



# **Conditions: Tendering and Contract Purchase and Removal of Goods**

Effective Date: 01 August 2013  
Version No. 4.1.18

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# 1 Conditions of Tendering

## 1.1 General

Unless the contrary intention is indicated this RFT is to be interpreted in the same manner and words have the same meaning as in the Conditions of Contract.

In these Conditions of Tendering the following definitions apply:

**'Addendum'** means any document expressly stated to be an Addendum, which is issued by the Principal varying some provision in the original RFT prior to the stated closing time and date.

**'RFT'** means the request for tender inviting offers and includes all annexures, schedules, drawings, attachments and addenda.

**'Tender'** means all documents lodged by the Tenderer in response to the RFT.

**'Tenderer'** means the person lodging a Tender in response to the RFT.

## 1.2 Lodgement of Tenders

For the Tender to be considered, the Tenderer shall complete and submit one copy of the documents listed in the section of the Annexure to the Conditions of Tendering and Contract titled "Documents to be Lodged" (ie all Response Schedules);

- a) in English;
- b) in the form required; and
- c) to be fully received by the stated time and date for closing of the Tender.

Any Tender that does not comply with these conditions or which contains provisions not required or allowed by the RFT may result in the Tender being declared ineligible for consideration.

Oral Tenders or Tenders submitted electronically (other than via the Quotations and Tenders Online eLodgement Service or by facsimile), shall be declared ineligible for consideration.

The Principal will not be liable for any expense or loss, which may be incurred by any Tenderer in the preparation of its Tender. Once lodged, the Tender shall become the property of the Principal.

### 1.2.1 Closing Time and Date

Tenders will close at the time and on the date stated on the front cover of the RFT.

### 1.2.2 Lodged by Hand

Tenders delivered by hand (including by a commercial courier service) are **not permitted**. Any Tender submitted by hand or commercial courier service shall be declared ineligible for consideration.

### 1.2.3 Lodged by Post

Tenders sent by prepaid post must be directed to the postal address stated on the cover of the RFT.

### 1.2.4 Lodged by Facsimile

Tenders sent by facsimile must be directed to the facsimile number stated on the cover of the RFT.

### 1.2.5 Lodged by Electronic Lodgement

Where electronic lodgement has been allowed, Tenders sent by electronic lodgement must be:

- a) submitted using the eLodgement button via the Quotations and Tenders Online eLodgement Service as stated on the front cover of the RFT; and
- b) electronic format as specified (ie .arf, .doc, .docx, .jpg, .pdf, .rtf, .tif, .txt, .xls, .xlsx, .zip).

Tenders lodged in an unspecified electronic format will be invalid and declared ineligible for consideration.

Where select tenders have been sought and access to the RFT is provided from a link contained in the covering email sent inviting the submission of an offer, Tenders must be submitted electronically using the same e-mail link.

The Tender may be admitted for consideration on the basis that the transmission of the Tender is acknowledged by the Tenderer as being the true and legal version and is completed, submitted and acknowledged by the stated time and date for closing of Tenders.

In choosing to use the eLodgement option, Tenderers agree to comply with the conditions of use, of the Quotations and Tenders Online eLodgement Service.

If, for any reason, the electronic Tender (except pricing schedule[s]) submitted becomes corrupt, illegible, inadequate or incomplete as a result of transmission, storage, etc. a hard copy or a further electronic copy of the Tender must be provided by the Tenderer on request from the Principal. Pricing schedule(s) submitted electronically that become corrupt, illegible, inadequate or incomplete as a result of transmission, storage, etc will result in the Tender being declared ineligible for consideration.

### **1.2.6 Late Tenders**

Tenders received (in full or part) after the stated time and date for closing of Tenders are ineligible for consideration.

