

REQUEST FOR TENDER NO. **[INSERT]**



ACT
Government

DESIGN (TO THE EXTENT SPECIFIED) & CONSTRUCTION OF
[INSERT TITLE OF WORKS] ON BEHALF OF **[DIRECTORATE]**

Tenders ACT will direct all enquiries to the contact officer for this procurement

ISSUE DATE: **[INSERT]**

INDUSTRY BRIEFING/SITE INSPECTION DATE: **[INSERT OR DELETE IF NONE]**

CLOSING DATE: **[INSERT]**

CLOSING TIME: 2:00PM CANBERRA TIME

[Project Officers: Delete the following if other form of lodgement allowed for]

IMPORTANT NOTICE:

TENDERS MUST BE LODGED ELECTRONICALLY THROUGH TENDERS ACT

All enquiries should be directed to Tenders ACT at TendersACT@act.gov.au

We wish to acknowledge the Ngunnawal people as traditional custodians of the land we are meeting on and recognise any other people or families with connection to the lands of the ACT and region. We wish to acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

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EXAMPLE ONLY

SHORT FORM REQUEST FOR TENDER & CONTRACT SCHEDULE

Tenders are invited for the execution of the Works described below, subject to the attached request for tender conditions (Part 1), proposed Conditions of Contract and Specifications, if any.

CONTRACT SCHEDULE

Timing of the Tender Lodgement and the Works

Tenders close at Tenders ACT at 2.00pm on:	
Time for commencement of the Works:	
Time for completion of the Works:	
Defects Liability Period:	
For further information contact Tenders ACT:	TendersACT@act.gov.au
Telephone Number:	(02) 6207 9000

Location of Work and Particulars of Work 'the works'

Project Number:	
Project Title:	
Contract Number:	
Procurement Unique Identifier (PUI)¹	
Prequalification:	
Brief Description of Works:	
PRICE	

TOTAL PRICE (GST INCLUSIVE) (in words)	\$
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Work Health and Safety Matters

Yes/No/NA

<p>1. Where the project value exceeds \$250,000 (GST exclusive) - Is the preferred Tenderer to be appointed principal contractor for the purpose of the WHS Legislation (only applicable if Project value (as opposed to contract value) exceeds \$250,000 (GST exclusive).</p>	<p>YES/NO/NA <i>(Yes applies if item not completed)</i></p>
<p>2. Where the project value is less than \$250,000 (GST exclusive) will the preferred Tenderer be given control of the site on which the Works are being conducted?</p>	<p>YES/NO</p>
<p>3. If 2 is yes then does the preferred Tenderer have to prepare and submit a WHS Management Plan (see Part 4B)</p>	<p>YES/NO <i>(Yes applies if item not completed)</i></p>

Principal's Details

Principal:	<p>The AUSTRALIAN CAPITAL TERRITORY, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth) represented by [insert name of Directorate] [OR insert name and legal description of other Territory authority for example Commissioner for Social Housing]</p>
Principal's Representative:	To be completed at time of Contract
Address for the service of notices:	To be completed at time of Contract
Telephone:	To be completed at time of Contract
Email Address:	To be completed at time of Contract

Superintendent: [DELETE LINE if no Superintendent for this Contract]	To be completed at time of Contract
Superintendent Telephone Details: [DELETE LINE if no Superintendent for this Contract]	To be completed at time of Contract
Superintendent Email Address: [DELETE LINE if no Superintendent for this Contract]	To be completed at time of Contract

By submitting this Contract Schedule you authorise the Principal to provide it to any Territory, State or Commonwealth government agency (including any regulatory or law enforcement body, which includes, without limitation, Work Safe ACT) or other third party as evidence of your consent to allow that agency or party to release information as requested by the Principal to the Principal.

Tenderer's Details

Tenderer's Name (Including ABN or ACN if a company):	
Address for the service of notices:	
Telephone:	
Facsimile:	
Email Address:	
I/ we accept the attached RFT Conditions and Conditions of Contract and tender for the execution of the Works for the above total tendered price.	Signature: _____ Name: _____ Signature: _____ Name: _____

	Date ____/____/____
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Acceptance of Tender

<p>Signed for and on behalf of the Australian Capital Territory represented by: _____ _____</p> <p>Directorate (“Principal”) in acceptance of this Tender:</p> <p>[or insert appropriate signature block for relevant Territory authority]</p>	<p>Print Name: _____</p> <p>Signature: _____</p> <p>Date ____/____/____</p>
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EXAMPLE ONLY

Part 1. REQUEST FOR TENDER (“RFT”) CONDITIONS

1.1 DEFINITIONS

In this document:

- a) “**Conditions of Contract**” means the conditions of contract set out in Part 2, Part 3B, Part 4A and 4B of the Tender Documents and the Specifications;
- b) “**Ethical Suppliers Declaration - Tender**” or “**Ethical Suppliers Declaration - Contract**” means a declaration in the same form as that at Part 3A or 3B (or such other form as approved by the Principal from time to time and advised to You), which forms part of the Tender Documents. The Ethical Suppliers Declaration is only applicable for procurements which are not eligible for the Ethical Treatment of Workers Policy;
- c) “**Labour Relations, Training and Workplace Equity Plan**” has the meaning given by the Government Procurement Act.
- d) “**LIPP**”—means the Canberra Region Local Industry Participation Policy which can be viewed at:
https://www.procurement.act.gov.au/_data/assets/pdf_file/0011/1365869/Canberra-Region-Local-Industry-Participation-Policy.pdf
- e) “**Principal**” means the Territory or Territory authority named in the Contract Schedule;
- f) “**Principal’s Representative**” means the officer or representative named in the Contract Schedule;
- g) “**Procurement Act**” means “*Government Procurement Act 2001 (ACT)*”;
- h) “**Schedule**” or “**Contract Schedule**” means the information set out under the heading “Contract Schedule”;
- i) “**Secure Local Jobs Code**” and “**Code**” has the same meaning as in the Procurement Act;
- j) “**Secure Local Jobs Code Certificate**” has the same meaning as in the Procurement Act;
- k) “**Specifications**” means the specifications, including any plans or drawings, for the Works attached to these Tender Documents;
- l) “**Tender**” means your tender for the carrying out of the Works including the Contract Schedule and Ethical Suppliers Declaration – Tender as completed by you;
- m) “**Tender Documents**” means the Contract Schedule, these RFT Conditions (Part 1), the proposed Conditions of Contract, the Ethical Suppliers Declaration (if applicable) and any Specifications;
- n) “**Territory**” means:
 - i) when used in a geographical sense, the Australian Capital Territory; and
 - ii) when used in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth);
- o) “**WHS Active Certification Policy**” means the Territory’s WHS Active Certification Policy as amended from time to time and any substituted policy of the Territory;
- p) “**Works**” means the works specified in the Contract Schedule;
- q) and
- r) “**you and your**” refers to the tenderer named in the Contract Schedule.

1.2 OPTIONAL Your Tender may be nonconforming if you do not have current **prequalification** for category [.....] or higher in accordance with the Principal’s pre-qualification procedures on or before the date and time for closing of tenders or if your pre-qualification lapses during the tender evaluation period. **(RESERVE this clause if it is not required)**

1.3 By submitting your Tender **you acknowledge that you have read the proposed Conditions of Contract.**

- 1.4** You must keep confidential all Tender Documents clearly identified as confidential and you must not copy the Tender Documents except for tendering purposes. Any **material submitted** as part of your Tender will remain or become the property of the Principal.
- 1.5** In submitting a Tender, the Tenderer acknowledges that it:
- (a) agrees to all requirements specified in the RFT (including these Terms and Conditions), and where relevant, makes the acknowledgements and warranties specified;
 - (b) it has required all Subcontractors, if any, to understand, comply with and execute any declarations or warranties similar to those specified in this Approach to Market, and which may be requested by the Territory under section 1.3.8;
 - (c) all information contained in the Tender is true and correct to the best of the Tenderer's knowledge, after making careful and thorough enquiries;
 - (d) it will immediately notify the Territory if it becomes aware that any information contained in the Tender, or which might be relevant to the Tender (including its corporate or ownership structure, access to resources and financial backing, and insurance arrangements after the Closing Time) has changed or is incorrect;
 - (e) if a change under clause 1.4(d) above alters any of the information or warranties the Tenderer has provided in its Tender, the Tenderer will immediately:
 - i. notify the Territory in writing of the change;
 - ii. identify with specificity (including the relevant page, section, clause, schedule, exhibit and other like reference to the Tender, and any other material and information provided to the Territory), all such information and assurances; and
 - iii. state in detail the alterations to such information and assurances required by such change.
 - (f) it consents to the exchange of information by the Territory (at the Territory's discretion) with relevant third parties that the Territory receives as part of the Tender or otherwise obtains in connection with the Tender (including as part of the evaluation of the Tender), and acknowledges that the relevant third parties (may include other any Territory, State or Commonwealth government agency);
 - (g) if required by the Territory, it will provide (at its own expense) reasonable assistance to the Territory to undertake any enquiries, checks or other steps specified in this RFT, including by providing written consents;
 - (h) will, if an Act or Regulation requires that a person be registered or licensed to carry out the Works/Services include in its Tender evidence of registration or licensing. The Territory may seek information from sources, including regulatory and law enforcement bodies, relevant to whether the Tenderer is relevantly registered or licensed to perform the Works/Services
- 1.6** The Tenderer agrees to provide any additional information requested by the Territory in relation to its Tender, in the form specified by the Territory (for example, a statutory declaration).
- 1.7** **Tenders must be lodged** electronically via Tenders ACT before the closing time in accordance with the lodgement procedures set out in this document, and the Tenders ACT Terms of Use available www.tenders.act.gov.au. A Tender lodged by any other means including by hand, facsimile or email will be considered non-conforming.
- 1.8** Tenderer's must **register on TendersACT** in order to lodge a Tender.

- 1.9** Following the closing date for Tenders, the Principal will **list names of Tenderers** on the Tenders ACT web page. Late Tenders may not be included on the list.
- 1.10** Tendered files must be lodged, as applicable, in the following **formats**: PDF; Microsoft Word; Microsoft Excel; AutoCAD (dwg). **[OR add or delete as appropriate]**
- 1.11** TendersACT will accept up to a maximum of **15 files in any one upload**. Each upload must not exceed the size limit of 100 MB per upload. If an upload would otherwise exceed the specified size limit, Tenderers should either:
- transmit the Tender file(s) as a compressed (zip) file not exceeding the size limit; and/or
 - lodge the Tender in multiple uploads ensuring that each upload does not exceed the size limit and clearly identify each upload as part of the Tender.
- 1.12** Tenderers should use a **structured file naming convention** to ensure clear identification of Tendered documents and their contents including the RFx number, a shortened Tenderer name and file description (for example: **RFT_50094_MYTENDER_Pricing**).
- 1.13** **Tender file names** must not:
- use special characters, including but not limited to \ / : * ? " < > | . ; or
 - exceed 80 characters in length.
- 1.14** **Tendered files** should:
- be uploaded from a high level directory on the Tenderer's desktop to ensure the file name does not exceed 100 characters in total;
 - not be selected from a secure or password protected location or from portable media such as, but not limited to, CD, DVD or USB; and
 - be zipped (compressed) together for transmission to TendersACT.
- 1.15** Tenderers must ensure the **transmission of all files is complete** before the closing time (including where a Tender consists of multiple uploads).
- 1.16** Tenders must be completely **self-contained**. No hyperlinked or other material may be incorporated by reference.
- 1.17** **All enquiries in relation to this RFT** must be directed in writing to the TendersACT team TendersACT@act.gov.au.
- 1.18** **All queries and requests for technical or operational support** should be directed to:
- TendersACT Team**
Telephone: (02) 6207 9000
International: +61 2 6207 9000
Email: TendersACT@act.gov.au
- 1.19** The **Tenders ACT team is available** between 9 am and 5pm ACT local time, Monday to Friday (excluding ACT and national public holidays).
- 1.20** The Tenderer warrants that, when it lodges its Tender electronically, it has taken reasonable steps to ensure that the electronic files lodged are **free of viruses**, malicious code or other disabling features which may affect Tenders ACT and/or the Territory's ICT environment. Any Tender found to contain viruses, malicious code or other disabling features will be excluded from the evaluation process.
- 1.21** **Before lodging a Tender**, it is strongly recommended that Tenderers:

- a) ensure their technology platform meets the minimum requirements identified, if any, on Tenders ACT;
- b) ensure their internet connection is working correctly and in the case of wireless internet connection that the signal is strong and stable;
- c) refer to Tenders ACT user manual, if required, on uploading a submission;
- d) take all steps to ensure that the submission is free from anything that might reasonably affect useability or the security or operation of Tenders ACT and/or the Territory's ICT environment;
- e) ensure that the submission does not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by the Principal; and
- f) ensure that the submission complies with all file type, format, naming conventions, size limitations or other requirements specified in the RFT.

