves four purposes:

1. it is an Invitation to Tender;
2. it is a Tender when filled out by the Tenderer and lodged in accordance with clause 1.9 of the Conditions of Tender;
3. it is a Contract when one copy is signed by the Contract Administrator and returned to the successful Tenderer; and
4. it is an aid to contract administration.

Participants in the Works are the:

1. Principal (contracting party);
2. Contractor (the other contracting party); and
3. Contract Administrator (who acts as an agent for the Principal in accepting tenders, administering all the provisions of the Contract and supervising the Works). Any act which may be, or is required by this [Contract](#Contract) to be, done by the [Principal](#Commonwealth) may be done by the [Contract Administrator](#ContractAdministrator) on the [Principal](#Commonwealth)'s behalf.

# OVERVIEW

1. **Part 1** is in narrative form and sets out Conditions of Tender. The Tenderer should read this thoroughly.
2. **Part 2** is the Tender Schedules which should be completed and lodged by the Tenderer with its Tender.
3. **Part 3** is the Conditions of Contract. These set out in the form of flow charts and text narrative the various rights and obligations of the parties. The flowchart boxes on the central line follow the usual sequence of actions in performing minor works. Default or disputes may occur at any time during the performance of the Works and for this reason are at the end of the central line. The flowchart boxes to the left and right of the central flowchart boxes contain further rights, obligations, actions and/or explanatory material for when things go wrong or problems occur. Some of the flowchart boxes require additional information to be inserted by either the Contract Administrator or the Tenderer.

# LODGEMENT CHECKLIST

🞏 Have you completed all Tender Schedules in Part 2?

🞏 Have you completed the relevant details in the Contract (identified in "**[Bold and in square brackets]**") in Part 3?

🞏 Have you signed the Contract in Part 3?

## PART 1 - CONDITIONS OF TENDER

* 1. The Tenderer is invited to lodge a Tender for the performance of the Works on the basis of these Conditions of Tender, the Conditions of Contract and the Specifications, Drawings, Design Brief (if any), and any Other Documents referred to in this clause 1.1.

|  |  |
| --- | --- |
| The Works are: | ***[INSERT WORKS]*** |
| The Site of the Works is: | ***[INSERT SITE]*** |
| The Design Brief marked: | ***[INSERT DESIGN BRIEF MARKING]*** |
| The Drawings marked: | ***[INSERT DRAWINGS MARKING]*** |
| The Specifications marked: | ***[INSERT SPECIFICATIONS MARKING]*** |
| Other Documents marked: | ***[INSERT OTHER DOCUMENTS]*** |