Notwithstanding the preceding paragraph Tenderers may appeal such decisions however:

- a) Tenders submitted by prepaid post, received after the stated time and date for closing of Tenders may be considered only if it can be established to the satisfaction of the Procurement Review Board that the Tender was posted or despatched before the stated time and date for closing of Tenders and in the ordinary course of business would not have been received late. Impressions of company owned franking machines are not acceptable evidence of timely posting or despatch.
- b) Tenders submitted via the Quotations and Tenders Online eLodgement Service may be considered only if it can be established to the satisfaction of the Procurement Review Board that they were submitted before the stated time and date for closing of Tenders, as evidenced in the acknowledgment of receipt from the NT Government Tender Lodgement host server.
- c) The Procurement Review Board may, but is not obliged to, consider Tenders that appear to its satisfaction to have been submitted prior to the stated time and date for closing of Tenders where those Tenders were not received before the stated time and date for closing of Tenders because of a fault or failure of Quotations and Tenders Online eLodgement Service.
- d) Times and dates displayed on transmissions from company owned facsimile transmission devices are not acceptable evidence of timely transmission.

## **1.3 Tenderers to Inform Themselves**

Tenderers at their own expense, shall inform themselves fully of all circumstances and conditions relating to submitting a Tender, including compliance with all legislation applicable to the removal,

an inspection of the Goods if applicable, and shall satisfy themselves as to the correctness and sufficiency of the RFT documentation.

The NT Government Procurement Framework including the NT Procurement Code is available from the web address:

[www.dob.nt.gov.au/business/tenders-contracts/legislative\\_framework/Pages/default.aspx](http://www.dob.nt.gov.au/business/tenders-contracts/legislative_framework/Pages/default.aspx)

## 1.4 Compliance with NT Procurement Code

- a) In preparing its Tender, submitting its Tender and throughout the tendering period and process the Tenderer shall comply with the Northern Territory Procurement Code ('Code').
- b) A copy of the Code is available at the web address specified in the clause entitled "Tenderers to Inform Themselves".
- c) If the Principal:
  - i. has evidence that the Tenderer has not complied with the Code; or
  - ii. is of the reasonable opinion that the Tenderer has not complied with the Code,

the Principal may, at its absolute discretion, deem the Tender submitted by the Tenderer to be ineligible for consideration.

## 1.5 Enquiries

Should the Tenderer

- a) have any doubts as to the meaning of any part of the RFT; or
- b) find any discrepancy or error; or
- c) find any omission in the RFT (for example all pages are not numbered consecutively and that all drawings, attachments or supplements referred to are not included, etc);

the Tenderer shall seek clarification in writing (which may be by means of electronic transmission) from the person specified in the Annexure, as early as possible but in any event before the stated time and date for closing of Tenders.

Where attachments or supplements have been referred to in any section of the RFT these should be read in conjunction with the section to which they refer.

Any clarification given pursuant to this clause may also be issued to all other prospective Tenderers. No explanation or amendment to the RFT shall be recognised unless in the form of a written addendum issued by the Principal.

It is the sole responsibility of Tenderers to ensure that their contact details held by Quotations and Tenders Online Service are correct and up-to-date in order for them to receive any written addendum issued by the Principal.

Any Tenderer who believes the RFT to be discriminatory, restrictive or biased should inform the Director, Contract and Procurement Services in writing to [CAPSAssist@nt.gov.au](mailto:CAPSAssist@nt.gov.au) as early as possible, but in any event before the stated time and date for closing of Tenders.

## 1.6 Inspection

The Goods are offered for sale ex site on an "as is where is" basis and may be inspected at the location stated in the Annexure. Being available for inspection, no allowance will be made nor will the Tenderer be permitted to claim on the Principal on the grounds that the Goods have not been correctly described.