1.22 It is the responsibility of Tenderers to **allow sufficient time for lodgement**, including time that may be required for any problem analysis and resolution prior to the closing time.

1.23 Tenderers should be aware that holding the "Submit Electronic Response" page open in the web browser will not hold the electronic tender box open beyond the closing time.

1.24 If Tenderers have any **problem in accessing TendersACT** or uploading a Tender they must contact the Tenders ACT Team prior to the closing time for technical and operational assistance.

1.25 The Tenders ACT system will not permit electronic lodgement of Tenders **after the closing time**. Tenderers wishing to lodge a Tender after the closing time must contact the Tenders ACT team to obtain instructions on how a late Tender can be lodged.

1.26 **Late Tenders** will be registered separately and may be admitted to evaluation at the absolute discretion of the Principal. In accordance with the Procurement Act, **open tender submissions that are received late are not accepted for any reason unless the tender was submitted late due to an act or omission of the Territory**. In other than an open tenders, in deciding whether to admit a late Tender for evaluation, factors that may be considered include:

- a) whether the Tenderer is likely to have had an opportunity to obtain some unfair advantage from late submission of the Tender;
- b) how late the Tender is, the reasons and evidence given for lateness;
- c) whether the Tender was mishandled by the Principal; and
- d) evidence of unfair practices.

1.27 The Principal may **investigate the reasons provided for lateness**. The investigation process may include reviewing the system's audit trail to identify if the Tenderer attempted to lodge the Tender prior to the closing time and if assistance was sought from the Tenders ACT team.

1.26 Where the **lodgement of (all files of) a Tender has commenced** prior to the closing time but concluded after the closing time, and upload of all of the Tender file/s has completed successfully, as confirmed by Tenders ACT logs, the Tender will be considered to have been received prior to closing time.

1.28 **When a lodgement has successfully been completed**, an official receipt is provided on screen. The on-screen receipt will record the time and date the submission was received by Tenders ACT and will be conclusive evidence of successful lodgement of a submission. It is essential that Tenderers save and print this receipt as proof of lodgement. A separate email confirming receipt of the submission will also be automatically dispatched to the email address registered with Tenders ACT.

- 1.29 Failure to receive a receipt** means that lodgement has not completed successfully. In these circumstances, Tenderers should lodge the Tender again or, if electronic lodgement has closed, contact the Tenders ACT team to obtain instructions on how to lodge a late Tender.
- 1.30 Your submitted Tender must address** the requirements set out in the Contract Schedule, the Specifications for the Works, the proposed Conditions of Contract, and any other condition or requirement that forms part of this Tender Document, and include:
- a) completed Contract Schedule; and
 - b) completed copy of the Ethical Suppliers Declaration – Tender (as applicable)
 - c) completed Fair and Safe Employment Evaluation Criteria Response Schedule (as applicable); and
 - d) completed Labour Relations, Training and Workplace Equity Plan (as applicable).
- 1.31 You must satisfy yourself that:**
- a) information in and the requirements of this Tender Document are correct and sufficient for you to properly prepare and submit your Tender, including the tendered price; and
 - b) your tendered price includes all the costs of complying with all obligations under the proposed Conditions of Contract.
- 1.32** Despite any other requirement of the RFT, the Tenderer must, if so required, submit additional information to allow full consideration of the Tender (including if required, in response to a show cause request). There is no obligation on the part of the Territory to seek clarifying or any other information. A Tenderer must:
- a) respond to any request for clarification within the time period and in the format specified by the Territory;
 - b) ensure that clarifying information provided answers the Territory's enquiry and is fully consistent with the Tender submitted by the Tenderer; and
 - c) not seek to materially alter any aspect of their Response by providing additional information to the Territory.
- 1.33** The Territory will not accept information provided in Tender to a request for clarification if that information alters the original Tender in any material respect. If the Tenderer fails to supply clarification or additional information to the satisfaction of the Territory, the Territory may exclude the Tender from further consideration.
- 1.34** The Territory may require the Tenderer to submit similar information to that required by this Approach to Market in respect of any proposed Subcontractors if that information was not already required to be included in the Tender by this RFT. The Territory may additionally request that a Subcontractor separately provide information, declarations or warranties similar to those specified in this RFT.
- 1.35** A request for clarification or additional information is not an indication that its organisation will or will not be the preferred Tenderer. The Tenderer should treat all contact as strictly confidential and not disclose the details of any contact to any third parties. A Tenderer's failure to observe confidentiality may result in the exclusion of their Response from further consideration.
- 1.32 All fees and prices** quoted in your Tender must be **inclusive of GST** and you must identify the value of any GST-free input. Your Tender must **remain open for at least 90 days** from the closing date specified on the Contract Schedule. You are responsible for all **costs, losses and expenses** incurred by you in preparing your Tender.

- 1.33** You must hold and maintain all appropriate **licences, permits, approvals and certificates** to carry out the Works. You must produce evidence of those licences, permits, approvals and certificates if requested by the Principal.
- 1.34** The ACT Government is committed to ensuring competitive local businesses are given every opportunity to compete for government contracts. The **Canberra Region Local Industry Participation Policy** (LIPP) sets out the process and requirements for ensuring opportunities for local industry participation in Principal or Territory procurements. The LIPP aims to promote the development and growth of the broader Canberra region economy to support local businesses capabilities and ultimately support more local jobs. You should inform yourself about the requirements of the LIPP by reviewing the policy which can be accessed at <http://www.procurement.act.gov.au>. If a Local Industry Participation plan (LIP) is submitted as part of the tender response, the plan will form part of the contract. The Tenderer may consider whether any part of the plan should be specified as Confidential Text.
- 1.35** Tenders will be excluded without further evaluation if following the evaluation of the Fair and Safe Employment Evaluation Criteria, the Territory determines that a Tenderer will not proceed for consideration in the Tender process.
- 1.36** Secure Local Jobs strengthens the ACT Government’s procurement practices so its contracts are only awarded to businesses that meet high ethical and labour standards. The requirements create fairer procurement processes for ethical employers whilst holding to account business not meeting their industrial and legal obligations. Tenderers should inform themselves about the requirements of Secure Local Jobs, including the procurements to which it applies, by reviewing the policy which can be accessed on the Procurement ACT website. **[Note to drafters: if Secure Local Jobs applies to this project also include the following text: Refer to the relevant Assessment Criteria.]**
- 1.37** The *Government Procurement (Ethical Treatment of Workers Evaluation) Direction 2021* (Direction) applies from 1 February 2022. Like the Secure Local Jobs Code, it will strengthen the Territory’s procurement practices so contracts are only awarded to businesses that meet the highest ethical and labour standards. Tenderers should inform themselves of the Direction, including the procurements to which it applies. The Direction can be accessed at the ACT Legislation Register. **[If the ETWE evaluation applies insert: Please refer to the Fair and Safe Employment Evaluation Criteria.]**
- 1.38** The ACT Government is committed to fostering a positive, respectful, and inclusive culture across the construction industry, as outlined in the [Culture in Construction Standard](#). This commitment underpins our approach to construction-related procurement, project delivery, and industry engagement. It is consistent with the Diversity, Equality and Inclusion and the Fair and Safe Conditions for Workers procurement values in the Government Procurement (Charter of Procurement Values) Direction 2020.
- Suppliers are encouraged to demonstrate alignment with the three pillars of the [Culture in Construction Standard](#) – Inclusion & Diversity, Wellbeing and Time for Life- throughout their response. This may include, but is not limited to, demonstrating:
- the promotion of respectful and inclusive workplace practices;
 - supporting mental health and wellbeing of its workforce;
 - implementing initiatives that support workforce diversity and safety and female representation across critical workforce segments; and
 - in the project methodology and schedule policies and practices that support, promote and implement flexibility for all workers.

These details can be outlined in Supplier's direct response to the statement of requirements and in the relevant areas of the Labour Relations Training and Workplace Equity Plan and WHS Weighted Evaluation Criterion.

Suppliers can refer to the Culture in Construction Guidance for Suppliers on the *Infrastructure Canberra (iCBR)* website for guidance on how compliance with the *Culture in Construction Standard* can be articulated in their response. The *Culture in Construction Standard* also provides examples of actions suppliers may take to support implementation of the Standard in their business and on projects.

The ACT Government values Suppliers who actively contribute to a constructive construction industry culture and will consider this as part of the relevant weighted or un-weighted criteria and the overall value assessment of tender responses.

- 1.39** You must maintain currency of a **Secure Local Jobs Code Certificate** at all times during the Tender validity period, and the Principal may not consider (or not continue to consider) your Tender further if you fail to maintain a current Secure Local Jobs Code Certificate. You must hold a Secure Local Jobs Code Certificate as a precondition to entering into contract with the Principal.
- 1.40** From March 1st, 2022, businesses that are bidding for cleaning, security, or traffic management work worth more than \$25,000 or construction work more than \$200,000 will need to complete a Labour Relations, Training and Workplace Equity Plan (LRTWE Plan). The LRTWE plan includes: How the business will comply with the Code; Support for employment security, health, and wellbeing; Support for diversity and career development for workers. The plan must be developed in consultation with employees and include a statement about how this was done. The successful tenderer will need to operate in alignment with the plan for the duration of the project. If the a Labour Relations, Training and Workplace Equity (LWERTY) Plan is submitted as part of the tender response, the plan will form part of the contract. The Tenderer may consider whether any part of the plan should be specified as Confidential Text. The requirements of the LRTWE Plan can be viewed on the Procurement ACT website. Refer to the relevant Assessment Criterion, above.
- 1.41** The successful Tenderer(s) will be required to utilise the Government's Contract and Managing Payments System (CAMPS). CAMPS will facilitate the transmission of commercial information through an internet interface, including management invoicing and supporting documentation. The interface does not require the installation of software or electronic integration. The Tenderer(s) will be fully supported in transitioning to CAMPS and will also have access to a helpline and user support through the life of the Contract(s). For further information, visit the website Infrastructure Canberra > Supplying to Government > CAMPS SRM.
- 1.42** You must, if required by the Principal, provide **additional information** to allow full consideration of your Tender. The Principal reserves the right to negotiate variations to the Conditions of Contract and/or Specifications with the preferred tenderer after Tenders have been lodged.
- 1.43** **Tenders will be assessed** on the basis of best value for money and not necessarily the lowest priced tender. The Principal is not obliged to select any Tender and may accept part of your Tender. In assessing your Tender the Principal may consider information from any Commonwealth, State or Territory agency, any referee or other reputable source in addition to all information supplied by you in support of your Tender.
- 1.44** In determining the '**value for money**' of your Tender the Principal will consider the following **assessment criteria** and may also consider the following: your ability to undertake the Works; your past performance; your tendered price, your Work Health and Safety record, your response to the local industry participation policy (where relevant), your Labour Relations, Training and Workplace

Equity Plan (if relevant), risk, whole of life costs and any other matters set out in the *Government Procurement Act 2001* and any associated ACT Government policies.

