

STANDARD CONDITIONS OF TENDER CONSTRUCTION

(INCLUDES CONSTRUCTION RELATED
CONSULTANCIES)

(Note: For use in relation to the Territory's modified version of GC21, the Territory's modified version of MW21, the Infrastructure Maintenance Services Agreement, the Construction Related Services Agreement (CRCA), the DSC-ACT-2013, the MCC-ACT-2014 and any other RFT that references these Standard Conditions)

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1. CONDITIONS OF TENDER

- 1.1.1. These Standard Conditions of Tender must be read in conjunction with the Request for Tender (RFT) that refers to these Standard Conditions and the Tenders ACT Terms of Use as defined in Section 3 – Terminology below.
- 1.1.2. In the event of any inconsistency or discrepancy between the RFT, the Terms of Use and these Standard Conditions the order of precedence will be as follows: the RFT, the Terms of Use and these Standard Conditions.
- 1.1.3. In submitting a Tender, the Tenderer acknowledges that it:
- (a) has examined the RFT, Brief and any other information, including all addenda and forum clarifications issued;
 - (b) agrees to all requirements specified in the RFT (including these Terms and Conditions), and where relevant, makes the acknowledgements and warranties specified;
 - (c) has examined all information relevant to the risks, contingencies, and other circumstances having an effect on the Tender;
 - (d) has made and relied upon its own enquiries as it considers appropriate to address the Assessment Criteria;
 - (e) has assessed the risks which it will assume under the Contract;
 - (f) is satisfied as to the correctness and sufficiency of the Tender, including the price or rates specified and has ensured the price or rates specified contain allowances to protect against risks;
 - (g) expect to the extent expressly set out in any alternative Tender, accepts (without departure, qualification, amendment, limitation or exclusion) the Contract; and
 - (h) has examined the Site and its surroundings to its satisfaction following receipt of any necessary authorisation.
 - (i) all information contained in the Tender is true and correct to the best of the Tenderer's knowledge, after making careful and thorough enquiries;
 - (j) 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;
 - (k) if a change under clause 1.1.3(j) 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.
- (l) 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 any Territory, State or Commonwealth government agency;
 - (m) 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;
 - (n) warrants that no other person's or organisation's moral or Intellectual Property Rights will be breached in the Territory's use of the Tender for the purpose of the RFT or in any agreement that may be entered into by the Territory with a preferred Tenderer; and
 - (o) 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.
- 1.2. 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).
- 1.3. Tenders must remain open for at least 120 days from the date and time of closing of Tenders to enable the evaluation of Tenders by the Territory.

2. DISCLAIMER

- 2.1.1. The RFT may contain information that may be described as data, documents, and images, prepared by Territory agencies. While that information has been formulated with care, the Territory does not warrant or represent that it is free from misdescription, error or omission.

The Territory is in no way liable for the inaccuracy of any information printed or stored by a Tenderer (or other user) after downloading an electronic copy from Tenders ACT. A Tenderer (or other user) who utilises an automatic language translation service in connection with the

RFT does so at its own risk. Tenderers must take their own precautions to ensure that the process they employ to download or access electronic copies of any information provided on Tenders ACT does not expose them to the risk of viruses, malicious code or other forms of interference which may damage their computer systems. To the extent the RFT references Site Information documents or Information Documents, those documents are provided for the information only of the Tenderer and the Tenderer agrees that it will not rely in any way upon the relevance, completeness, accuracy or adequacy of the documents, for the purposes of preparing its Tender or entering into any contract with the Territory.

- 2.1.2. 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 Procurement ACT website.

3. TERMINOLOGY

- 3.1.1. The RFT and these Standard Conditions will use some terms that will have a particular meaning. Unless indicated otherwise in an RFT (including in any special/additional conditions of tender) or Tenders ACT Terms of Use, the following meanings apply to terms.

Assessment/Evaluation Criteria: the criteria by which a Tender will be evaluated, set out in an RFT.