* 1. The Contract Administrator will have filled in the information marked in bold text and underlined before inviting Tenders (except for the space allowed for his/her signature in Part 3).
  2. In lodging its Tender, the Tenderer should fill in the boxes including signing the Contract in Part 3 and complete and lodge the Tender Schedules and the Tenderer's signature should be witnessed. When the Tenderer lodges its Tender in accordance with clause 1.9, this will be the Tenderer's offer for performance of the Works which the Contract Administrator may accept by signing in the space in Part 3 and returning 1 copy of this document to the Tenderer at its address.
  3. The Principal prefers to effect payment on Completion of the Works, but if the Tenderer requires progressive payments, then the Tenderer should stipulate in the Conditions of Contract the stages and amounts when progressive payment is required (in the boxes in Part 3).
  4. In pricing the Tender, allowance is to be made for the Tenderer's obligation to comply with Government policies (to the extent they apply in the jurisdiction in which the Site of the Works is located), statutory requirements and other requirements relevant to the Works. The relevant Government policies are available from the Contract Administrator. In particular, the Tenderer's attention is drawn to:
     1. the Commonwealth Procurement Rules, which provide that the Principal cannot enter into a contract with the Tenderer if the Tenderer has a judicial decision (being a decision of any court, tribunal or other body with authority to make a decision or determination which is binding on the Tenderer) against the Tenderer (not including a decision under appeal) relating to employee entitlements and has not paid the claim; and
     2. the Black Economy Procurement Connected Policy which imposes obligations on the Commonwealth to obtain from Tenderers satisfactory and valid STRs. The Black Economy Procurement Connected Policy ***[APPLIES / DOES NOT APPLY - IT WILL APPLY IF THE PROCUREMENT IS A NEW APPROACH TO THE MARKET, HAS AN ESTIMATED VALUE OVER $4 MILLION (GST INCLUSIVE) AND IT IS BEING PROCURED VIA AN OPEN TENDER PROCESS BY THE COMMONWEALTH (INCLUDING BY THE DEPARTMENT OF DEFENCE) IN CIRCUMSTANCES WHERE THE CPRs APPLY AND REGARDLESS OF LOCATION.]***. If it applies, the Tenderer must complete and lodge Tender Schedule E with its Tender. ***This is a minimum form and content requirement for your Tender.*** If the Tenderer does not satisfy this minimum form and content requirement, the Tender will be non-conforming and will not be evaluated (or continue to be evaluated) unless the Principal considers in its absolute discretion that the failure to satisfy the minimum form and content requirement was due to an unintentional error by the Tenderer and the Principal (in its absolute discretion) seeks, reviews and accepts any correction to the unintentional error.
  5. By signing this document the Tenderer declares that it has no knowledge of and has not participated in any of the following unacceptable tendering practices:
     1. Collusive Tendering:
        1. Neither the Tenderer nor any of its servants or agents had knowledge of the tender price for the Works or of any other tenderer prior to the Tenderer lodging its Tender for the Works.
        2. Neither the Tenderer nor any of its servants or agents disclosed the tender price for the Works submitted by the Tenderer to any other tenderer who lodged a tender for the Works or to any other person or organisation prior to the close of tenders.
     2. Cover Bidding:
        1. Neither the Tenderer nor any of its servants or agents provided information to any other tenderer, person or organisation, to assist another tenderer for the Works to prepare a tender known in the building and construction industry as a cover bid, whereby the Tenderer was of the opinion or belief that another tenderer did not intend to genuinely compete for the contract.
        2. The Tenderer is genuinely competing for the contract and its Tender is not a cover bid.
     3. Industry Association Agreements: Prior to the Tenderer lodging its Tender for the Works, neither the Tenderer nor any of its servants or agents entered into any contract, agreement, arrangement or understanding, other than as disclosed to the Principal, that the successful tenderer for the Works would pay any money to, or would provide any other benefit or other financial advantage to, an Industry Association in respect of the Tender.
     4. Unsuccessful Tenderers' Fees: Prior to the Tenderer lodging its Tender for the Works neither the Tenderer nor any of its servants or agents entered into any contract, agreement, arrangement or understanding that the successful tenderer for the Works would pay any money, or would provide any other benefit or other financial advantage, to or for the benefit of any other tenderer who unsuccessfully tendered for the Works.
  6. The Principal is not bound to accept the lowest Tender. Tenders are evaluated on the general criterion of value for money. Subject to the Conditions of Tender, the Principal will, in considering your Tender, apply the following evaluation criteria:

***[THE EVALUATION CRITERIA FOR THE TENDER MUST BE SET OUT BELOW. THE EVALUATION CRITERIA MUST BE CONSISTENT WITH THE APPROVED EVALUATION PLAN. ANY WEIGHTINGS OR RANKING OF IMPORTANCE PLACED ON EVALUATION CRITERIA MUST BE CLEARLY SPECIFIED. IF THERE IS ANY AMENDMENT TO THE EVALUATION CRITERIA, THIS MUST BE COMMUNICATED TO TENDERERS BY WAY OF AN ADDENDUM.]***