Threshold Assessment Criteria

[Note to drafters: Insert, delete, or amend Threshold Assessment Criteria as contained in the Evaluation Plan as necessary for the particular project, noting the matter to be assessed, and any specific information or documents the Tenderer is requested to submit as evidence of its meeting the Assessment Criteria. Care should be taken to ensure the Threshold Assessment Criteria are mandatory requirements for the provision of Works (whether due to the nature of the services, or as a matter of government policy), as Tenders must generally be excluded from further consideration if they do not meet the threshold criteria. Subject to any non-substantive refinements to the text of each Criterion (for example, to better explain the requirements of the criterion) ensure that the Assessment Criteria correspond with the Assessment Criteria set out in the Evaluation Plan in the Procurement Plan Minute, unless otherwise approved by your manager (noting that the Delegate must approve amendments to an endorsed Evaluation Plan.)]

- 1.45** Tenderers that do not meet the above threshold assessment criteria may be regarded as non-conforming and may not be considered for further assessment against remaining assessment criteria.

Fair and Safe Employment Evaluation Criteria

[Note to drafters: Insert the Fair and Safe Employment Evaluation Criteria as contained in the Evaluation Plan if the Ethical Treatment of Workers Evaluation applies to this RFT.]

- 1.46** Following the evaluation of the Fair and Safe Employment Evaluation Criteria, the Territory will determine whether a Tenderer will proceed for consideration in the RFT process.

Weighted Assessment Criteria

[Note to drafters: INSERT weighted Assessment Criteria as approved in the Evaluation Plan. Changes to the criteria as shown the Evaluation Plan or wording refinements must be approved by your manager (noting that the Delegate must approve amendments to an endorsed Evaluation Plan). You should note both the matter to be assessed and any specific information or documents the Tenderer is requested to submit as evidence of its meeting the Assessment Criteria. WHS must be weighted at 30% unless specific permission from the Superintendent of Works has otherwise been obtained and Local Industry Participation must be weighted at 10%. Secure Local Jobs must be included if the procurement is for "Territory-Funded Work" as defined in the *Government Procurement Act 2001*.]

Non-Weighted Assessment Criteria

[Note to drafters: Insert non-weighted assessment criteria as approved in the Evaluation Plan. Delete or insert as necessary, noting the matter to be assessed and any specific information or documents the Tenderer is requested to submit. Non-weighted Assessment Criteria are additional matters that the Tender Evaluation Team can take into consideration in its evaluation of value for money more generally. If you intend to evaluation all Tenderer's financial status (rather than only the preferred) a financial capacity assessment should be included as a non-weighted criterion]

- 1.47** The purpose of the evaluation process is to identify and select Tenderers that represent the best value for money consistent with the ACT Government Procurement Framework, inclusive of the *Government Procurement Act 2001*, the *Government Procurement Regulation 2007*, *Government Procurement*

(Ethical Treatment of Workers Evaluation) Direction 2021, Government Procurement (Charter of Procurement Values) Direction 2020, procedures and policies.

1.48 Tenders will be assessed in accordance with the Assessment Criteria.

1.49 For the purpose of evaluation of Tenders, the Territory may in relation to some or all Tenderers:

- a) ask a Tenderer to undertake presentations, demonstrations or interviews;
- b) ask a Tenderer to provide written clarification of various aspects of their Tender;
- c) visit a Tenderer's site;
- d) have discussions with, obtain information and documents from, provide information and documents to, or undertake visits to third parties (including customers of a Tenderer and their subcontractors), whether or not those third parties are listed as Referees in a Tender and take relevant information or material into account in its evaluation of the Tender, including:
 - i. obtaining from any Territory, State or Commonwealth government agency (including for the avoidance of doubt, any regulatory or law enforcement body, including without limitation WorkSafe ACT) or any other third party information about the Tenderer's performance and/or compliance during any previous or current contracts for similar services/ works to those sought in the Approach to Market;
 - ii. obtaining information from referees, customers of a Tenderer and their Subcontractors or other third parties on prior or current projects on which the Tenderer or relevant Subcontractor was involved (whether or not the referee or customer was nominated by the Tenderer in its Tender);
 - iii. undertake any other enquiries specified in the RFT (including obtaining any information or documents), or that the Territory considers appropriate;
 - iv. provide information about the Tenderer or its Tender to any Territory, State or Commonwealth government agency, including information provided by the Tenderer and information related to the Tenderer's performance at any time and for any reason;
 - v. provide the name of the Tenderer to ACT Long Service Authority, Environment Protection, WorkSafe and Unions ACT, and seek any feedback in relation to the Tenderer; and
 - vi. provide the Tender and/or these Standard Conditions to any Territory, State or Commonwealth government agency (including any regulatory or law enforcement body, which includes, without limitation WorkSafe ACT) or third party as evidence of the Tenderer's consent to allow that agency or third party to release the relevant information, if consent is required.
- e) consider any part of a Tender, as well as any other information or material independently obtained, in the evaluation of any or all of the Assessment Criteria; and
- f) use any relevant information obtained in respect of a Tenderer either through this RFT process or by independent inquiry; and
- g) do anything else required or permitted under law, or permitted in this RFT.

1.50 If the Territory obtains information in the course of its independent enquiries that are adverse to the Tenderer, the Territory will provide the Tenderer the opportunity to respond to that information.

- 1.51 Selection of Preferred Tenderer**, on conclusion of the evaluation process, the Principal may:
- a) accept a Tender for the whole of the Works, or if the Works are specified in sections, for a section of the Works;
 - b) accept none of the Tenders;
 - c) commence contract negotiations with the preferred Tenderer(s); or
 - d) negotiate with other Tenderers if contract negotiations with the preferred Tenderer(s) are not successfully concluded.
- 1.52** At any time the Principal may:
- a) cease negotiations with any Tenderer; or
 - b) vary or discontinue the procurement process on giving written notice to the Tenderers.
- 1.53** The Principal must have regard to probity and ethical behaviour in pursuing value for money in accordance with the Government Procurement Act. In having regard to matters of probity and your ethical behaviour the Principal may provide your Ethical Suppliers Declaration to regulatory bodies and/or non- government organisation (including Unions ACT) for comment, and have regard to the comments provided.
- 1.54** If :
- a) you fail to provide a completed Ethical Suppliers Declaration;
 - b) you do not have a current Secure Local Jobs Code Certificate;
 - c) you do not submit a Labour Relations, Training and Workplace Equity Plan where required by the Tender Documents;
 - d) you do not hold prequalification where required by the Tender Documents;
 - e) your Tender is incomplete, contains erasures or is illegible; or
 - f) in the Principal's opinion your Tender contains a virus, malicious code, or anything else that might compromise the integrity or security of Tenders ACT and/or the Territory's ICT environment,
- it may be deemed nonconforming.
- 1.55** The Principal may at its absolute discretion, in respect of your Tender if it is **nonconforming** or if it has been deemed nonconforming by the Principal:
- a) reject and not further consider the Tender;
 - b) ignore any non-conformance in the Tender; or
 - c) if it is possible to correct the non-conformance without affecting the probity of the tender process, permit you to do so.
- 1.56** **No legal obligations** arise until the Principal has sent a notice of acceptance/award (howsoever named) to the preferred tenderer, or provides the preferred tenderer with a signed copy of its Contract Schedule. Unless specifically stated in this RFT no other document issued and no other representation made or conduct engaged in by or on behalf of the Principal will be deemed acceptance of a tenderer's Tender or will create any contractual or other legal relationship between the Territory and a tenderer or otherwise oblige the Principal to enter into a contract with the tenderer.
- 1.46** **You** acknowledge the Principal may be required to **disclose information**, under the *Freedom of Information Act 1989* (ACT), the *Auditor-General Act 1996* (ACT), the Government **Procurement Act**

2001, under other laws applicable in the Australian Capital Territory or by the responsible Minister in the Legislative Assembly.

- 1.57** In giving effect to the principles of open and accountable government, the Principal may disclose documents and information unless it has otherwise agreed, or is otherwise required under law, to keep the information confidential. In accordance with those principles, this Contract may be a notifiable contract under the *Government Procurement Act 2001*, Part 2 and, if so, the Principal will be required to make the text of this Contract available to the public, including by publication on a public contracts register. All documents that form a notifiable contract (contract of \$25,000 or over), excluding the information agreed to be confidential text or as required under law, will be published on the Notifiable Contracts Register.
- 1.58** Your attention is drawn to Division 2.3 of the *Government Procurement Act 2001*. You may request, as part of your Tender response, to specify any information you believe should be confidential text if included in any contract, in accordance with and for the purposes specified in the *Government Procurement Act 2001*. If you wish to make such a request you should identify the text you seek to be identified as confidential and the relevant ground or grounds you propose the Principal may rely upon as set out in section 18 (1) and (2)(b) of the *Government Procurement Act 2001*. If the Principal agrees to the identification of any of the proposed text as confidential text, for the purpose of the *Government Procurement Act 2001*, Section 16 will apply.
- 1.59** Except as provided in the Contract, the Principal must not disclose any agreed confidential text to any person without your prior written consent (which consent will not be unreasonably withheld) except to the extent that confidential text:
- a) is required or authorised to be disclosed under law;
 - b) is reasonably necessary for the enforcement of the criminal law;
 - c) is disclosed to the Principal's solicitors, auditors, insurers or advisers;
 - d) is generally available to the public;
 - e) is in the possession of the Principal without restriction in relation to disclosure before the date of receipt from you;
 - f) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
 - g) is disclosed to the ombudsman or for a purpose in relation to the protection of public revenue.
- 1.60** Tenders ACT features an **online forum** that enables Tenderers to seek clarification about an RFT. The forum can be accessed, and posts made, once an RFT has been downloaded.
- 1.61** All Tenderers who have downloaded the RFT will be able to **view all posts** and responses on the forum.
- 1.62** Posts made to the forum will not be immediately **displayed** to enable the Principal to review the clarification question and to develop a response.
- 1.63** **The Principal may choose**, in its absolute discretion, to:
- a) not publish a request for clarification on the forum and instead issue an addendum; or
 - b) publish the clarification question and a response on the forum, without issuing an addendum; or
 - c) at its discretion, not publish the clarification question.

- 1.64** The forum will not display details about the **source of any requests** for clarification, however Tenderers are solely responsible for the content of their posts.
- 1.65** **All information and notices** (including addenda) relating to an RFT (including clarifications or amendments) will be posted on the relevant RFT page on Tenders ACT.
- 1.66** **The Principal accepts no responsibility** if a Tenderer fails to become aware of any addendum, clarification or other information which would have been apparent from a visit to the relevant RFT page on Tenders ACT.
- 1.67** Tenderers who have downloaded the RFT will be notified by Tenders ACT via email of any **addenda issued** relating to the RFT.
- 1.68** A Tenderer who wishes to make a complaint about a procurement activity must follow the process outlined in the ACT Government Supplier Complaints Management Procedure. This procedure can be accessed from the ACT Procurement website at www.procurement.gov.au.

(OPTIONAL – Insert as necessary)

- 1.69** Under the current COVID-19 situation, if a site inspection/industry briefing/information session is to be held, it will be conducted in accordance with notified Public Health Directions at that time.

[Instructional note: Site inspections / industry briefings / information sessions need to be considered in the context of COVID-19 Public Health Directions at the time of tender.]

Part 2. CONDITIONS OF CONTRACT

If your Tender is accepted, the following conditions (and those in Part 2, 4A and 4B) together with the Contract Schedule and any Specifications and the requirements of all addenda issued will constitute the contract between you and the Principal.