Brief: means the brief detailing the Services being sought by the Territory supplied with the RFT or otherwise made available to Tenderers for the purposes of the RFT (and which may be described as the Brief / Project Brief / Statement of Requirement/ Scope of Work or another descriptor).

Contact Officer: the Territory officer whose name and contact details appear on the cover sheet of an RFT.

Contract: the form of contract proposed to engage the preferred Tenderer as set out in the RFT.

Counterparts: multiple copies of the same agreement, with each signed copy treated as an original and together comprising a single legal instrument).

Ethical Suppliers Declaration: the prescribed form of declaration set out in an RFT.

Information Documents: means the documents specified in the RFT as being information documents, or that are notified to the Tenderers as such from time to time.

Intellectual Property Rights: all intellectual property rights, including:

- (a) patents, copyright, rights in circuit layouts, registered designs, trademarks, know how, trade secrets and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in (a) above.

Joint Bid Basis: a Tender submitted:

- (a) by an incorporated or unincorporated joint venture or special purpose vehicle; or
- (b) on any other basis involving more than one party where the Territory is relying upon a representation that those parties will be jointly (whether fully or partially) responsible for the delivery of the Services described in the RFT.

RFT (or Request for Tender) / REOI (or Request for Expression of Interest) / RROI (or Request for Registration of Interest) / RFP (or Request for Proposal) / RFQ (or Request for Quotation) / (ATM) Approach to Market: a request document describing the Works, Brief, Assessment Criteria and other conditions of quote or tender.

Project: the project as described in the RFT.

Services: the services sought to be provided in an RFT.

Site: means the site of the proposed Works as set out in or otherwise implied by the RFT.

Site Information: means the documents specified in the RFT as being information documents, or that are notified to the Tenderers as such from time to time.

Special Conditions: special conditions that will form part of the Contract and are identified as such in the RFT.

Standard Conditions: these conditions, which apply to all RFTs that reference these conditions.

Tender: a tender lodged by a Tenderer in response to an RFT.

Tenderer: the legal entity (e.g., a company or an individual) that submits a Tender.

Tenderer Declaration: the prescribed form of declaration set out in an RFT and called the "Tenderer Declaration".

Tenders ACT: the Territory's electronic tendering system.

Terms of Use: the terms of use of Tenders ACT available at tenders.act.gov.au.

Territory: when used:

- (a) in geographical sense, the Australian Capital Territory, and
- (b) in any other sense, the body politic established by section 7 of *the Australian Capital Territory (Self-Government) Act 1988* (Cth).

Territory-Funded Work: has the meaning given by the *Government Procurement Act 2001*.

WOL: whole of life.

WOL Cost: the total of the financial costs to the Territory arising out of, or in any way in connection with, the Works over the whole life of the Works including the costs of designing and constructing the Works prior to completion and operating and maintaining the Works after completion.

WOL Objectives: means balancing:

- (a) WOL Cost;

- (b) the useful life of the Works;
- (c) the reliability and availability for use of the Works throughout their useful life;
- (d) the operability and maintainability of the Works throughout their useful life;
- (e) the value for money achieved by the Territory from the design, construction, operation and maintenance of the Works;
- (f) the achievement of sustainability development principles; and
- (g) the achievement of the specific additional matters (if any) relating to WOL specified in RFT.

Works: the development to be delivered as set out in the RFT and any documents supplied by the Territory during the tender process.

3.1.2. Where these Standard Conditions are stated to apply to an REOI, RFP, RFQ, RROI or other request document, each instance in these Standard Conditions of the word:

RFT should be read as REOI, RFP, RFQ, RROI etc as applicable

Tender should be read as “Response”;

Tenderer should be read as “Respondent”; and

Tenderer Declaration should be read as “Respondent Declaration”,

for the purpose of that request document.

4. LODGEMENT OF TENDERS

4.1. ELECTRONIC LODGEMENT

4.1.1. Tenders must be lodged electronically via Tenders ACT before the closing time in accordance with the lodgement procedures set out in the RFT and the Tenders ACT Terms of Use.