* + 1. **workload and proposed resources** **([*INSERT*]% weighting)** (noting the information the Principal is seeking is outlined in Tender Schedule A);
    2. **task appreciation and methodology** **([*INSERT*]% weighting)** (noting the information the Principal is seeking is outlined in Tender Schedule B);
    3. **previous performance** **([*INSERT*]% weighting)** (noting the information the Principal is seeking is outlined in Tender Schedule C);
    4. **program** **([*INSERT*]% weighting)** (noting the information the Principal is seeking is outlined in Tender Schedule D);
    5. **the Tenderer's commercial position** **(no weighting, the Tender will be evaluated with reference to whether value for money has been demonstrated)** (noting the information the Principal is seeking should be completed by the Tenderer by submitting all information requested in square brackets and italics in the Conditions of Contract);
    6. **the lump sum contract price** **(no weighting, the Tender will be evaluated with reference to whether value for money has been demonstrated)** (noting the information the Principal is seeking should be completed by the Tenderer by submitting its lump sum contract price for performing the Contract at clause 2.1 in the Conditions of Contract); and
    7. any **design or other alternative Tender proposals** for the Works which offer better value for money **(no weighting, the Tender will be evaluated with reference to whether value for money has been demonstrated)**.
  1. The Tenderer may submit an alternative offer, but the Tenderer must also lodge a Tender which conforms with clause 1.1 above.
  2. The Tenderer must place this document and all information required to be completed and lodged with its Tender, in an envelope marked with the Tender No. appearing on the front of this document and closing date indicated below, in the Tender Box at ***[INSERT LOCATION OF TENDER BOX]*** not later than ***[INSERT TIME]*** on the ***[INSERT DAY OF MONTH]*** day of ***[INSERT MONTH AND YEAR]***.
  3. The Principal may provide information or answer questions from Tenderers in the form of Information Documents. The Tenderer will not be entitled to and shall not rely upon any Information Documents or the accuracy or adequacy of the Information Documents for the purposes of preparing its Tender. The Principal does not warrant, guarantee or assume any responsibility for or make any representation about the accuracy or adequacy of the Information Documents. The following Information Documents are issued to the Tenderer:

|  |  |
| --- | --- |
| Information Documents: | ***[INSERT INFORMATION DOCUMENTS]*** |

* 1. If the Tenderer wishes to make a complaint in relation to this tender process the Tenderer should submit the complaint in writing to ***[PRINCIPAL TO ENTER EMAIL ADDRESS]***. If the Tenderer has reason to believe that the complaint satisfies the requirements of the Judicial Review Act, the Tenderer may submit the complaint under the process set out in clause 1.12.
  2. This clause 1.12 ***[DOES/DOES NOT]*** apply. ***[DELETE WHICHEVER OPTION DOES NOT APPLY. THIS CLAUSE WILL APPLY IF THE RULES IN DIVISION 1 AND DIVISION 2 OF THE COMMONWEALTH PROCUREMENT RULES APPLY TO THE PROCUREMENT.]*** The *Government Procurement (Judicial Review) Act 2018* (Cth) (**Judicial Review Act**) establishes a statutory framework for suppliers to make complaints about non-compliance with specific provisions of the Commonwealth Procurement Rules in respect of Covered Procurements (as defined in the Judicial Review Act). If this clause 1.12 applies and the Tenderer has reason to believe that:
     1. the Commonwealth or an official of the Commonwealth has engaged, is engaging or is proposing to engage in any conduct in contravention of the Relevant Commonwealth Procurement Rules (as defined in the Judicial Review Act) in relation to this tender process; and
     2. the Tenderer's interests are affected by the conduct;

the Tenderer may submit a complaint about the conduct in writing to procurement.complaints@defence.gov.au.

Where requested by the Commonwealth, you must do all things reasonably necessary to cooperate with the Commonwealth (including providing information or answering questions) in the investigation and attempted resolution of any complaint under this clause 1.12.

A public interest certificate under the Judicial Review Act in relation to the tender process ***[IS/IS NOT***] in force. If a public interest certificate is not in force, a public interest certificate may otherwise be issued by the Commonwealth at any time during the tender process (including after any complaint has been made under this clause 1.12), in which case the Contract Administrator will notify all Tenderers of the issue of the public interest certificate by notice by email or post.