2.1. In these Conditions of Contract:

- a) **“Contract”** means and comprises the Contract Schedule (as completed by you and signed by the Principal), the conditions of contract set out in Parts 2, 3B, 4A and 4B and any Specifications;
- b) **“Contract Price”** means the total price specified in the Contract Schedule;
- c) **“Defects Liability Period”** means the period from the acceptance of the Works by the Principal as being satisfactorily completed until the end of the defects liability period specified in the Contract Schedule;
- d) **“Ethical Suppliers Declaration - Contract”** means a declaration in the same form as that set out in Part 3B and entitled “Ethical Suppliers Declaration –Contract” (or such other form as approved by the Principal from time to time and advised to You).
- e) **“WHS Legislation”** means:
 - i) the *Work Health and Safety Act 2011* (ACT);
 - ii) the *Work Health and Safety Regulation 2011* (ACT) as amended;
 - iii) all instruments issued under the *Work Health and Safety Act 2011* or the *Work Health and Safety Regulation 2011 as amended*;
 - iv) all laws that replace the above laws; and
 - iiiv) all other laws applicable in the Australian Capital Territory dealing with work health and safety matters.
- f) references to “you” includes your employees, agents or subcontractors;
- g) words importing a gender include the others; words in the singular number include the plural and vice versa; and references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation; and
- h) an obligation imposed by the Contract on more than one person binds them jointly and severally.

2.2. You must commence and complete the **Works** in accordance with the Specifications and the timeframes set out in the Contract Schedule.

2.3. You must observe and comply with all **Acts, ordinances, regulations**, and other requirements of any law in force in the place where the Works are to be executed. You bear the whole risk of complying with all applicable legislation and law until the Works have been completed to the satisfaction of the Principal.

2.4. All **materials and workmanship** must be in accordance with the Specifications or if not fully described in the Specifications, in accordance with the recognised industry or trade standards. If the Principal is of the opinion that any materials or part of the Works, are unsatisfactory or are defective during the Defects Liability Period, the Principal may direct you to remove, and/or correct those works or materials at your expense.

2.5. The Principal will only **pay** you the **Contract Price** by Electronic Funds Transfer (EFT) following its receipt of a correctly rendered tax invoice approved by the Principal.

2.6. **A tax invoice** is correctly rendered if it includes:

- a) the Principal’s reference number and the contract number;

- b) the amount due to you and the basis for the calculation of that amount;
- c) the amount of any GST paid or payable by you in respect of the Works;
- d) the date of delivery and a description of the Works to which the invoice relates;
- e) if a discount is applicable, the discounted price;
- f) your address for payment;
- g) your payment claims are to be submitted through CAMPS SRM; and
- h) Payment Claims are to be made in favour of the represented Directorate of the Principal being (insert the full name of the Directorate or Agency and their ABN as applicable) and is to be provided to the Contract Officer. Payment Claims are to be addressed as follows:
 - Directorate
 - Directorate Representative
 - Directorate Address

[1. If a different electronic system or email address for Payment Claims is required from this default, delete the above and write the appropriate system or email. Seek advice from an appropriate senior manager prior to amending this email address.

2. Insert the name of the Directorate, their representative and all other information that the Directorate requires to be provided in the Payment Claim so that they are able to process the Payment Claim after assessment by the Contract Officer.]

- 2.7.** During the **Defects Liability Period** you must **make good at your expense** all defective work or materials, all damage to or destruction of the Works and all other loss caused by faulty work or materials.
- 2.8.** Provided the Works are carried out in accordance with the Contract, the Principal will pay you **progress payments** representing 97.5% of the Contract Price for satisfactory work done at or before the commencement of the Defects Liability Period. The remaining 2.5% of the Contract Price will be paid to you when:
- a) the Defects Liability Period has ended; and
 - b) you have rectified any defects in the Works that have been identified before the end of the Defects Liability Period and all of your obligations in relation to the making good of defects have been fulfilled.
- Any payment by the Principal under this clause will not prejudice any other legal right the Principal may have against you for breach of the Contract.
- 2.9.** The Principal may **vary the Works** specified or require the substitution of alternative materials for the Works. The Principal will adjust the Contract Price and time for completion as a result of any variation. The amount of the variation of the Contract Price and adjustment to the time for completion will be as agreed by the parties. If the parties do not agree on the amount of the variation, the Principal will determine the reasonable cost of the variation and time for completion of the Works.
- 2.10.** You will carry out the Works during the **customary working hours** Monday to Friday. All proposed work outside those hours must be approved in advance by the Principal.
- 2.11.** The Principal may **terminate the Contract** at any time by written notice if you:
- (a) fail to commence the Works within the time specified in the Contract Schedule, or within 14 days of the date the Principal notified acceptance of your Tender;
 - (b) fail to carry on the Works at a rate of progress satisfactory to the Principal;
 - (c) fail to carry out any instruction of the Principal in respect of the Works;

- (d) fail to complete the whole of the Works within the time specified in the Contract Schedule or such extended time as the Principal may approve;
- (e) are or become bankrupt or insolvent, enter into voluntary administration or make any arrangement with your creditors or take advantage of any statute for the relief of insolvent debtors; or
- (f) fail to remedy a breach of a term of the Contract within the period specified in a written notice by the Principal;
- (g) fail to provided an Ethical Suppliers Declaration – Contract in accordance with Part 3B;
- (h) make a false declaration in an Ethical Suppliers Declaration - Contract supplied in accordance with Part 3B; or
- (i) become the subject of an Adverse Ruling (see Part 3B).

2.12. If the **Principal terminates the Contract** under the clause above, it may by written notice:

- a) take over the Works; and
- b) take possession and ownership of all materials on or about the Works site which are your property and have been provided by you for the purpose of carrying out the Works, then **all losses, costs, charges, and expenses incurred** or sustained by the Principal in completing the Works will be recoverable from you and, without limiting any other right the Principal may have, may be offset against any amount subsequently due to you from the Principal. Nothing in this clause prejudices any other right or remedy of the Principal in respect of your breach of the Contract.

2.13. You must comply with all reasonable **directions** given by the Principal and the Principal's representative in relation to the Works. The Principal may from time to time advise you of the appointment of a Principal's representative who will act as the agent of the Principal under the Contract (subject to such limits as advised by the Principal to you).

2.14. You must ensure that **all persons employed** in carrying out the Works, whether they are your employees or a subcontractor's, are paid at the rates and employed under conditions of employment not less favourable than those required by any law or certified agreement applicable to you or your subcontractor and those employees are paid their correct superannuation entitlements.

2.15. RESERVED.

2.16. RESERVED.

2.17. RESERVED.

2.18. You must take out and keep current **workers compensation insurance** for any person employed in respect of the Contract and you must produce evidence of the currency of any such policy if requested by the Principal.

2.19. The Principal has arranged policies ("Policies") for insurance of the Works and for \$20 million Public Liability insurance through Marsh Pty Ltd. The insurer is XL Insurance Company SE Limited and the details of the Policies are as follows:

- (a) Works insurance – **policy number AU00008055CA21A**; and
- (b) Public Liability insurance – **policy number AU00008059LI21A**.

The Principal will maintain the Policies while the Contractor has an interest in them, and the Principal will pay all the premiums. A copy of the policy may be obtained from the **Senior Director, Contracts, Portfolio Performance and Procurement, Infrastructure Canberra at GPO Box 158 Canberra City ACT 2601**. The Principal will maintain the Policy until you have completed your obligations under the Contract and the Principal will pay all the premiums. The policy insures the ACT Government, you and other relevant parties, including all contractors, subcontractors,

construction managers and project managers. You will be liable for the excesses detailed in the policy.

- 2.20.** You must, as soon as practicable, inform Marsh Pty Ltd in writing at either address given below of **any occurrence that may give rise to a claim** under the policy; Level 5, 60 Marcus Clarke Street Canberra ACT 2601 or GPO Box 306 Canberra ACT 2601 Telephone (02) 6279 3300, Facsimile (02) 6279 3320. You must ensure that subcontractors engaged in carrying out the Works similarly inform Marsh Pty Ltd.
- 2.21.** You must ascertain whether you require any **additional insurance** in relation to the Contract. The existence of the policy does not relieve you of any obligation under the Contract or limit your liability to any third parties.
- 2.22.** If requested by the Principal you must prepare and provide to the Principal an **Environmental Management Plan** (“EMP”) before commencing the Works. The EMP must be to the reasonable satisfaction of the Principal. The Principal may require you to amend the EMP.
- 2.23.** The **Works site** may be **occupied by other parties**. The Principal or other contractors may restrict your access to the Works site due to their occupation of the Works site.

You must:

- a) liaise with the Principal’s Representative having primary control of any Works site or location to gain site access to carry out the Works; and
- b) take into account the occupants of the Works site and liaise with them in relation to site safety and the protection/exclusion of site occupants.

(OPTIONAL)

- 2.24.** If requested to do so, you must submit to the Principal the personal particulars and two copies of an identification photograph of **any person directly or indirectly engaged by you** to undertake the Works, within 7 days of such a request and provide all information and do any other act or thing for the purpose of assessing the suitability and fitness of that person to undertake the Works, including but not limited to giving fingerprints to any police force.

The Principal may, at its absolute discretion and by written notice, **withhold or withdraw approval** for any person to have access to the Works. The Principal will not be liable for any detriment caused by the withholding or withdrawal of approval. If the Principal withholds or withdraws approval for any person under this clause, you must not permit that person to have access to the Works under this Contract.

(RESERVE this clause if it is not required)

- 2.25.** You must:
- a) comply with the WHS Legislation as well as all safety plans endorsed by the Principal for the Works;
 - b) ensure that members of the general public at or near the Works site are not exposed to risk to their health or safety arising from your carrying out of the Works;
 - c) comply with your obligation under the WHS Legislation to consult, cooperate and coordinate activities with all persons who have a work health and safety duty in relation to the same matter;
 - d) institute and maintain systems to obtain regular written assurances from all subcontractors and other entities engaged to perform on the Works site about their ongoing compliance with the WHS Legislation including the due diligence obligation contained in the WHS Legislation;

- e) provide the written assurances obtained under paragraph d) of this clause together with written assurances from you about your ongoing compliance with WHS Legislation to the Principal;
- f) provide the Principal with a written report on all work health and safety matters, or any other relevant matters including a summary of your compliance with WHS Legislation, at least once per month, and at other times as requested;
- g) exercise a duty of utmost good faith to the Principal in carrying out the Works to enable the Principal to discharge the Principal's duties under the WHS Legislation;
- h) ensure that if any law requires that a person:
 - i. be authorised or licensed (in accordance with WHS Legislation) to carry out any work at a workplace, the person is so authorised or licensed and complies with any conditions of such authorisation or licence; or
 - ii. has prescribed qualifications or experience, or if not, is supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised;
- i) ensure that if any law requires that a workplace, plant or substance, or work (or class of work) be authorised or licensed, that workplace, plant or substance, design or work is so authorised or licensed;
- j) not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any law and paragraphs h) and i) of this clause are met;
- k) if requested by the Principal or required by WHS Legislation, produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal before you or any subcontractors commence such work;
- l) systematically manage your work health and management processes in accordance with the systems, plans, standards and codes specified in the Contract and the WHS Legislation;
- m) demonstrate to the Principal, whenever requested, that you have met and are meeting at all times, your obligations under this Contract with regard to work , health and safety matters but such demonstration does not relieve you of your obligation to perform work safely;
- n) take all reasonable actions and comply with all reasonable requests of the Principal, or its authorised persons regarding any safety audits in respect of the site on which the Works are performed;
- o) Without limiting paragraph n), at all reasonable times, allow the Principal or any person authorised by the Principal:
 - i. to enter upon the site where the Works are being performed to conduct a safety audit;
 - ii. to enter upon the site where the Works are being performed or any premises occupied by you to inspect and copy any records relevant to a safety audit; and
 - iii. to enter upon the site where the Works are being performed or any premises occupied by you to interview any person as part of a safety audit; and
- p) provide reports on work health and safety matters to the Principal in such form and at such times as reasonably required by the Principal and advised to you.

2.26. If the Principal reasonably considers that a risk of injury to people or damage to property is arising or likely to arise from your activities (or any of your subcontractors) the Principal may direct you (or the relevant subcontractor) to change your (or its) manner of working or cease working and you or the subcontractor must comply.

2.27. The Principal may take any action necessary to protect the Works and other property or to prevent or minimise risk to health and safety of persons, which you must take but do not and the Principal may recover any costs associated with such action from you.