4.1.2. Unless otherwise stated in the RFT, a Tender lodged by any other means, including by hand, facsimile or email, will be considered non-conforming.

4.1.3. Following the closing date for Tenders, the Territory will list names of Tenderers on the Tenders ACT web page. Late Tenders may not be included on the list.

4.1.4. For specific directions on the electronic submissions of tenders, see the Tenders Act’s website.

4.2. TENDER CLOSING TIME

- 4.2.1. A Tender must be lodged before the closing time identified in the RFT.
- 4.2.2. The judgement of the Territory as to the time a Tender has been lodged will be final.
- 4.2.3. The Territory may extend the closing time at its sole and absolute discretion and will issue an addendum notifying any decision to extend.

4.3. PREPARING TO LODGE A TENDER

- 4.3.1. 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.
- 4.3.2. Tenderers must lodge their Tenders in accordance with the requirements set out in these Standard Conditions of Tender, Tenders ACT's Terms of Use and the RFT for file format/s, naming conventions and file sizes. Failure to comply with any of these requirements may render a Tender non-conforming.
- 4.3.3. Tenderers must ensure that transmission of all files is completed before the closing time (including where a Tender consists of multiple uploads).
- 4.3.4. Tenders must be completely self-contained. No hyperlinked or other material may be incorporated by reference. All supporting material that is not directly related to the RFT should be provided in accordance with the requirements as detailed in the RFT.
- 4.3.5. Tenders lodged through Tenders ACT will be deemed to be authorised by the Tenderer.
- 4.3.6. If Tenderers have any problem in accessing Tenders ACT or uploading a Tender they must contact the Tenders ACT Team prior to the closing time for technical and operational assistance.

4.4. LATE TENDER RESPONSES

- 4.4.1. For open Tenders, a late Tender will not be considered for any reason unless the Tender was submitted late due to an action or omission of the Territory.ⁱ
- 4.4.2. Consideration of late Tenders will otherwise conform with the Australian Standards Code of Tenderingⁱⁱ. Late Tenders shall not be accepted, except where it is both clear that circumstances beyond the Tenderer's control were the cause of the lateness and that the integrity of the tendering process will not be compromised by accepting a late Tender.
- 4.4.3. Where a late Tender is received, the time and date of receipt shall be noted.
- 4.4.4. The late Tender will be registered separately and may be admitted to evaluation at the absolute discretion of the Territory. In deciding whether to admit a late Tender to 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 Territory; and
- (d) evidence of unfair practices.

4.4.5. The Territory 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.

4.5. PROOF OF LODGEMENT

4.5.1. 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.

4.5.2. Failure to receive a receipt means that lodgement has not completed successfully. In these circumstances, Tenderers should lodge submissions again or, if electronic lodgement has closed, contact the Tenders ACT team to obtain instructions on how to lodge a late Tender.

5. ADDITIONAL INFORMATION, CLARIFICATION AND ENQUIRIES

5.1.1. Despite any other requirement of the RFT, the Tenderer must, if so required, submit additional information to allow full consideration of the Tender. There is no obligation on the part of the Territory to seek clarifying or any other information.

5.1.2. 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 responds to 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.

5.1.3. The Territory will not accept information provided in a 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.

5.1.4. 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.

5.1.5. 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.

6. NON-CONFORMING TENDERS

6.1.1. A Tender that is:

- (a) is at variance with or does not respond to or does not fully comply with any requirement of the RFT; or
- (b) is incomplete, cannot be read or decrypted, may be deemed to be non-conforming.

6.1.2. The Territory may at its absolute discretion, in respect of a Tender that is non-conforming or which has been deemed by the Territory to be non-conforming having regard to any conditions of tender:

- (a) reject and not further consider the Tender;
- (b) ignore any non-conformance in the Tender and assess the Tenders against the Assessment Criteria; or
- (c) if it is possible to correct the non-conformance without affecting the probity of the tender process, permit the Tenderer to do so.