## 1.7 Signing of Documents

The Tenderer shall sign its Tender as indicated below:

- a) In the case of a corporation:
  - i. With its common seal, and the fixing of the seal witnessed by:
    - two (2) directors of the company; or
    - a director and a company secretary of the company; or
    - for a proprietary company that has a sole director who is also the sole company secretary – that director; or
  - ii. Without its common seal, if signed by:
    - two (2) directors of the company; or
    - a director and a company secretary of the company; or
    - for a proprietary company that has a sole director who is also the sole company secretary – that director; or
  - iii. by signature of two (2) persons (other than the persons described in clause [ii]) authorised by the corporation to bind it in Contract. In such circumstances a copy of the authorisation duly executed by the corporation in accordance with clause (i) or (ii) must be submitted with the Tender.
- b) In the case of a firm (including a firm trading under a business or trading name and a partnership):
  - i. by signature of each proprietor of the firm; or
  - ii. in the case of firms having more than five (5) proprietors, by signature of the proprietors authorised to bind the firm in Contract. In the case of the later evidence of the authority of those proprietors to bind the firm may be required by the Principal; or
  - iii. any proprietor who is a corporation must sign the Tender in the manner indicated in paragraph (a) above.

Where the Tenderer is lodging its Tender via the Quotations and Tenders Online eLodgement Service, there is no requirement to complete the "signature" block on the Declaration by Tenderer form.

Where the Tender is from a:

- a) person or persons, full given names are to be provided; or
- b) firm or business or trading name, full given names of each member of the firm are to be provided; or
- c) company, the full name and registered address are to be provided.

Each Tender shall contain the Tenderer's unique business identifier required by law (eg ACN/BN) and an address for service of any notices necessary or required to be or which may be served on or given to the Tenderer in connection with its Tender and any subsequent Contract arising out of acceptance of the Tender.

## 1.8 Tender Validity

Tenders shall remain valid for the period stated in the Annexure. If a Tender is not formal in accordance with these Conditions of Tendering the Tender validity period shall commence on the date on which the Tender is formalised to the satisfaction of the Principal. A Tenderer may withdraw its Tender at any time after the expiration of the Tender validity period, but shall not withdraw its Tender prior to the expiration of such period unless such withdrawal is accepted by or on behalf of the Principal.



## 1.9 Part Offer and Part Acceptance

Unless otherwise stated in the Annexure, Tenderers may tender for any item or items or any group or groups of items.

Where part offers are allowed, the Principal reserves the right to accept separate Tenders for each or any item or items or item groups, which have been tendered for, unless the Tenderer specifically states to the contrary in its offer.

## 1.10 Pricing

All prices shall be stated in Australian dollars and where applicable be inclusive of GST. The price(s) shall include all costs necessary and incidental to the removal of the Goods.

The Tenderer shall complete each line item in the Schedule of Prices against which a price is offered and lodge the Schedule with the Tender.

## 1.11 Change to the Conditions

Tenderers **are not permitted** to request changes or propose alternatives to the Conditions of Tendering and Contract applicable to the RFT. Any Tenderer who attempts to do so will have their Tender declared ineligible for consideration.

## 1.12 Tender Assessment Criteria

Selection of the successful Tenderer will be based on a best value for money assessment of Tenders against the Tender Price and any assessment criteria requested in the Response Schedules.

Tenderers should provide all relevant factors addressing the selection criteria specified in the Response Schedules, which may assist the Principal in making an assessment of the Tender.

The Principal reserves the right to apply weightings to each selection criterion applied in its total discretion, having regard to requirements contained in the NT Government Procurement Framework.

## 1.13 Clarification and Additional Information

The Tenderer may be called upon to clarify information contained in their Tender or to supply information additional to that provided in their Tender to demonstrate to the satisfaction of the Principal that the Tenderer has the ability to perform the requirements of the RFT.

The Tenderer shall within the time specified comply with any such requests. Failure to submit any or all of the information required, in the time stipulated, may result in the Tender being declared ineligible for further consideration.

## 1.14 Notification of Acceptance

The Principal shall not be bound to accept the highest or any Tender.

Notice of Acceptance of the Tender shall constitute a binding Contract between the Principal and the successful Tenderer (hereinafter called the '**Contractor**'). The Notice of Acceptance will, at the Principal's discretion, be issued by pre-paid post, facsimile or email to the address stated in the Tender.