2.28. In this clause, “regulator” and “notifiable incident” have the same meaning as in the *Work Health and Safety Act 2011* (ACT).

In addition to any obligations under WHS Legislation, you must:

- a) notify the Principal of any notifiable incident immediately after you notify the regulator;
- b) provide the Principal with copies of all written notifications and/or details of any verbal notifications given to the regulator (as applicable) immediately after providing the same to the regulator.

2.29. In addition to the obligations under the preceding clause, you must promptly notify the occurrence and furnish a written report to the Principal of:

- a) incidents resulting in damage to property;
- b) incidents resulting in significant delays to the Works;
- c) incidents resulting in injury or illness other than a notifiable incident; and
- d) incidents that may have resulted in or may result in any incident set out in paragraphs a), b), or c) above or a notifiable incident.

2.30. In this clause “improvement notice”, “infringement notice”, “non-disturbance notice”, “notice of entry” and “prohibition notice” have the same meaning as in the *Work Health and Safety Act 2011* (ACT)

You must immediately notify the Principal upon becoming aware of the issue of any improvement notice, infringement notice, non-disturbance notice, notice of entry or prohibition notice referable to the site on which the Works are being performed and provide the Principal with a copy of the relevant notice if you have the same.

2.31. In this clause “provisional improvement notice” has the same meaning as in the *Work Health and Safety Act 2011* (ACT)

You must promptly notify the Principal upon becoming aware of the issue of any provisional improvement notice referable to the site on which the Works are being performed and provide the Principal with a copy of the relevant notice if you have the same.

2.32.

- a) In this clause, unless otherwise stated, capitalised words and paraphrase the same meaning as in the Australian Capital Territory’s WHS Active Certification Policy (as amended from time to time).
- b) Without limiting any other part of this Contract where you:
 - i) are prequalified under a Prequalification Scheme at the date of this Contract;
 - ii) become prequalified under a Prequalification Scheme during the term of this Contract; or
 - iii) have your prequalification status under a Prequalification Scheme cancelled, suspended or downgraded during the term of the Contract, the **WHS Active Certification Policy** will apply. To the

extent necessary to give effect to the WHS Active Certification Policy its provisions are incorporated by reference into this Contract.

- c) You will pay to the Principal by way of reimbursement the Auditor's costs associated with the conduct of any Follow up Audit (required as a result of your actions or inaction) and any Close out Audit conducted under the WHS Active Certification Policy.
- d) Unless otherwise agreed by the parties, the costs of the Auditor referred to in clause 2.31c) will be paid by you to the Principal way of a deduction from an amount or amounts claimed by you in any claim for payment made under this Contract, at absolute discretion of the Principal.
- e) Where all or part of the costs of the Auditor are not paid to the Principal in accordance with clause 2.31d) any amount outstanding will be a debt due and payable by you to the Principal.

2.33. Where you have been appointed as principal contractor for the purpose of the WHS Legislation Part 4A will also apply. Where you have not been appointed a principal contractor for the purpose of the WHS Legislation Part 4B will apply.

2.34. If requested by the Principal, you must arrange testing of any material or work comprising the Works. All testing under the Contract must be carried out by a laboratory which is registered with the National Association of Testing Authorities.

2.35. If at any time you become aware of the presence on the Works site of any loose fibrous matter which may contain asbestos, or any other potentially dangerous chemicals or articles, you must:

- a) not disturb the material or article and must immediately notify the Principal; and
- b) ensure that all employees, subcontractors and members of the public are protected from exposure to the material or article until the nature of the material has been assessed by the appropriate authority and directions issued to you in respect of further action to be taken.

2.36. You must make good at your expense all fencing, roads, footpaths and surfaces which may be disturbed by you in carrying out the Works leaving the Works site and adjacent areas in the same state of repair as they were in when you commenced the Works; and remove from the Works site all rubbish, debris and waste resulting from you carrying out the Works, as directed by the Principal up to the end of the Defects Liability Period.

2.37.

- a) This clause applies if you were required to submit a **local industry participation plan** ("**LIP Plan**") as part of your tender or quotation for the Works.
- b) You must provide a local industry participation report ("**LIP Report**") on its compliance with this clause in a format and addressing matters reasonably required by the Principal within 6 months of the date of this Contract and on or before the first, and each subsequent, anniversary of this Contract.
- c) Before or concurrently with the invoice for your last progress payment under this Contract you must provide to the Principal a final LIP Report ("**Final LIP Report**") that sets out your level of compliance with the commitments provided for in the LIP Plan throughout the term and which is accompanied by a statutory declaration stating the information provided in the Final LIP Report is true and correct.

- d) The Principal may withhold payment of the final invoice until submission of a satisfactory Final LIP Report by you.
 - e) You must attend any meeting scheduled by the Principal to review how your LIP Plan is being implemented and advanced, and for this purpose, must provide all information reasonably requested by the Principal.
 - f) Your failure to comply, in whole or in part, with the commitments contained within the LIP Plan may be a factor taken into account in the award of future contracts for the Principal.
- 2.38.** Despite any difference or dispute (“Dispute”) between the parties arising in relation to the Contract or the Works, each party will continue to perform their obligations under the Contract. The parties agree that, following the issue of a dispute notice, they will endeavour to resolve the Dispute by negotiations, including by referring the Dispute to persons who have authority to intervene and direct some form of resolution.
- 2.39.** You **indemnify** the Principal, its employees and agents against all claims, costs and expenses and for all loss, damage, injury or death to persons or property caused or contributed to by you, your employees, agents or contractors in connection with carrying out the Works except to the extent that the Principal caused the relevant loss, damage or injury. This indemnity survives the expiration or earlier termination of the Contract.
- 2.40.** You may not without the prior written approval of the Principal assign the Contract, or assign, mortgage, charge or encumber any of the moneys payable under the Contract or any other benefit whatsoever arising under the Contract.
- 2.41.** Any **material provided by the Principal** to you for the purposes of the Contract (“**Material**”) will remain the property of the Principal and you must use and be responsible for the safekeeping and maintenance of that Material only for carrying out the Works. You must return all Material at the expiry or early termination of the Contract.
- 2.42.** You **warrant** that, at the date of entering into the Contract, no **conflict of interest** exists or is likely to arise in the carrying out of the Works and of your other obligations under the Contract. If, a conflict or risk of conflict of interest arises, you will notify the Principal immediately in writing and will comply with any requirement of the Principal to eliminate or otherwise deal with that conflict or risk of conflict.
- 2.43.** You warrant that you have not entered into any **collusive arrangement** in relation to the Works or your Tender for the Works.
- 2.44.** You must not **represent** yourself as being employees, partners or agents of the Principal. Nothing in this Contract creates any employment, partnership or agency for any purpose.
- 2.45.** You must, when using the Principal’s premises or facilities, comply with all **security and office regulations** as notified by the Principal.
- 2.46.** The Contract comprises the **entire agreement** between the parties in relation to the Works and supersedes any prior representations, negotiations, writings, memoranda and agreements. The Contract may only be varied by the written agreement of the parties.
- 2.47.** Any **notice**, or other communication required or otherwise to be given or sent to the Principal or to you under the Contract must be in writing and will be deemed to have been given: if delivered by hand, upon delivery; if sent by prepaid mail, upon the expiration of two days after the date on which it was so sent; if sent by facsimile, upon the sender’s facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient’s address; if sent by electronic mail, upon the sender’s computer recording that the message has been successfully transmitted to the recipient’s electronic mail address, to the persons and addresses, facsimile numbers or email

addresses set out in the Contract Schedule or on such other person, address, facsimile number or email address as may be notified by a party to the other from time to time.

- 2.48.** Any **provision of the Contract** which is illegal, void or unenforceable will not affect the validity of the remaining provisions of the Contract.
- 2.49.** The **Contract is governed by and construed** in accordance with the law for the time being in force in the Territory and the parties submit to the jurisdiction of the courts of the Australian Capital Territory. You must ensure that you comply with the laws from time to time in force in the Territory in performing its obligations under the Contract.
- 2.50.** Parts 3B, 4A and 4B form part of the Conditions of Contract.
- 2.51.** If the Principal claims a sum under or arising out of this Contract, or any other agreement between the parties or between you and any other Territory entity as defined in section 6(1) of the Government Procurement Act the Principal may withhold, deduct or set-off the claimed sum against any sum to which you are otherwise entitled under or arising out of this Contract.

(OPTIONAL – Insert as necessary)

2.52. Statutory Approvals

Development/Building consent/Approvals

For Development Consent: use Option 1 where the Contractor applies on behalf of the Principal, use either Option 2 or Option 3 where the Principal applies]

The Contractor must prepare and lodge on behalf of the Principal a Development Application for the Works. The Contractor is responsible for all lodgement fees and other costs associated with the Development Application and resulting from the development consent.

OR

The Contractor is not required to prepare and lodge on behalf of the Principal a Development Application for the Works. However, if, as a result of the acceptance of an Alternative Tender, through design development or due to conditions placed on the Development Consent a new, revised or amended Development Application is required the Contractor is responsible for preparation and submission of new, revised or amended documentation including all associated fees.

OR

Option 2

Principal applies

The Contractor is not required to prepare and lodge on behalf of the Principal a Development Application for the Works. The Principal will prepare, lodge and obtain an approved Development Application for the Works and is responsible for all lodgement fees and costs resulting from the Development consent.

Development consent for the Works has been obtained by the Principal prior to release of the Request for Tender for the Works.

OR

Option 3

Principal applies

Development consent for the Works has been submitted to the approval entity by the Principal on the (insert date). The current status of the application is (insert details so as to inform tenderers).

AND/OR:

The Contractor must obtain Building Approval from the ACT Planning and Land Authority.

AND/OR

To the extent the Site includes any public unleased land the Contractor must obtain approval from Transport Canberra and City Services.

2.53.

a) In this clause:

Adverse Ruling means a ruling by any court, tribunal, board, commission or other entity (including but not limited to the Fair Work Commission) with jurisdiction to determine the matter, that the Contractor or one of its Associated Entities has contravened an Industrial Law;

Approved Auditor has the meaning as set out in the Procurement Act;

Associated Entity has the meaning given by section 50AAA of the *Corporations Act 2001* (Cth);

Full Details means:

- (i) the nature of the Adverse Ruling;
- (ii) any conviction recorded or adverse finding made in respect of the Adverse Ruling;
- (iii) any penalty or orders imposed by a court, tribunal, board, commission or other entity in respect of the Adverse Ruling and the maximum penalty that could have been imposed under the relevant Industrial Law;
- (iv) the name of the court, tribunal, board, commission or other entity, the jurisdiction in which the proceeding or prosecution was brought, the date on which the proceeding or prosecution commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, board, commission or other entity;
- (v) the name of the entity against which the Adverse Ruling was made; and
- (vi) any other relevant information that the Contractor may rely on as grounds for not terminating this Contract as a result of the Adverse Ruling;

Industrial Law means any Commonwealth, State or Territory legislation that deals with matters relating to industrial relations and includes employment and workplace safety obligations;

Registrar has the meaning as set out in the Procurement Act;

Territory Entity has the meaning as set out in the Procurement Act;

Territory-Funded Work has the meaning as set out in the Procurement Act;

- b) This clause 2.56 applies to the extent that this Contract provides for the performance of Territory-Funded Work (as defined in the Procurement Act).
- c) The Contractor must comply with all of its obligations under the Code.
- d) The Contractor must maintain a valid Secure Local Jobs Code Certificate during the term of the Contract.
- e) Failure of the Contractor to maintain a valid Secure Local Jobs Certificate will constitute a breach of an essential term of this Contract entitling the Principal to terminate the contract on written notice to the Contractor.
- f) If at any time during the term of the contract an Adverse Ruling is made, the Contractor must, within 7 working days of the making of the Adverse Ruling, provide a statutory

declaration by an authorised representative of the Contractor setting out the Full Details of the Adverse Ruling and (if applicable) any existing or planned remedial measures taken or to be taken to prevent a contravention, breach or offence similar to the contravention, breach or offence on which the Adverse Ruling is based from recurring.