7. ONLINE FORUM AND ADDENDA

- 7.1.1. 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.
- 7.1.2. All information and notices (including addenda) relating to an RFT (including technical clarifications or amendments) will be posted on the relevant RFT page on Tenders ACT.
- 7.1.3. All Tenderers who have downloaded the RFT will be able to view all posts and responses on the forum.
- 7.1.4. Posts made to the forum will not be immediately displayed to enable the Territory to review the clarification question and to develop a response.
- 7.1.5. The Territory 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.
- 7.1.6. 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.
- 7.1.7. The Territory accepts no responsibility if a Tenderer fails to become aware of any information (including addenda) posted on the forum or otherwise on the relevant RFT page on Tenders ACT which would have been apparent from a visit to the relevant RFT page on Tenders ACT.
- 7.1.8. Tenderers who have downloaded the RFT will also be notified by Tenders ACT via email of any formal addenda issued relating to the RFT.
- 7.1.9. If a Tenderer is in doubt as to the true meaning of any part of the RFT it is its responsibility to notify the Contact Officer through Tenders ACT to obtain clarification of the RFT. Any response by the Territory will be in writing and may, if of general application, be issued as an addendum to the RFT. The Territory will not be responsible for any other interpretation.
- 7.1.10. Questions or requests for clarification by Tenderers may only be accepted up to 72 hours prior to the date and time of close of Tenders.

8. OWNERSHIP OF TENDERS

8.1.1. All Tenders submitted in accordance with the RFT become the property of the Territory, which may use each Tender for Tender assessment purposes.

8.1.2. A Tenderer:

- (a) retains intellectual property rights in their Tenders, subject to any other person's rights;
- (b) authorises the Territory to communicate, reproduce, use or supply the content of their Tenders for any purpose in respect of the assessment of their Tenders;
- (c) must specify in their Tenders if any intellectual property or moral rights vest in an entity or a person other than the Tenderer, naming the entity or person, and indicating to what extent the authorisation in paragraph (b) may be limited.

9. EXCLUSION OF RESPONSES

9.1.1. The evaluation process will involve the initial clarification and evaluation of Tenders against the Assessment Criteria set out in this RFT.

9.1.2. 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.

10. EVALUATION PROCESS

10.1.1. The purpose of the evaluation process is to identify and select Tenderers that represent the best value for money consistent with the Territory 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.

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

10.1.3. 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.

10.1.4. 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.

11. SELECTION OF PREFERRED TENDER

11.1.1. The Territory is under no obligation to select any Tender. The tender process may be varied or discontinued upon the Territory giving written notice to Tenderers.

11.1.2. Upon conclusion of the evaluation process, the Territory may select a preferred Tenderer and then:

- (a) commence contract negotiations with the preferred Tenderer; or
- (b) commence contract negotiations with another Tenderer if contract negotiations with the preferred Tenderer are not concluded in a manner satisfactory to the Territory (including within a time specified by the Territory); or
- (c) cease negotiations with any Tenderer.

11.1.3. Unless otherwise specified in the RFT or notified by the Territory, no legal obligations arise until the Territory has sent a letter of acceptance/award (howsoever named) to the preferred Tenderer or the Territory has executed a contract with the preferred Tenderer.

11.1.4. Even where a letter of acceptance has been issued, the Territory may require the Tenderer to execute a formal agreement on terms no different from those contained in the letter of acceptance. If required, the Tenderer must execute and return the formal agreement within 14 days of receipt. The Territory will return an executed copy to the Tenderer. For the avoidance of doubt, the Contract is valid from the date specified in the letter of acceptance (or if no date is specified, the date of the letter of acceptance) notwithstanding a failure by the Tenderer to sign any formal agreement.

11.1.5. The Territory reserves the right to use counterparts as the form of execution for Deeds, Agreements, and Contracts which may be signed in a number of counterparts, all of which taken together will be deemed to constitute one and the same document.