If a Notice of Acceptance has not been given there shall be no agreement between the Principal and the Tenderer and the Tenderer shall not act on any representations or statements made by the Principal or its employees or agents prior to the issue of the Notice of Acceptance.

## **1.15 Debriefing Tenderers**

Tenderers may request a debriefing as to the specific reasons why their Tender was unsuccessful. This is for the purpose of assisting Tenderers to improve their competitiveness for future Tenders.

Information will be confined to discussion of the Tenderer's Tender and under no circumstances will information relating to another Tender be disclosed.

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## 2 Conditions of Contract

### 2.1 Interpretation of Terms

In these Conditions, unless the context otherwise requires:

**'Agency'** means a department, agency or statutory authority of the Northern Territory of Australia.

**'Annexure'** means the section in the RFT detailing the specific requirements applicable to the Conditions of Tendering and Contract.

**'Business Day'** means any day which is not a Saturday, Sunday or a NT wide public holiday within the meaning of the *Public Holidays Act*.

**'Business Hours'** means from 8.00am to 4.30pm on a Business Day at the place where the Goods are to be removed.

**'Completion'** means the Principal has determined that the removal of the Goods has been completed.

**'Contract'** means the document, that constitutes or evidences or, as the case may be all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor.

**'Contractor'** means the legal entity that, as party to the Contract is bound to remove the Goods in accordance with the Contract and includes the successors and lawful assigns of the Contractor.

**'Contract Price'** means the price that the Contractor has agreed to pay for the purchase and removal of the Goods.

**'Date of Acceptance'** means the date that appears on the Notice of Acceptance issued by the Principal accepting the Tenderer's Tender.

**'Goods'** means the items described and quantified in the Description of Goods and/or Schedule of Prices, which are to be purchased by the Contractor in accordance with the Contract.

**'Notice of Acceptance'** means the written notification and any accompanying documentation sent to the Contractor by the Principal advising acceptance of the Tenderer's Tender to purchase and remove the Goods.

**'Principal'** means the Northern Territory of Australia. The Principal for Power and Water contracts is the Power and Water Corporation.

**'Principal's Representative'** means the person nominated by the Principal or other person from time to time appointed in writing by the Principal to act as the Principal's Representative for the purposes of the Contract.

**'Description of Goods'** means the statement set out in the Contract detailing the Goods to be removed.

**'Request for Tender (RFT)'** means the document containing or referring to the Conditions of Tendering, Conditions of Contract, Special Conditions of Contract (if any), the Annexure, Northern Territory Procurement Code, the Description of Goods, Response Schedules and any other document issued for the purpose of inviting Tenders for the purchase and removal of the Goods.

**'sub-contractor'** means a person other than the Contractor's employees, engaged by the Contractor who provides goods or services to the Contractor.

**'Tax Invoice'** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999*.

In the Contract, unless the contrary intention appears:

- a) headings are for the purpose of convenient reference only and shall not be used in the interpretation of these conditions;
- b) the singular includes the plural and vice-versa;
- c) a reference to one gender includes the other;
- d) a reference to a person includes a natural person, a body politic, body corporate, a partnership, joint venture, incorporated association, government, local government authority or agency;
- e) a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Contract;
- f) if the last day of any period prescribed for the doing of an action falls on a day which is not a Business Day, the action shall be done no later than the end of the next Business Day;
- g) a reference to time is to Australian Central Standard Time;
- h) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- i) a reference to a 'dollar', '\$', '\$A' or 'AUD' means the Australian dollar unless otherwise stated;
- j) a reference to a "measurement" means Australian legal units of measurement unless otherwise specified;
- k) a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the date of the Notice of Acceptance and updated from time to time, or alternatively, a reference to another version of the document if agreed in writing between the parties;
- l) the word 'includes' in any form is not a word of limitation;
- m) a reference to a clause includes a reference to a subclause of that clause; and
- n) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract, and a reference to this Contract includes any schedule or annexure.