- g) The Contractor must ensure terms are included in all agreements with subcontractors engaged to perform Territory-Funded Work:
 - i) requiring the subcontractor to comply with the Code; and
 - ii) imposing obligations on the subcontractor in the same form as those set out in this clause 2.56 and imposed on the Contractor (subject to any necessary variation to reflect the different parties).
- h) The Contractor must ensure:
 - i) all subcontractors engaged to perform Territory-Funded Work:
 - A) hold a Secure Local Jobs Code Certificate; and
 - B) maintain a Secure Local Jobs Code Certificate during the term of their agreement; and
 - ii) the obligations in clause 2.56.h)i) are included in the relevant agreement with the subcontractor.
- i) The Contractor must provide the Principal with a statutory declaration in a form approved by the Principal regarding its compliance with the Code:
 - i) within 5 working days of a written request from the Principal; and
 - ii) if requested in writing by the Principal, at the time the Contractor provides a payment claim.
- j) Failure of the Contractor to provide a statutory declaration in accordance with clause 2.56.i) or the making of a false statement in a statutory declaration by the Contractor or its representative will constitute a breach of this contract.
- k) If the Contractor fails to provide a statutory declaration in accordance with clause 2.56.i)ii) the Principal may withhold payment of monies otherwise due to the Contractor in respect of the relevant payment claim until the statutory declaration is received.
- l) The Principal may by written notice request the Contractor obtain a statutory declaration from a subcontractor regarding its compliance with the Code and provide it to the Principal within 15 working days of the date of the written notice. The Contractor must use its reasonable endeavours to ensure the subcontractor supplies the declaration to enable the Contractor to comply with this paragraph.
- m) The Principal may require a union workplace delegate or employee representative to attend staff induction sessions held by the Contractor except in circumstances where attendance would result in a conflict with Commonwealth laws.
- n) The Contractor must, at all reasonable times, allow the Principal, Registrar or person nominated by the Principal or Registrar to enter the Contractor's worksite where the Territory-Funded Work is being performed in order to undertake education and awareness raising activities in relation to the Code. A person may not be nominated by the Principal or Registrar under this paragraph in circumstances where entry would result in a conflict with Commonwealth laws.

- o) Without limiting the powers of the Territory's Auditor-General under the *Auditor-General Act 1996* (ACT), the Principal (or nominated representative) and Approved Auditors may, at the Principal's cost, access records kept by the Contractor or its subcontractors and conduct audits and other reviews and checks, to monitor the delivery of the Works and compliance with this contract and the Code, except in circumstances where a nomination would result in a conflict with Commonwealth laws.
- p) If the Contractor was required to submit a Labour Relations, Training and Workplace Equity Plan (if any) submitted as part of its tender for the Works:
 - i) the Contractor must implement its commitments set out in its Labour Relations, Training and Workplace Equity Plan;
 - ii) the Contractor must report to the Principal on its compliance with paragraph q)i) quarterly during the term of this Contract;
 - iii) the Contractor must attend any meetings scheduled by the Principal to review its progress in implementing its commitments set out in the Labour Relations, Training and Workplace Equity Plan; and
 - iv) failure to comply, in whole or in part, with the commitments contained in any Labour Relations, Training and Workplace Equity Plan may be taken into account in the award of future contracts for Territory Entities and/or the granting of future Secure Local Jobs Code Certificates by the Registrar.

(OPTIONAL – Insert as necessary)

2.54. Proprietary Items

[Instructional note: This Special Condition will generally be relevant to all projects, particularly if proprietary items are known to have been listed in the specifications].

Identification by the Principal of a proprietary item does not necessarily imply exclusive preference for that item, but indicates the required properties of the item.

The Contractor may offer an alternative to any proprietary item by applying in writing for approval to use the alternative. The request must be accompanied by all available technical information and describe how, if at all, the alternative differs from the proprietary item and how it will affect other parts of the Works and performance of the Works. Approval of an alternative is at the Principal's absolute discretion.

Except to the extent that the approval, if any, of the Principal includes a contrary provision, the approval is deemed to include the conditions that:

- (a) use of the alternative must not directly or indirectly result in any increase in the cost to the Principal of the Works;
- (b) the alternative product must comply with any applicable standard, rating or certification specified in the Contract, and the Contractor must provide evidence satisfactory to the Principal of compliance with this Item upon request;
- (c) the Contractor must indemnify the Principal against any increase in costs;
- (d) use of the alternative must not directly or indirectly cause any delay to the Works and if it does, the Contractor will compensate the Principal for any loss which the delay causes.

The Contractor must include a provision equivalent to this Clause 2.57 Part 2 in all Subcontracts (subject to any necessary variation to reflect the different parties).

(OPTIONAL – Insert as necessary)

2.55. Building Certifier

[**Note to drafters:** Include this item if a building certifier is to be appointed in accordance with the *Building Act 2004* if the works under this RFQ involves construction or design & construction (including demolition and maintenance) services. Otherwise DELETE. Two alternatives are provided. Option 1 is to be used when the works are for a residential project and when the Principal elects to engage the Certifier for a non-residential project. Option 2 is to be used when the Principal elects to have the Contractor engage the Certifier, note that this Option cannot be selected for residential projects. Delete the Option that does not apply.]

Option 1

Principal to appoint

The Principal will appoint the certifier (**Certifier**) for the purposes of section 19, and to undertake the functions specified in section 17A, of the *Building Act 2004*. The Principal will be responsible for all fees and charges associated with the engagement of the Certifier. The Contractor is to cooperate with, and accept all directions from, the Certifier as reasonably required so as to enable the parties to comply with the *Building Act 2004*.

OR

Option 2

Contractor to appoint

The Contractor will appoint the certifier (**Certifier**) for the purposes of section 19, and to undertake the functions specified in section 17A, of the *Building Act 2004*. The Contractor will be responsible for all fees and charges associated with the engagement of the Certifier. The Contractor is to cooperate with, and accept all directions from, the Certifier as reasonably required so as to enable the parties to comply with the *Building Act 2004*.

(OPTIONAL – Insert as necessary)

2.56. Building Cladding

[**Note to drafters:** Include reference to aluminium cladding for all building works RFQs]

- (a) Aluminium cladding panels are not to be used for any cladding system. This requirement applies to all cladding locations, i.e. internal or external cladding and to non-combustible proprietary aluminium cladding systems.
- (b) Without limiting the above, the Principal requires the following materials, fixtures or fittings (as the case may be) to comply with the specified standard, rating or certification, and the Contractor must produce evidence satisfactory to the Principal of compliance with this Item upon request:

[Include a list of materials, fixtures of fittings AND relevant standard, rating or certification required to be met.]

- (c) For the purposes of paragraph (c), the Principal may, at its discretion and without limitation:
 - (i) accept as evidence a sample test result or certificate of compliance or similar document provided with the relevant materials, fixtures or fittings; or
 - (ii) require the Contractor to test the material, fixture or fitting in accordance with clause 2.34, at the Contractor's cost.

SPECIFICATIONS

[Attach Specifications, drawings, and plans, if any, or where prospective tenderers can obtain drawings or plans otherwise insert 'Not Applicable']

EXAMPLE ONLY

Part 3A. ETHICAL SUPPLIERS DECLARATION – TENDER

[DRAFTING NOTE: This attachment should only be included for non-ETWE eligible procurements i.e. works under \$200k.]

[Instructional note: The Tenderer is to complete all prompts in this Declaration – do not complete them yourself]

Statutory Declaration

Statutory Declarations Act 1959 (Cth)

I, [Name, address and occupation of person making declaration] make the following declaration under the Statutory Declarations Act 1959 (Cth),

1. In this declaration a reference to:
 - a. **“Adverse Ruling”** means a ruling, order, notice (including without limitation any improvement notice or prohibition notice), conviction or finding made or issued by any Authorised Entity.
 - b. **“Authorised Entity”** means any court, tribunal, board, commission, regulatory agency (including without limitation the director-general, commissioner, regulator or any inspector referred to in the Prescribed Legislation) or other entity with jurisdiction to determine employee and industrial relations matters or work health and safety matters to the effect that the Tenderer has contravened the Prescribed Legislation.
 - c. **“Employee”** means a natural person who is employed under a contract of service (excluding professional or information technology services) to provide the Tenderer with his or her labour.
 - d. **“Full Details”** means the details of:
 - (i) the nature of the Adverse Ruling, breach or offence;
 - (ii) the name of the relevant Authorised Entity;
 - (iii) the State or Territory in which the proceeding or prosecution was brought;
 - (iv) the date of the Adverse Ruling was made, or the proceeding or prosecution was commenced and the number or description assigned to the proceeding or prosecution;
 - (v) the entity against which the Adverse Ruling, breach or offence was made or issued;
 - (vi) any document setting out the Adverse Ruling, breach or offence (including provision of a copy of the same);
 - (vii) any conviction recorded or adverse finding made in respect of the Adverse Ruling, breach or offence;
 - (viii) any penalty, fine or order imposed by an Authorised Entity in respect of the Adverse Ruling, breach or offence and the maximum penalty, fine or order that could have been imposed under the Prescribed Legislation;
 - (ix) any remedial measures or other actions proposed or recommended by the Authorised Entity and details of steps taken by the Tenderer to comply with those remedial measures or other actions; and
 - (x) the status of the Adverse Ruling, breach or offence as at the date of the declaration.

- e. **“Industrial Instruments”** means an award or agreement, however designated, that is made under or recognised by an Industrial Law.
- f. **“Prescribed Legislation”** means all applicable Acts and subordinate instruments of the Commonwealth and the Territory, which deal with matters relating to industrial relations, employment and/or workplace safety obligations that apply to an entity including (as amended or replaced from time to time) but not limited to:
- (i) *Fair Work Act 2009* (Cth);
 - (ii) *Fair Work (Building Industry) Act 2012* (Cth);
 - (iii) *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth);
 - (iv) *Income Tax Assessment Act 1997* (Cth);
 - (v) *Independent Contractors Act 2006* (Cth);
 - (vi) *Industry Research and Development Act 1986* (Cth);
 - (vii) *Long Service Leave Act 1976* (ACT);
 - (viii) *Long Service Leave (Portable Schemes) Act 2009* (ACT);
 - (ix) *Migration Act 1958* (Cth);
 - (x) *Paid Parental Leave Act 2010* (Cth);
 - (xi) *Payroll Tax Act 2011* (ACT);
 - (xii) *Safety, Rehabilitation and Compensation Act 1988* (Cth);
 - (xiii) *Superannuation Guarantee (Administration) Act 1992* (Cth);
 - (xiv) *Superannuation Guarantee Charge Act 1992* (Cth);
 - (xv) *Work Health and Safety Act 2011* (ACT);
 - (xvi) *Workers’ Compensation Act 1951* (ACT);
 - (xvii) *Workplace Gender Equality Act 2012* (Cth).
- g. **“Prescribed Works or Services”** means works or services that require the exertion of labour by Employees.
- h. **“Secure Local Jobs Code Certificate”** has the meaning given by the *Government Procurement Act 2001*.
- i. **“Secure Local Jobs Code”** has the meaning given by the *Government Procurement Act 2001*.
- j. **“Tenderer”** means **[insert full legal name of Tenderer including the ACN/ABN as per that identified in the Tender]**.
- k. **“Territory-Funded Work”** has the meaning given by the *Government Procurement Act 2001*.

2. I am authorised on behalf of the Tenderer to make this declaration.
3. The information supplied by the Tenderer with and in its Tender is true and correct. Any further information to be supplied by the Tenderer to enable assessment of its Tender will be true and correct.
4. The Tenderer is aware that tenderers for Territory-Funded Work must hold a Secure Local Jobs Code Certificate and that once certified tenderers must comply with the Secure Local Jobs Code.