11.1.6. The Tenderer acknowledges that unless specifically stated in the relevant RFT, no other document issued and no other representation made or conduct engaged in, by or behalf of the Territory (other than as set out in **section 11.1.3** of these Standard Conditions) 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 Territory to enter into a contract with the Tenderer.

11.1.7. The Territory will invite unsuccessful Tenderers to attend a debriefing.

12. PRICE BASIS, ENGLISH LANGUAGE AND METRIC UNITS

12.1.1. Prices must be in Australian dollars and include GST.

12.1.2. Tenders and all communications with the Territory must be in the English language.

12.1.3. All dimensions and units on plans and drawings and all references to measurements must be in metric units.

12.1.4. Prices must be inclusive of all customs duty applicable to imported materials, plant and equipment required for the Works and any taxes levied by any authority or government.

13. CONFIDENTIAL TEXT AND DISCLOSURE

13.1.1. Tenderers must specify in writing any information they believe is confidential in relation to their Tender which they may wish to be treated as confidential if it were included in any contract. Tenderers should seek their own legal advice as to the implication for them of the notifiable contracts provisions of the *Government Procurement Act 2001* (ACT).

13.1.2. Tenderers should be aware that the Territory may be required to disclose information, either under the *Freedom of Information Act 2016* (ACT) or by the responsible Minister in the Legislative Assembly.

14. COSTS OF TENDERING

14.1.1. The Territory will make no payment to a Tenderer:

- (a) for any costs, losses or expenses incurred by a Tenderer in preparing its Tender or any alternative Tender; or
- (b) in respect of any discussions, negotiations, enquires or requests for details or information made by or on behalf of the Territory after the submission of Tenders; or
- (c) for any work undertaken by any Tenderer after its Tender is submitted including work requested by the Territory in accordance with any provision of the RFT.

15. CONFLICTS OF INTEREST AND COLLUSION

15.1.1. A Tenderer must not place itself, and must ensure that its officers, employees, agents, subcontractors, consultants and advisers do not place themselves in a position that may or does give rise to an actual, potential or perceived conflict of interest between the interests of the Territory and the Tenderer during the tender process.

15.1.2. Where an actual, potential or perceived conflict of interest referred to in **section 15.1.1** arises the Tenderer must disclose the conflict of interest to the Territory in its Tender. If the conflict of interest or a risk of a conflict of interest arises after lodging of the Tender and before the completion of the procurement process, the Tenderer must immediately disclose that conflict of interest to the Territory Contact Officer. The Tenderer must comply with any directions of the Territory to resolve or otherwise deal with the conflict.

15.1.3. In submitting a Tender, the Tenderer warrants that:

- (a) the Tenderer has no knowledge of the tender price, including rates, of any other tenderer for the Works/Services;
- (b) except as disclosed in its Tender, the Tender has not been prepared with any consultation, communication, contract, arrangement or understanding with any competitor; and
- (c) the Tenderer has not otherwise engaged in any collusion, anti-competitive conduct or any other similar conduct in relation to the preparation of their Tender.

15.1.4. At the sole discretion of the Territory, contravention of this provision may result in the Tenderer's Tender being deemed to be non-conforming.

16. INSURANCE

16.1.1. In addition to all insurance which a Tenderer may be required by law to effect (e.g., workers' compensation), a successful Tenderer will be required to take out:

- (a) professional indemnity insurance in the amount specified in an RFT;
- (b) public liability insurance in the amount specified in an RFT; and
- (c) such other insurances and such other amounts as may be set out in the RFT.

16.1.2. A preferred Tenderer may be required to produce evidence of insurances before a contract is signed.

17. PROPRIETARY NAMES

17.1.1. When proprietary names, brands, catalogues or reference numbers are specified in the RFT, they are intended to set a minimum standard, and preference for any particular material or equipment is not intended. The Tenderer may offer material or equipment of similar characteristics, type, quality, appearance, finish, method of construction and performance. Where the Tenderer does so it must disclose any difference in the characteristics, type, quality, appearance, finish, method of construction or performance of the material or equipment.