## 2.2 Formation of the Contract

The Contract between the Principal and the Contractor shall comprise:

- a) these Conditions of Contract and any Special Conditions;
- b) the Notice of Acceptance;
- c) the RFT;
- d) the Tenderer's Tender response; and
- e) any other document expressly referred to in items (a) to (c) of this clause as forming part of the contract (together the Contract).

If there is any inconsistency between any part of the Contract, a descending order of precedence shall be accorded to the:

- a) Special Conditions (if any);
- b) these Conditions of Contract;
- c) Annexure to the Conditions of Tendering and Contract;
- d) Notice of Acceptance;
- e) Scope of Services;
- f) Drawings included in the RFT (if any);

- g) any other document expressly referred to in items (a) to (f) inclusive of this clause as forming part of the Contract;
- h) Conditions of Tendering and all other documents, other than those specified above in (a) to (f) inclusive, forming the RFT or the Contract (other than the Tenderer's Tender); and
- i) the Tenderer's Tender response including any drawings;

so that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail.

## **2.3 General Obligations of the Parties**

Both the Principal and the Contractor will, at all times:

- a) act reasonably in performing their obligations and exercising their rights under the Contract;
- b) diligently perform their respective obligations under this Contract; and
- c) work together in a collaborative manner.

## **2.4 Principal's Responsibilities and Obligations**

The Principal shall give or cause to be given to the Contractor timely instructions, decisions and information sufficient to define the requirements of the Contract.

The address for the service of notices is as stated in the Annexure.

### **2.4.1 Principal's Representative**

The Principal's Representative shall exercise the duties discretions and powers vested in the Principal under the Contract except this power of appointment.

The Principal's Representative is nominated in the Annexure.

## **2.5 Nature of Contract**

The Contractor shall pay on a Schedule of Prices basis.

Unless otherwise stated in the RFT, prices will be considered firm.

### **2.5.1 Applicable Law**

The Contract shall be governed by and construed in accordance with the laws of the Northern Territory of Australia.

## **2.6 Compliance with Relevant Acts, Regulations and By-Laws**

The Contractor shall observe and comply with the provisions of relevant Acts, regulations, by-laws and rules and the requirements of any authority in the place where the Goods are stored in relation to the purchase and removal of the Goods.

## **2.7 No Warranty Given**

The Principal gives no warranty as to the quantity, quality, fitness of purpose, or safe condition of the Goods. The Goods are sold as and where they lie and the Contractor shall have no claim against the Principal in respect of the quantity, quality or safety of the Goods whatsoever.

## **2.8 Responsibility/Risk, Safeguarding Goods**

The Contractor is responsible for all cost and risk in relation to the purchase and removal of the Goods.

Before any part of the Goods is removed from site, the Contractor may notify the Principal's Representative in writing of any deficiency in the quantity of the Goods at pre-tender inspection and when proof of payment is provided to the Principal's Representative. The Principal's Representative has sole discretion to determine the quantum of any deficiency in the quantity of the Goods and adjust the Contract Price accordingly.

Subject to the preceding paragraph, once the Contractor has presented the Principal's Representative with satisfactory proof of payment of the Goods the Principal shall not be liable for any loss or damage to the Goods for any reason whatsoever.

## **2.9 Notices**

### **2.9.1 Services of Notices**

Notice must be:

- a) in writing, in English and signed by a person duly authorised by the sender; and
- b) hand delivered or sent by prepaid post or by electronic means to the recipient's address for Notices set out in the Contract, as varied by any Notice given by the recipient to the sender.

### **2.9.2 Effective on Receipt**

Any notice given in accordance with sub-clause 2.9.1 sent to the address set out in the Contract, takes effect when it is taken to be received (or at a later time specified in it) and is taken to be received:

- a) if hand delivered, on delivery;
- b) if sent by post, three (3) Business Days after the date of posting; and
- c) if sent by electronic transmission, on receipt by the sender of a transmission report from the despatching machine indicating that the notice sent was received in its entirety at the recipient's machine unless, within eight (8) Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice;

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 8.00am on the next Business Day.