5. The Tenderer agrees to comply with all applicable Territory policies and legislation referable to Territory-Funded Work and, if the Tenderer is prequalified under a prequalification scheme in the Territory, the WHS Active Certification Policy, if it is the preferred Tenderer.
6. By submitting a Tender the Tenderer authorises the Territory to:
- a. obtain from any Territory, State or Commonwealth government agency (including for the avoidance of doubt, any regulatory or law enforcement body) and take into account in its evaluation, information, including information about the Tenderer’s performance under contracts (whether or not those contracts were with the Territory, State or Commonwealth or another entity and whether or not those contracts were identified by the Tenderer in its Tender);
 - b. obtain and take into account in its evaluation, information from referees or other reputable sources on the performance of the Tenderer on projects (whether or not they are identified by the Tenderer in their Tender);
 - c. use any information obtained from any Territory, State or Commonwealth government agency (including for the avoidance of doubt, any regulatory or law enforcement body), referee or other reputable source for any government purposes including, without limitation, assessment of suitability for award of contract;
 - d. provide information about the Tenderer to any Territory, State or Commonwealth government agency, including information provided by the Tenderer and information related to the Tenderer’s performance at any time and for any reason;
 - e. provide the name of the Tenderer and this declaration to Unions ACT; and
 - f. provide this declaration to any Territory, State or Commonwealth government agency (including any regulatory or law enforcement body, which includes, without limitation WorkSafe ACT) as evidence of the Tenderer’s consent to allow that agency to release information as requested by the Territory to the Territory.
7. The following Industrial Instruments made pursuant to any Prescribed Legislation specifically applies to the Employees of the Tenderer and are binding on it or them.

[Insert details of Industrial Instruments (this is the award you pay your employees under). If no Employees write “N/A”]

8. The Tenderer has in the preceding 36 months of the date of this declaration complied with all applicable Industrial Instruments.
- True (delete 8A and initial) Not true (answer 8A) N/A No Employees (delete 8A)

- 8A. The Tenderer has not complied with the following Industrial Instruments in the following respects.

[Insert full details]

9. The Tenderer has in the preceding 36 months of the date of this declaration complied with all Prescribed Legislation
- True (delete 9A and initial) Not true (answer 9A)

- 9A. The Tenderer has not complied with the following Prescribed Legislation.

[Insert Full Details of the failure to comply with Prescribed Legislation]

10. The Tenderer has in the preceding 36 months of the date of this declaration recognised the rights of its Employees to union membership and representation.
- True (delete 10A and initial) Not true (answer 10A) N/A No Employees (delete 10A)

- 10A. The Tenderer has not recognised the rights of Employees to union membership and representation in the following respects.

[Insert Full Details of how the Tenderer has not recognised the rights of Employees to union membership and representation]

11. The Tenderer has in the preceding 36 months of the date of this declaration complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency.

True (delete 11A and initial) Not true (answer 11A) N/A No Employees (delete 11A)

11A. The Tenderer has not complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency in the following respects:

[Insert Full Details of how the Tenderer has failed to comply with all amendments to wages and conditions of employment]

12. In the preceding 36 months of the date of this declaration there have been no findings against the Tenderer by an Authorised Entity, including a finding of a breach in a non-confidential consent order.

True (delete 12A and initial) Not true (answer 12A)

12A. There have been the following findings (Full Details of which are provided) against the Tenderer by an Authorised Entity:

[Set out Full Details of findings]

13. In the preceding 36 months of the date of this declaration there have been no Adverse Rulings under the Prescribed Legislation against the Tenderer.

True (delete 13A and initial) Not true (answer 13A)

13A. There have been the following Adverse Rulings under the Prescribed Legislation against the Tenderer:

[Set out Full Details of Adverse Rulings]

14. There are currently no proceedings or prosecutions against the Tenderer in respect of a breach of any Prescribed Legislation.

True (delete 14A and initial) Not true (answer 14A)

14A. There are currently the following proceedings or prosecutions against the Tenderer in respect of a breach of Prescribed Legislation.

[Set out Full Details of proceedings or prosecutions]

15. The Tenderer has not been required to implement any remedial measures to ensure future compliance with the Prescribed Legislation.

True (delete 15A and initial) Not true (answer 15A)

15A. The Tenderer has been required to implement the following remedial measures to ensure future compliance with the Prescribed Legislation:

[Set out Full Details of the remedial measures implemented]

16. Below is a complete list of all projects (both completed and current) in the Australian Capital Territory where the Tenderer has had management or control of a project site and on which an audit into any aspect of work health and safety performance or compliance has been conducted in the 36 months prior to the date of this declaration.

[Set out list of projects, or is none “n/a”]

17. I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

[Signature of person making the declaration]]

[Print name of person making the declaration]

Declared at [place] on [day] of [month] [year]

Before me:

[Signature of person before whom the declaration is made]

[Full name, qualification and address of person before whom the declaration is made (in printed letters)]

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years – see section 11 of the Statutory Declarations Act 1959.

Note 2 Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959 – see section 5A of the Statutory Declarations Act 1959.

A statutory declaration under the Statutory Declarations Act 1959 may be made before–

- (1) A person who is currently licensed or registered under a law to practise in one of the following occupations:
Chiropractor Dentist Legal practitioner
Medical practitioner Nurse Optometrist
Patent attorney Pharmacist Physiotherapist
Psychologist Trade marks attorney Veterinary surgeon
- (2) A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
- (3) A person who is in the following list:
Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)

Bailiff
Bank officer with 5 or more continuous years of service
Building society officer with 5 or more years of continuous service
Chief executive officer of a Commonwealth court
Clerk of a court
Commissioner for Affidavits
Commissioner for Declarations
Credit union officer with 5 or more years of continuous service
Employee of the Australian Trade Commission who is:
 (a) in a country or place outside Australia; and
 (b) authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
 (c) exercising his or her function in that place
Employee of the Commonwealth who is:
 (a) in a country or place outside Australia; and
 (b) authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
 (c) exercising his or her function in that place
Fellow of the National Tax Accountants' Association
Finance company officer with 5 or more years of continuous service
Holder of a statutory office not specified in another item in this list
Judge of a court
Justice of the Peace
Magistrate
Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961
Master of a court
Member of Chartered Secretaries Australia
Member of Engineers Australia, other than at the grade of student
Member of the Association of Taxation and Management Accountants
Member of the Australasian Institute of Mining and Metallurgy
Member of the Australian Defence Force who is:
 (a) an officer; or
 (b) a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or
 (c) a warrant officer within the meaning of that Act
Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants
Member of:
 (a) the Parliament of the Commonwealth; or
 (b) the Parliament of a State; or
 (c) a Territory legislature; or
 (d) a local government authority of a State or Territory
Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961
Notary public
Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public
Permanent employee of:
 (a) the Commonwealth or a Commonwealth authority; or
 (b) a State or Territory or a State or Territory authority; or
 (c) a local government authority;
with 5 or more years of continuous service who is not specified in another item in this list
Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made
Police officer
Registrar, or Deputy Registrar, of a court
Senior Executive Service employee of:
 (a) the Commonwealth or a Commonwealth authority; or
 (b) a State or Territory or a State or Territory authority
Sheriff
Sheriff's officer
Teacher employed on a full-time basis at a school or

Part 3B. ETHICAL SUPPLIERS DECLARATION – CONTRACT

[DRAFTING NOTE: This attachment should only be included for non-ETWE eligible procurements i.e. works under \$200k.]

[Instructional note: The Tenderer is to complete all prompts in this Declaration – do not complete them yourself]

Statutory Declarations Act 1959 (Cth)

I, [Name, address and occupation of person making declaration] make the following declaration under the Statutory Declarations Act 1959 (Cth),

1. In this declaration a reference to:

“Adverse Ruling” means a ruling, order, notice (including without limitation any improvement notice or prohibition notice), conviction or finding made or issued by any Authorised Entity.

“Authorised Entity” means any court, tribunal, board, commission, regulatory agency (including without limitation the director-general, commissioner, regulator or any inspector referred to in the Prescribed Legislation) or other entity with jurisdiction to determine employee and industrial relations matters or work health and safety matters to the effect that the Contractor has contravened the Prescribed Legislation.

“Consultant” means a consultant engaged by the Contractor to design parts of the Works or to provide other professional services. It includes a consultant whose contract with the Principal is novated to one with the Contractor.

“Contract” means an agreement which has or will shortly be entered into between the Australian Capital Territory and the Contractor for the provision of works in respect of the Project.

“Contractor” means [insert full legal name of Contractor including the ACN/ABN as per that identified on the Contract];

“Employee” means a natural person who is employed under a contract of service (excluding professional or information technology services) to provide the Contractor or a Subcontractor with his or her labour.

“Industrial Instruments” means an award or agreement, however designated, that:

- (a) is made under or recognised by an industrial law; or
- (b) concerns the relationship of an employer and the employer’s employees.

“Prescribed Legislation” means all applicable Acts and subordinate instruments of the Commonwealth and the Territory, which deal with matters relating to industrial relations, employment and/or workplace safety obligations that apply to an entity including (as amended or replaced from time to time) but not limited to:

- (a) *Fair Work Act 2009* (Cth);
- (b) *Fair Work (Building Industry) Act 2012* (Cth);
- (c) *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth);
- (d) *Income Tax Assessment Act 1997* (Cth);
- (e) *Independent Contractors Act 2006* (Cth);
- (f) *Industry Research and Development Act 1986* (Cth);
- (g) *Long Service Leave Act 1976* (ACT);
- (h) *Long Service Leave (Portable Schemes) Act 2009* (ACT);
- (i) *Migration Act 1958* (Cth);
- (j) *Paid Parental Leave Act 2010* (Cth);

- (k) Payroll Tax Act 2011 (ACT);
- (l) Safety, Rehabilitation and Compensation Act 1988 (Cth);
- (m) Superannuation Guarantee (Administration) Act 1992 (Cth);
- (n) Superannuation Guarantee Charge Act 1992 (Cth);
- (o) Work Health and Safety Act 2011 (ACT);
- (p) Workers' Compensation Act 1951 (ACT);
- (q) Workplace Gender Equality Act 2012 (Cth).

"Project" means Project No [insert ACT Government Project no] for [insert sufficient details to identify nature of project, e.g. for the construction of school at Block 11 Section 66 Kambah];

"Prescribed Works or Services" means works or services that require the exertion of labour by Employees;

"Secure Local Jobs Code Certificate" has the meaning given by the *Government Procurement Act 2001*; and

"Subcontractor" includes a sub-subcontractor;

"Supplier" means an entity engaged by the Contractor to supply part of the Works (including temporary works).

all other capitalised words or terms have the same meaning as defined in the Contract.

2. I am authorised on behalf of the Contractor to make this declaration.
3. All Employees of the Contractor who have at any time been employed by the Contractor in respect of the Project have, at the date of this statutory declaration, been paid all moneys due and payable to them in respect of their employment on the work under the Contract.
4. The Contractor has made provision for all other benefits (as required by Prescribed Legislation and any Industrial Instruments) accrued in respect of its Employees as at the date of this statutory declaration.
5. All Subcontractors, Suppliers and Consultants have been paid all amounts payable to each of them by the Contractor as at the date of this statutory declaration with respect to engagement by each of them for the performance of Work or the supply of materials for or in connection with the Contract.
6. All workers compensation insurance premiums payable by the Contractor to the date of this statutory declaration in respect of the Work done in connection with the Contract have been paid.
7. All payroll tax payable by the Contractor in respect of wages paid or payable to the relevant Employees of the Contractor for Work done in connection with the Contract to the date of this statutory declaration has been paid.
8. The Contractor holds a current Secure Local Jobs Code Certificate.
9. The Contractor has in the preceding 24 months of the date of this declaration complied with all applicable Industrial Instruments.

True (delete 9A and initial)

Not true (answer 9A)

- 9A. The Contractor has not complied with the following Industrial Instruments in the following respects.