18. SUSTAINABILITY, WASTE REDUCTION AND GREENHOUSE POLICIES

18.1.1. The Territory is committed to considering environmental issues in the performance of its activities. To this end the following policies and strategies are to be noted by Tenderers:

- (a) *People, Place and Prosperity: A Policy for Sustainability in the ACT* - outlines a set of principles that clarify the concept of sustainability. These principles include using resources prudently and taking all costs and benefits into account;

- (b) *ACT Waste Management Strategy 2011-2025: Towards a Sustainable Canberra* – establishes a framework for sustainable resource management and lists broad actions which are needed to achieve the aim of a waste-free society; and
- (c) *ACT Climate Change Strategy 2019-2025* - this strategy builds on achievements to date and identifies new measures to further reduce emissions and increase our resilience to unavoidable climate change impacts. It sets a path toward achieving our target of reducing emissions by 50–60% (from 1990 levels) by 2025 and outlines initial steps towards achieving our goal of net zero emissions by 2045. Our targets are ambitious. Achieving them will require continual learning and improvement as well as the active participation of the whole community. Government is committed to collaborating with the community and businesses to find new ways of working together to respond to climate change.

18.1.2. To download these policies, see the Environment, Planning and Sustainable Development Directorates web site.

19. ALTERNATIVE TENDERS

- 19.1.1. A Tender must be submitted strictly in accordance with the RFT.
- 19.1.2. The Tenderer may submit alternative Tenders for consideration, but must also submit a Tender which conforms in all aspects with the RFT to be eligible for consideration.
- 19.1.3. Where an alternative tender is submitted, the Tenderer must include a fully detailed description of the alternative tender and must state clearly the manner in which it differs from the requirements of the RFT.
- 19.1.4. If the Territory (at its absolute discretion) selects or accepts any alternative Tender, the Territory may make any necessary alterations to the Contract.

20. WORKPLACE GENDER EQUALITY

- 20.1.1. A Tender submitted by a Tenderer currently in breach of the *Workplace Gender Equality Act 2012*(Cth) may be deemed to be non-conforming.

21. NO GUARANTEE OF BUSINESS

21.1.1. The Territory does not guarantee, warrant or otherwise represent that any business or any minimum volume of works or services or value of business will be contracted, earned or received by the preferred Tenderer.

22. JOINT BIDS

22.1.1. The Territory will accept Tenders submitted on a Joint Bid Basis.

22.1.2. If a Tender is submitted on a Joint Bid Basis, the Tenderer must provide in its Tender:

- (a) a Tenderer Declaration from each party to the joint bid;
- (b) details of the legal entity of each party to the joint bid;
- (c) if prequalification is required, evidence that each party to the joint bid is prequalified;
- (d) details of the joint bid arrangements, including details of incorporation or otherwise, joint venture or special purpose vehicle; and
- (e) confirmation that each party to the joint bid will be jointly and severally liable to the Territory if they are the preferred Tenderer.

22.1.3. If the preferred Tenderer submitted its Tender on a Joint Bid Basis, the Territory reserves the right to require such amendments to the Contract as the Territory considers (in its absolute discretion) necessary to:

- (a) ensure the joint and several liability of the entities comprising the preferred Tenderer; and
- (b) otherwise provide it with sufficient protection in the event of default or financial difficulty of any type, including in relation to the provision of cross guarantees, parent company guarantees, indemnities, collateral warranties, direct collateral covenants with subconsultants or otherwise.

23. EXCHANGE OF INFORMATION

23.1.1. The exchange of information by the Territory and any relevant third party (including an ACT directorate or agency or other Government department or agency) is acknowledged by the Tenderer to be a communication in circumstances of qualified privilege and the Tenderer shall have no claim against the Territory, in defamation or otherwise, in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the Tenderer arising out of the communication.

24. NATIONAL COMPETITION POLICY

24.1.1. The Commonwealth and all State and Territory Governments agreed, in April 1995, to a National Competition Policy which comprises three agreements including a Competition Principles Agreement. The policy requires that both public and private sector organisations undertaking business operate within similar regulatory and commercial environments.