Without limiting the operation of the Judicial Review Act, if the Tenderer makes a complaint under this clause 1.12 and at the time of the complaint no public interest certificate is in force in relation to this tender process, the Commonwealth may suspend this tender process in accordance with section 20 of the Judicial Review Act by notice to all Tenderers by email or post.

* 1. This clause 1.13 ***[DOES/DOES NOT]*** apply. ***[DELETE WHICHEVER OPTION DOES NOT APPLY]***. The Tenderer acknowledges and confirms that if it is the successful Tenderer it will at its cost be in a position to comply with obligations under the Conditions of Contract relating to the DISP and will be "Defence-ready" for the purposes of the DISP (as defined in, and in accordance with, clause 28 of the Conditions of Contract in Part 3).

## PART 2 - TENDER SCHEDULES

Tender Schedule A - Workload and Proposed Resources

To assist the Tenderer to satisfy the evaluation criterion described in clause 1.7(a) of the Conditions of Tender and to assist the Principal in evaluating its Tender, the Tenderer is requested to provide information regarding:

* + 1. its current and potential future workload; and
    2. proposed resources and key people for the performance of the Contract (including abridged curricula vitae).

Tender Schedule B - Task Appreciation and Methodology

To assist the Tenderer to satisfy the evaluation criterion described in clause 1.7(b) of the Conditions of Tender and to assist the Principal in evaluating its Tender, the Tenderer is requested to provide:

* + 1. a brief narrative setting out its understanding of the nature and scope of the Works (including addressing the logistics support requirements of the project, as well as identifying potential logistics issues and solutions to these problems);
    2. its approach to:
       1. Site management including:
          1. the logistics support requirements of the project, as well as identifying potential logistics issues and solutions to these problems;
          2. procedures for Site access, ensuring security measures are in place, vehicle and traffic management, noise management and Site office requirements; and
          3. proposed approach to working hours and staff accommodation;
       2. environmental management including:
          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;
       3. commissioning and handover;
       4. work health and safety, which is to be reflected in the Work Health and Safety Plan (as described in the Conditions of Contract);
       5. minimising the risks of Modern Slavery, fraud, bribery and corruption in connection with the Works; and
       6. labour regulations and ethical employment practices; and
    3. its approach to obtaining all necessary national, regional and local certificates, permits and approvals for the Works.

Tender Schedule C - Previous Performance

To assist the Tenderer to demonstrate its ability to satisfy the criterion described in clause 1.7(c) of the Conditions of Tender and to assist the Principal in evaluating its Tender, the Tenderer is requested to provide details of its previous performance in respect of 3 projects that are directly relevant to the Works (having regard to the scope and value of the proposed contract) and completed in the past 12 months.

Tender Schedule D - Program

To assist the Tenderer to satisfy the evaluation criterion described in clause 1.7(d) of the Conditions of Tender and to assist the Principal in evaluating its Tender, the Tenderer is requested to submit a program showing:

(a) its order of work and periods for carrying out all design (to the extent required by the Design Brief), documentation and construction activities, including off-site activities and key dates;

(b) its allowance for all necessary reviews, consents and approvals; and

(c) commencement dates, mobilisation periods, staging and sequencing (if any) and the critical path.

The program should be based on achieving Completion by the relevant Date for Completion.

Tenders should note that the program submitted with this Tender Schedule D will not form part of the Contract.

**Tender Schedule E - Statement of Tax Record**

***[THIS TENDER SCHEDULE E - STATEMENT OF TAX RECORD APPLIES IF THE PROCUREMENT HAS AN ESTIMATED VALUE OVER $4 MILLION (GST INCLUSIVE).]***

The Tenderer's attention is drawn to clause 1.5(b) of the Conditions of Tender and clause 27 of the Conditions of Contract.