[Insert full details of failure to comply with Industrial Instruments]

10. The Contractor has in the preceding 24 months of the date of this declaration complied with all Prescribed Legislation

True (delete 10A and initial)

Not true (answer 10A)

10A. The Contractor has not complied with the following Prescribed Legislation.

[Insert Full Details of the failure to comply with Prescribed Legislation]

11. The Contractor has in the preceding 24 months of the date of this declaration recognised the rights of its Employees to union membership and representation.

True (delete 11A and initial) Not true (answer 11A)

11A. The Contractor has not recognised the rights of Employees to union membership and representation in the following respects.

[Insert Full Details of how the Contractor has not recognised the rights of Employees to union membership and representation]

12. The Contractor has in the preceding 24 months of the date of this declaration complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency.

True (delete 12A and initial) Not true (answer 12A)

12A. The Contractor has not complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency in the following respects:

[Insert Full Details of how the Contractor has failed to comply with all amendments to wages and conditions of employment]

13. In the preceding 24 months of the date of this declaration there have been no findings against the Contractor by any Authorised Entity, including a finding of a breach in a non-confidential consent order.

True (delete 13A and initial) Not true (answer 13A)

13A. There have been the following findings (Full Details of which are provided) against the Contractor by an Authorised Entity:

[Set out Full Details of findings]

14. In the preceding 24 months of the date of this declaration there have been no Adverse Rulings under the Prescribed Legislation against the Contractor.

True (delete 14A and initial) Not true (answer 14A)

14A. There have been the following Adverse Rulings under the Prescribed Legislation against the Contractor:

[Set out Full Details of convictions]

15. There are currently no proceedings or prosecutions against the Contractor in respect of a breach of any Prescribed Legislation.

True (delete 15A and initial) Not true (answer 15A)

15A. There are currently the following proceedings or prosecutions against the Contractor in respect of a breach of Prescribed Legislation.

[Set out Full Details of proceedings or prosecutions]

16. The Contractor has not been required to implement any remedial measures to ensure future compliance with the Prescribed Legislation.

True (delete 16A and initial)

Not true (answer 16A)

16A. The Contractor has been required to implement the following remedial measures to ensure future compliance with the Prescribed Legislation:

[Set out Full Details of the remedial measures implemented]

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

[Signature of person making the declaration]

[Print name of person making the declaration]

Declared at [place] on [day] of [month] [year]

Before me:

[Signature of person before whom the declaration is made]

[Full name, qualification and address of person before whom the declaration is made (in printed letters)]

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years – see section 11 of the Statutory Declarations Act 1959.

Note 2 Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959 – see section 5A of the Statutory Declarations Act 1959.

A statutory declaration under the Statutory Declarations Act 1959 may be made before—

- (1) A person who is currently licensed or registered under a law to practise in one of the following occupations:
- | | | |
|----------------------|----------------------|--------------------|
| Chiropractor | Dentist | Legal practitioner |
| Medical practitioner | Nurse | Optometrist |
| Patent attorney | Pharmacist | Physiotherapist |
| Psychologist | Trade marks attorney | Veterinary surgeon |
- (2) A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
- (3) A person who is in the following list:
- Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
 - Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)
 - Bailiff
 - Bank officer with 5 or more continuous years of service
 - Building society officer with 5 or more years of continuous service
 - Chief executive officer of a Commonwealth court
 - Clerk of a court
 - Commissioner for Affidavits
 - Commissioner for Declarations
 - Credit union officer with 5 or more years of continuous service
 - Employee of the Australian Trade Commission who is:
 - (a) in a country or place outside Australia; and
 - (b) authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
 - (c) exercising his or her function in that place
 - Employee of the Commonwealth who is:
 - (a) in a country or place outside Australia; and
 - (b) authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
 - (c) exercising his or her function in that place
 - Fellow of the National Tax Accountants' Association
 - Finance company officer with 5 or more years of continuous service
 - Holder of a statutory office not specified in another item in this list
 - Judge of a court
 - Justice of the Peace
 - Magistrate
 - Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961
 - Master of a court
 - Member of Chartered Secretaries Australia
 - Member of Engineers Australia, other than at the grade of student
 - Member of the Association of Taxation and Management Accountants
 - Member of the Australasian Institute of Mining and Metallurgy
 - Member of the Australian Defence Force who is:
 - (a) an officer; or
 - (b) a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or
 - (c) a warrant officer within the meaning of that Act
 - Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants
 - Member of:
 - (a) the Parliament of the Commonwealth; or
 - (b) the Parliament of a State; or
 - (c) a Territory legislature; or
 - (d) a local government authority of a State or Territory
 - Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961
 - Notary public
 - Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public
 - Permanent employee of:
 - (a) the Commonwealth or a Commonwealth authority; or
 - (b) a State or Territory or a State or Territory authority; or
 - (c) a local government authority;with 5 or more years of continuous service who is not specified in another item in this list
 - Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made
 - Police officer
 - Registrar, or Deputy Registrar, of a court
 - Senior Executive Service employee of:
 - (a) the Commonwealth or a Commonwealth authority; or
 - (b) a State or Territory or a State or Territory authority
 - Sheriff
 - Sheriff's officer
 - Teacher employed on a full-time basis at a school or tertiary education institution

GUIDELINE: If there is no prequalification category associated with this procurement then this WHS Declaration is required to be submitted with the tender. The Tenderer is to complete all prompts in this Declaration. If there is a prequalification category then insert
RESERVED

EXAMPLE ONLY

Part 4A. APPOINTMENT OF PRINCIPAL CONTRACTOR

4A.1 APPLICATION OF PART 4A

This Part 4A applies if you have been appointed as principal contractor for the purpose of the WHS Legislation (refer to the Contract Schedule). Part 4A.4 applies generally to the Contract.

4A.2 ENGAGEMENT AS PRINCIPAL CONTRACTOR

The Principal:

- (a) engages you as principal contractor;
- (b) authorises you to have management or control of the Works site; and
- (c) engages you to discharge the duties of a principal contractor under Chapter 6 of the *Work Health and Safety Regulation 2011* (ACT).

4A.3 PREPARATION OF AND COMPLIANCE WITH WHS MANAGEMENT PLAN

4A.3.1 You must:

- (a) prepare and supply to the Principal a WHS Management Plan; and
- (b) provide the WHS Management Plan before beginning work under the Contract.

4A.3.2 The Principal will notify you as to the suitability of the submitted WHS Management Plan. The WHS Management Plan will be taken as suitable if the Principal has not responded within 7 days.

4A.3.3 The acceptance by the Principal of your WHS Management Plan will not relieve you of your obligations to comply with and demonstrate compliance with this Contract and WHS Legislation.

4A.3.4 You must regularly review your WHS Management Plan and continue to update and amend it and submit it (as necessary) in accordance with this Contract and WHS Legislation.

4A.3.5 You must ensure all your employees, subcontractors and suppliers comply with the WHS Management Plan and any directions, notices or other notifications issued by you referable to work health and safety matters

4A.4 WHS MANAGEMENT PLAN

For the purpose of this Contract (including but not limited to this Part 4A) “WHS Management Plan” means a work health and safety management plan that addresses:

- (a) the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the work under the Contract;
- (b) the arrangements in place, or to be implemented, between any persons conducting a business or undertaking at the workplace where the work under the Contract is being undertaken, for consultation, cooperation and coordination of activities in relation to compliance with their duties under work health and safety legislation;

- (c) the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur, including incident reporting procedures, corrective action procedures, record-keeping and reporting requirements (including project-specific and general reporting and reporting to the Principal with respect to work health and safety matters), project-specific emergency plans and first aid procedures;
- (d) any site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
- (e) the arrangements for the collection and recording, and any assessment, monitoring and review of safe work method statements at the workplace;
- (f) ensuring that work health and safety is a compulsory agenda item at all monthly meetings (or equivalent) and ensuring that the outcomes of those agenda items are communicated to the Principal;
- (g) management of work health and safety generally, including any work health and safety policy, details of any work health and safety management system (including certification, inspection and audit programs), training and induction programs (including work health and safety generally, emergency procedures and use of emergency equipment), the process of communication and dispute resolution on work health and safety matters;
- (h) management of subcontractors, including induction, training, development of safe work method statements, job safety assessments or equivalent documentation, the obligation to consult, cooperate and coordinate activities, the process of communication and the process for ensuring subcontractor compliance with the WHS Management Plan;
- (i) management of project hazards and risks generally, including but not limited to work involving:
 - (i) fall hazards;
 - (ii) telecommunications towers;
 - (iii) demolition;
 - (iv) disturbance or removal of asbestos;
 - (v) structural alterations requiring temporary supports;
 - (vi) confined spaces;
 - (vii) excavation deeper than 1.5 metres;
 - (viii) tunnels;
 - (ix) use of explosives;
 - (x) pressurised gas distribution mains and consumer piping;
 - (xi) chemical, fuel and refrigerant lines;
 - (xii) electrical work, including involving energised electrical installations and services;
 - (xiii) hazardous atmospheres;
 - (xiv) tilt-up and precast concrete;
 - (xv) roadways or railways used by road or rail traffic;

- (xvi) movement of powered mobile plant;
 - (xvii) extremes of temperature;
 - (xviii) water or other liquids where there is a risk of drowning;
 - (xix) diving;
 - (xx) remote or isolated work;
 - (xxi) above-standard exposure to noise;
 - (xxii) other hazardous manual tasks;
 - (xxiii) exposure to falling objects;
 - (xxiv) abrasive blasting;
 - (xxv) hazardous chemicals and substances; and
 - (xxvi) working in the vicinity of electrical wires; and
- (j) if design forms part of the work under the Contract, proposed design risk assessments, purchasing policies for plant, materials and substances, the process for meeting statutory requirements regarding design and the process for addressing design changes relevant to work health and safety considerations.

Part 4B. OBLIGATIONS IF NOT PRINCIPAL CONTRACTOR

4B.1 APPLICATION OF PART 4B

This Part 4B applies if you have not been appointed as principal contractor for the purpose of the WHS Legislation (refer to the Contract Schedule).

4B.2 OBLIGATIONS IF NOT PRINCIPAL CONTRACTOR

Where you are not appointed as the principal contractor (or as the person with control of the site on which the Works are being conducted) you must, and you must ensure all your employees, subcontractors and suppliers, comply with:

- (a) the WHS Management Plan (if any) of the principal contractor, if appointed (or the person appointed by the Principal to have control of the site on which the Works are being conducted, if no principal contractor is appointed); and
- (b) directions, notices and any other notifications issued for or on behalf of the principal contractor (or the person appointed by the Principal to have control of the site on which the Works are being conducted, if no principal contractor is appointed) referable to work health and safety matters.

4B.3 WHS MANAGEMENT PLAN

4B.3.1 If you have been appointed to have control of the site on which the Works are being conducted (see Contract Schedule), you must, unless advised otherwise by the Principal:

- (a) prepare and supply to the Principal a WHS Management Plan either as a discrete plan or as a component of the project plan;
- (b) provide the WHS Management Plan before beginning work under the Contract; and
- (c) ensure all your employees, subcontractors and suppliers comply with the WHS Management Plan and any directions, notices or other notifications issued by you referable to work health and safety matters.

4B.3.2 The Principal will notify you as to the suitability of the submitted WHS Management Plan. The WHS Management Plan will be taken as suitable if the Principal has not responded within 7 days.

4B.3.3 The acceptance by the Principal of your WHS Management Plan will not relieve you of your obligations to comply with and demonstrate compliance with this Contract and the WHS Legislation (if applicable).

4B.3.4 You must regularly review your WHS Management Plan and continue to update and amend it and submit it (as necessary) in accordance with this Contract and WHS Legislation (if applicable).

End notes

- ¹ PUI helps in tracking and monitoring the procurement activities across the procurement lifecycle and is required to access procurement services and systems. A PUI should be created as early as possible in the planning stages of the procurement using the Procurement Unique Identifier Request Form, which can be found on the One Gov service Centre site > Procurement ACT > Goods and Services > PUI or on the Procurement Hub intranet site > Home > PUI.

EXAMPLE ONLY