24.1.2. Clause 3 of the Competition Principles Agreement requires government agencies which undertake significant business activities to observe the principle of competitive neutrality. Among other requirements, this means that government agencies must include in their tenders all commercial costs that private sector organisations would include in their tenders. It is the responsibility of a public sector agency submitting a Tender to advise whether all commercial costs have been included in their Tender.

25. PROCUREMENT ACT WEBSITE

25.1.1. The Australian Government has entered into a number of Free Trade Agreements (FTA) with countries which impose obligations that apply to the Territory in respect of the conduct of open and transparent procurement activities. The Territory's obligations include ensuring prescribed measures are implemented to enhance access by suppliers to those countries to

Territory government contracts and not discriminating against any supplier from the relevant countries.

25.1.2. Tenderers are encouraged to refer to the Procurement ACT website for further details of relevant FTAs .

26. CONTACT OFFICER

26.1.1. The Territory is not liable for, and Tenderers should not rely on:

- (a) any verbal advice or information provided by the Contact Officer; or
- (b) any advice or information provided by any other officer of the Territory, in relation to an RFT, unless it is confirmed in writing by the Contact Officer.

26.1.2. Tenderers must not contact or attempt to contact any other officer of the Territory other than the Contact Officer. Authorisation in writing is required from the Contact Officer for the Tenderer, or employees or agents of the Tenderer, to make contact with officers other than the Contact Officer.

26.1.3. The Territory may, at its sole discretion, deem the Tenderer's Tender to be nonconforming if unauthorised contact is made or attempted.

27. ETHICAL SUPPLIER'S DECLARATION

27.1.1. Tenderers must complete and provide the Ethical Suppliers Declaration with their Tender, as applicable to the tender.

28. CONSTRUCTION PROGRAM

- 28.1.1. This section applies to the extent an RFT is for construction or design & construction activities.
- 28.1.2. The Tenderer must, if requested as part of the RFT, submit with the Tender a construction program. Unless otherwise specified in the RFT, the construction program must be in the form of a preliminary time-scaled network (Gantt Chart) and otherwise complying with the RFT and the Contract.

29. WORKING HOURS AND WORKING DAYS AND HOLIDAYS

- 29.1.1. This section applies to the extent an RFT is for construction or design & construction activities or maintenance.
- 29.1.2. If a Tender includes an allowance for work under the proposed Contract outside the working hours, or on other than the working days, prescribed or otherwise implied by the Contract, the Tender must state the working hours and days proposed.
- 29.1.3. In the comparison of Tenders, the Territory may take into account the working hours and days proposed by the Tenderer and the costs to the Territory attributable to supervision of work under the proposed Contract outside the prescribed working hours and/or the prescribed working days.
- 29.1.4. Tenderers attention is drawn to the statutory holidays, Christmas breaks and industry holidays and shutdowns that may fall during the term of the Contract. Tenderers must make due allowance for such events in the tender price and any construction program. No extensions of time will be granted in respect of the occurrence of such events during the original term of the Contract.

30. VARIATION AND TERMINATION OF THE RFT

30.1.1. The Territory may, at its absolute discretion:

- (a) amend the RFT, including by extending the closing time, or amending the draft contract or the Territory's requirements by giving written notice to Tenderers (where possible) and advertising the changes on Tenders ACT;
- (b) vary the RFT process;
- (c) suspend, terminate or abandon the RFT process in whole or in part including, without limitation, where in the opinion of the Territory:
 - (i) that is in the public interest;
 - (ii) no Tenderer meets the minimum Brief or format requirements (if any); or
 - (iii) no Tenderer is fully capable of complying with and undertaking the Contract; or
 - (iv) no tender represents value for money.