If the Black Economy Procurement Connected Policy applies, the Tenderer must complete and lodge this Tender Schedule E. **This is a minimum form and content requirement for the Tender.**

The Tenderer's attention is drawn to the Black Economy Procurement Connected Policy, which imposes obligations on the Commonwealth to obtain from Tenderers satisfactory and valid STRs. More information about the requirements arising under the Black Economy Procurement Connected Policy is available from the Department of Treasury at https://treasury.gov.au/policy-topics/economy/black-economy/procurement-connected-policy. The application of the policy to foreign tenderers is addressed in section 8 of the Black Economy Procurement Connected Policy.

**A. STATEMENT OF TAX RECORD**

1. Subject to paragraph 2 below, the Tenderer is to provide and attach each of the valid and satisfactory STRs referred to in the table below as applicable to the Tenderer.

|  |  |
| --- | --- |
| **If the Tenderer is:** | **STRs required:** |
| * + - 1. a body corporate or natural person | a satisfactory and valid STR in respect of that body corporate or person |
| * + - 1. a partner acting for and on behalf of a partnership | a satisfactory and valid STR:  (i) on behalf of the partnership; and  (ii) in respect of each partner in the partnership that will be directly involved in the delivery of any resultant contract or subcontract (as applicable) |
| * + - 1. a trustee acting in its capacity as trustee of a trust | a satisfactory and valid STR in respect of the:  (i) trustee; and  (ii) the trust |
| * + - 1. a joint venture participant | a satisfactory and valid STR in respect of:  (i) each participant in the joint venture; and  (ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator |
| * + - 1. a member of a Consolidated Group | a satisfactory and valid STR in respect of:  (i) the relevant member of the Consolidated Group; and  (ii) the head company in the Consolidated Group |
| * + - 1. a member of a GST Group | a satisfactory and valid STR in respect of the:  (i) the GST Group member; and  (ii) the GST Group representative |

1. If the Tenderer has requested any of the STRs required under paragraph 1 above but the STR has not been issued by the Australian Taxation Office at the closing date and time indicated in clause 1.9 of the Conditions of Tender, the Tenderer must provide and attach the STR receipt issued by the Australian Taxation Office demonstrating that the STR was requested from the Australian Taxation Office prior to that date.
2. If the Tenderer provides and attaches in its response to this Tender Schedule E an STR receipt issued by the Australian Taxation Office demonstrating that the STRs required under this Tender Schedule E were requested from the Australian Taxation Office prior to the closing date and time indicated in clause 1.9 of the Conditions of Tender, then:
   1. the Tenderer must provide all of the required satisfactory and valid STRs to the Contract Administrator by email within 4 business days after that date; and
   2. if the Tenderer does not provide all of the required satisfactory and valid STRs to the Contract Administrator by email within 4 business days of that date, the Principal may (in its absolute discretion) decide not to evaluate (or continue to evaluate) the Tender.
3. For the purposes of the Contract:
   1. an STR is taken to be:
      * 1. **satisfactory** if the STR states that the entity has met the conditions, as set out in the Black Economy Procurement Connected Policy, of having a satisfactory engagement with the Australian tax system; and
        2. **valid** if the STR has not expired as at the date on which the STR is required to be provided or held;
   2. **Black Economy Procurement Connected Policy** means the Black Economy Procurement Connected Policy - Increasing the Integrity of Government Procurement - March 2019;
   3. **business day** means a day other than a Saturday, Sunday or a public holiday in the Australian Capital Territory;
   4. **Consolidated Group** means a Consolidated Group or MEC (Multiple Entry Consolidated) group as those terms are defined in section 995-1 of the *Income Tax Assessment Act 1997* (Cth);
   5. **GST Group** means a GST group formed in accordance with Division 48 of the GST Legislation;
   6. **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; and
   7. **Statement of Tax Record** or **STR** has the meaning given in the Black Economy Procurement Connected Policy.

## PART 3 - CONDITIONS OF CONTRACT