## **2.10 Payment**

Unless otherwise agreed in writing, payment for the Goods shall be made, within the time stated in the Annexure.

The Contractor shall remit the Contract Price for the Goods to the Receiver of Territory Monies, at the address shown on the Annexure. Payment is to be made by cash, bank cheque or EFTPOS if permitted in the Annexure.

## **2.11 Removal of Goods within the Time Stated**

The Contractor shall remove the Goods within the time and from the place stated in the Annexure.

Access to and removal of the Goods will be allowed when the Contractor has provided the Principal's Representative with satisfactory proof of payment.

## **2.12 Variations**

A variation of the Contract shall only be made by agreement in writing by the parties.

## 2.13 Assignment

The Contractor shall not assign the Contract, mortgage, charge or encumber any of the monies payable under the Contract or any other benefit whatsoever arising under the Contract, without consent of the Principal. Such consent shall not be unreasonably withheld.

## 2.14 Sub-Contracting

Should the Contractor desire to sub-contract any part or parts of the work the Contractor shall submit to Principal's Representative the names of his proposed sub-contractors the nature of the work that it is intended they undertake, and seek the written approval of the Principal's Representative in respect of them. No sub-contractor shall be employed in connection with the work unless such approval is first obtained. Such consent shall not be unreasonably withheld.

Any sub-contract shall be in writing and contain the provision that progress payments to the sub-contractor shall be made within fourteen (14) days after the Contractor has received payment from the Principal.

Any approval by the Principal to engage a sub-contractor for any part of removal of the Goods shall not relieve the Contractor from any of its liabilities under the Contract. The Contractor shall be fully liable to the Principal for the work of the sub-contractor or any employee or agent of the sub-contractor.

## 2.15 Disputes

The Contractor shall, in respect of any dispute or difference arising out of the Contract and not later than fourteen (14) days after the dispute or difference arises, submit the matter at issue in writing with detailed particulars of the matter at issue to the Principal for decision and the Principal shall as soon as practicable thereafter give a decision in writing to the Contractor.

If the Contractor is dissatisfied with the decision of the Principal, he may, not later than twenty-eight (28) days after the decision is given, notify the Principal that he requires the matter to be referred for expert determination, in accordance with the expert determination process detailed in "Northern Territory of Australia - Expert Determination", a copy of which is available from the place of issue of the RFT or from the following web address: [http://www.nt.gov.au/dbe/business/tenders-contracts/legislative\\_framework/tendering-contract/Pages/eddr.aspx](http://www.nt.gov.au/dbe/business/tenders-contracts/legislative_framework/tendering-contract/Pages/eddr.aspx)

If the Principal does not receive the notice requiring expert determination within the prescribed time, the Principal's decision shall not be subject to expert determination.

## 2.16 Termination

If the Contractor:

- a) fails to pay for the Goods within the period stated in the Annexure or such extended time as the Principal's Representative may approve, or
- b) fails to remove the Goods within the period stated in the Annexure or such extended time as the Principal's Representative may approve; or
- c) intimates that they are unwilling or unable to complete the Contract, or becomes insolvent or bankrupt, or being a company goes into liquidation,

the Principal may, by notice in writing, cancel the Contract.

All sums of money remaining in the hands of the Principal may be forfeited and become vested in or become payable to the Principal.

Upon cancellation of the Contract the Principal may arrange disposal of the Goods by any means the Principal decides.

### **2.17 Rights of Principal to Recover Monies**

Should action, pursuant to the clause titled Termination, be taken then all losses, costs, charges and expenses incurred or sustained by the Principal in completing the Contract may be deemed to be a debt due to the Principal by the Contractor and may be deducted from any monies that may then or may thereafter become due to the Contractor and if the monies are less than the amount so deductible the amount of the deficiency shall be a debt due by the Contractor to the Principal.

### **2.18 Goods and Services Tax**

The receipt issued by the Principal shall be a tax compliant invoice.