31. TENDERER PRESENTATIONS, BAFO OR STRUCTURED NEGOTIATION

31.1. GENERAL

31.1.1. Prior to determining the preferred Tenderer the Territory may, at its discretion:

- (a) request presentations or interviews with Tenderers for the purpose of seeking clarification or any other purpose;
- (b) create a further shortlist of Tenderers, which may be through a BAFO process, or through a structured negotiation process; and/or
- (c) conduct any further due diligence activities.

31.1.2. It is the Territory's preference that a preferred Tenderer is identified without undertaking a BAFO or structured negotiation, and Tenderers should not rely on such a process being undertaken when submitting their Tender.

31.2. INTERVIEWS/PRESENTATIONS

31.2.1. The purpose of any interviews/presentations (if held) will not be to allow Tenderers a chance to enhance or amend their Tender and will be confined to addressing the issues raised by the Territory.

31.2.2. Whether interviews and/or presentations are held will be at the Territory's absolute discretion and Tenderers should not rely on being invited to make further submissions (including presentations) or to participate in an interview process prior to the Territory's evaluation process being finalised.

31.3. STRUCTURED NEGOTIATIONS

31.3.1. A structured negotiation might be used if, for example, the Territory believes a non-interactive (e.g., BAFO) process will not facilitate the resolution of all outstanding issues with Tenderers to a standard which justifies the appointment of a preferred Tenderer.

31.3.2. Only Tenderers who the Territory believes capable of delivering the desired results, based on their submitted Tender including the results of assessment against the Assessment Criteria, will be invited to participate in a structured negotiation, if any are held.

31.3.3. The negotiations may address any areas of deficiency particular to the Tenderer's Tender.

31.4. BEST AND FINAL OFFER

31.4.1. If a single preferred Tenderer cannot be identified, but the Territory believes a value for money solution can still be achieved, the Territory reserves the right to use a Best and Final Offer (BAFO) process. This might be used if, for example:

- (a) costs submitted by all Tenderers are unacceptably high;
- (b) a preferred Tenderer cannot be clearly determined based on the evaluation of the responses against the Assessment Criteria in this RFT;
- (c) all Tenders are unacceptably deficient in one or more areas; or
- (d) it becomes evident that the RFT contained a mistake or area of uncertainty which has resulted in one or more Tenders not meeting the Territory's requirement.

31.4.2. Only Tenderers who the Territory believes capable of delivering the desired results, based on their submitted Tender including the results of assessment against the Assessment Criteria, may be invited to participate in the BAFO, if one is held.

31.4.3. The Territory will notify Tenderers who are invited to participate in the BAFO (if any) of the timeframe for response and (if applicable) the detailed questions relating to their Tender and/or the deficient parts of the Tender (as the case may be).

31.4.4. Those Tenderers will then be given an opportunity to revise their Tender, but only to the extent specifically outlined in the BAFO. The Territory will then re-evaluate the amended sections and re-score according to its evaluation process.

31.4.5. It is the Territory's preference that a preferred Tenderer is identified without the necessity of undertaking a BAFO, and Tenderers should not rely on such a process being undertaken when submitting their Tender.

32. SECURE LOCAL JOBS

32.1.1. 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.

33. ETHICAL TREATMENT OF WORKERS EVALUATION

33.1.1. 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. Guidance to industry is available on the Procurement ACT website.

34. APPLICABLE LAW

34.1.1. The laws of the Australian Capital Territory apply to this Approach to Market.

34.1.2. The Tenderer must comply with all relevant laws in preparing and lodging their Response and taking part in this Approach to Market.

35. PRIVACY POLICY

- 35.1.1. How Infrastructure Canberra (iCBR) complies with the *Information Privacy Act 2014* and manages personal information as described in the iCBR Information Privacy Policy located on the iCBR website: <https://www.act.gov.au/infrastructurecanberra/privacy>
- 35.1.2. For the purposes of notifiable contracts under the *Government Procurement Act 2001*, any personal information about a person is classified as confidential text and will not be published. Personal information is defined in the *Information Privacy Act 2014*.

36. END NOTES:

ⁱ Government Procurement Regulation 2007, section 10D.

ⁱⁱ AS4120 – Code of Tendering.